UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
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MAILED

DEC 14 2010

OFFICE OF PETITIONS

MUNCY, GEISSLER, OLDE & LOWE, PLLC
4000 LEGATO ROAD, SUITE 310
FAIRFAX VA 22033

In re Application of
BEHROUZ POUSTCHI, ET AL.
Application No. 10/760,530
Filed: January 21, 2004
Attorney Docket No. 3655/0270PUS2

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed July 20, 2004. The delay in rendering a decision on this petition is regretted.

The petition is dismissed.

In view of the allowance of the claims in the instant application (**see the Notice of Allowance and Fees Due, mailed October 4, 2010**), petitioner is reminded that any renewed petition, correcting the below-noted deficiencies, must be submitted prior to issuance such that it is actually received and granted by the appropriate officials before the date of issue. Petitioner should also note that the mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.**

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

As to item (1), the applicable statute (35 U.S.C.§ 116) requires that a "diligent effort" have been expended in attempting to find or reach the non-signing inventor. ***See* MPEP 409.03(a)**. The showing currently fails to demonstrate, with a documented showing, that a diligent effort was made to find or locate non-signing inventor Ms. Natalie Ann Gagnon, such that the declaration can be accepted under 37 CFR 1.47(a). Where inability to find or locate a named inventor(s) is

alleged, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a *diligent effort* was made to locate the inventor.

Petitioner has not demonstrated that all efforts were expended in trying to locate non-signing inventor Ms. Gagnon. The instant petition indicates that Ms. Gagnon was contacted only at her employer's address that is different from Ms. Gagnon's last known address stated in the petition. In this regard, petitioner should, at the very least, mail correspondence to the inventor's last known address, return receipt and/or forwarding address requested. If a forwarding address is provided, petitioner should then mail a complete copy of the application papers (specification, claims, drawings, oath, etc.) to Ms. Gagnon's 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 the inventor, e.g., through personnel records, co-workers, E-mail, the Internet or the telephone, etc., continue to fail, then applicant will have established that the inventor cannot be reached 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.

Where there is an express or oral refusal, that fact, along with the time and place of the refusal, must be stated in an affidavit or declaration by the party to whom the refusal was made. The alleged refusal by the non-signing inventor, Ms. Gagnon, was not directly made to the petitioner or Mr. Pepin (see item 8 in the oath/declaration of Mr. Pepin). Where there is a written refusal, a copy of the document(s) evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the rule 47 applicant that an omitted inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in an affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence must be submitted.

Whenever an omitted inventor **gives a reason for refusing to sign the application oath or declaration**, that reason should be stated in the affidavit or declaration.

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 should be directed to the undersigned at (571) 272-4914.

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MUNCY, GEISSLER, OLDE & LOWE, PLLC
4000 LEGATO ROAD, SUITE 310
FAIRFAX VA 22033

MAILED
JAN 24 2011
OFFICE OF PETITIONS

In re Application of :
BEHROUZ POUSTCHI, ET AL. : DECISION ON STATUS
Application No. 10/760,530 : UNDER 37 CFR 1.47(a)
Filed: January 21, 2004 :
Attorney Docket No. 3655/0270PUS2 :

Papers filed on December 28, 2010, in response to a "Decision Refusing Status Under 37 CFR 1.47(a)," mailed December 14, 2010, included a Declaration signed by a previously non-signing inventor, Natalie Ann Gagnon, in compliance with 37 CFR 1.63. It is noted that the declaration submitted on December 28, 2010, is not complete. However, where neither the original oath or declaration nor the substitute oath or declaration is complete in itself, but each oath or declaration names all of the inventors and the two taken together give all the required data, no further oath or declaration is needed. *See* MPEP 602.02.

The petition is **DISMISSED AS MOOT**.

In view of the joinder of the inventor, further consideration under § 1.47(a) is not necessary. This application does not have any Rule 1.47 status and no such status should appear on the record for this file. This application need not be returned to this Office for any further consideration under 37 CFR 1.47(a).

This application is being referred to the Office of Data Management for further processing.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-4914.

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

CC: Scott T. Wakeman
PO BOX 1364
Fairfax,VA 22038-1364

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. 7102089
Issue Date: September 5,2006
Application No. 10760655
Filed: January 17,2004
Attorney Docket No. 300-27 DIV III

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

This is a decision on the electronic petition, filed July 21,2011 ,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 21,2011 .
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)
7102089	2006-09-05	10760655	2004-01-17	300-37 DIV III

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

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.

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	/ATC/	Date (YYYY-MM-DD)	2011-07-21
Name	Adrian T. Calderone	Registration Number	31746

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. 6909046
Issue Date: June 21,2005
Application No. 10760784
Filed: January 20,2004
Attorney Docket No. 42P12202D

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

This is a decision on the electronic petition, filed October 1,2010 ,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 1,2010 . 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)
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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)
6909046	2005-06-21	10760784	2004-01-20	42P12202D

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

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.

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)	2010-09-29
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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CARL H. STROM
25462 GALASHIELDS CIRCLE
BONITA SPRINGS, FL 34134

MAILED

APR 13 2011

OFFICE OF PETITIONS

ON PETITION

In re Patent No. 6,861,934 :
Issue Date: March 1, 2005 :
Application No. 10/760,964 :
Filed: January 20, 2004 :
Attorney Docket No.: STORM-2 :

This is a decision on the petition, filed February 14, 2011, under 37 CFR 1.378(c) to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on March 1, 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 was timely filed under the provisions of 37 CFR 1.378(c).

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.

It is noted that the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. Petitioner is reminded, however, that the mere filing of a change of correspondence address does not affect fee address. Therefore, if petitioner desires to receive future correspondence regarding any Maintenance Fee Reminder which may be mailed regarding maintenance fees for the above-identified patent, an appropriate "fee address" and/or "customer number" form should be submitted to the Maintenance Fee Division. A courtesy copy of this decision is being mailed to the address given on the petition.

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: CARL H. STROM
13863 BENTLY CIRCLE
FT. MEYERS, FLORIDA 33912

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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GARDERE WYNNE SEWELL LLP
INTELLECTUAL PROPERTY SECTION
3000 THANKSGIVING TOWER
1601 ELM STREET
DALLAS, TX 75201

MAILED

APR 21 2011

OFFICE OF PETITIONS

In re Application of :
Pierre Cote :
Application No. 10/761,434 : DECISION ON PETITION
Filed: January 22, 2004 : TO WITHDRAW
Attorney Docket No. 133620-1010 : 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 2, 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. 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 Chris P. Perque on behalf of all attorneys of record. All attorneys/agents have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

All future communications from the Office will be directed to the assignee of the entire interest at the first copied address below until otherwise properly notified by the applicant.

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

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

cc: **Greg J. Micek**
IQ Biometrix, Inc.
1525 Lakeville, Suite 200
Kingwood TX 77339

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
10/761,434	01/22/2004	Pierre Cote	133620-1010

CONFIRMATION NO. 1416

32914
GARDERE WYNNE SEWELL LLP
INTELLECTUAL PROPERTY SECTION
3000 THANKSGIVING TOWER
1601 ELM ST
DALLAS, TX 75201-4761

POWER OF ATTORNEY NOTICE

OC000000046950493

Date Mailed: 04/05/2011

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/02/2010.

- 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.

/tsjohnson/

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
P.O. Box 1450
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SEED INTELLECTUAL PROPERTY LAW GROUP PLLC
701 FIFTH AVE
SUITE 5400
SEATTLE WA 98104

MAILED

AUG 06 2010

OFFICE OF PETITIONS

In re Patent No. 7,633,851
Issued: December 15, 2009
Application No. 10/761,708
Filed: January 21, 2004
Attorney Docket No. 859063.462C1

: DECISION ON REQUEST
: FOR RECONSIDERATION
: OF PATENT TERM ADJUSTMENT
: AND
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d) filed on February 16, 2010, requesting that the patent term adjustment be corrected from 1197 to 1806 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 seven hundred thirty days is **GRANTED to the extent indicated herein.**

It is undisputed that the period of examination delay, "A" delay", pursuant to 37 CFR 1.702(a)(1) is 1197 days and the "B" delay period, the over three year period begins on January 21, 2007 and ends on December 15, 2009 and is 1059 days. However, while Applicants agrees that the period of overlap begins on January 21, 2007 and ends on June 30, 2008, Applicant argues that the period of overlap is 450 days. Applicants are advised that as the period of overlap begins on January 21, 2007 and ends on June 30, 2008, the period of overlap is 526 days, and therefore, considering the 526 days of overlap, the "B" delay is 533 days. As such, the patent term adjustment is 1730 days (1197 plus 1059 minus 526 overlap minus 0 applicant delay), not 1806 days.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e).

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

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by

the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand seven hundred thirty (1730)** days.

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

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 : 7,633,851 B2

DATED : December 15, 2009

INVENTOR(S) : Simone Mazzoni

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 (1197) days

Delete the phrase "by 1197 days" and insert – by 1730 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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FEB 28 2011

OFFICE OF PETITIONS

COOLEY LLP
ATTN: Patent Group
Suite 1100
777 - 6th Street, NW
WASHINGTON DC 20001

In re Patent No. 7,582,260 : DECISION ON APPLICATION FOR
Issued: September 1, 2009 : PATENT TERM ADJUSTMENT and
Application No. 10/761,818 : NOTICE OF INTENT TO ISSUE
Filed: January 20, 2004 : CERTIFICATE OF CORRECTION
Dkt. No.: MONT-058/02US 306509-2189 :

This is a decision on the petition filed November 2, 2009 requesting that the patent term adjustment be increased from 737 days to 1313 days.

The request for reconsideration of the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.**

The patent is entitled to an overall adjustment of 1200 days.

The above-identified application issued as U.S. Pat. No. 7,582,260 on September 1, 2009. The patent issued with a patent term adjustment of 737 days. The instant application for patent term adjustment was timely filed November 2, 2009. Patentees assert entitlement to an additional adjustment of 955 days for the Office's failure to issue the patent within three months of the date that the application was filed.

Review of the record reveals that the application is entitled to an adjustment of 576 days pursuant to 37 CFR 1.703(a)(1) plus an adjustment of 955 days pursuant to 37 CFR 1.703(b) less 113 days in connection with the Notice of Appeal filed December 12, 2008 pursuant to 37 CFR 1.703(b)(4) less 218 days of applicant delay pursuant to 37 CFR 1.704.

In view thereof, the patent is entitled to an overall adjustment of 1200 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. See 37 CFR 1.323(a)(4).

The required $200.00 fee set forth in 37 CFR 1.18(e) has been charged to the authorized deposit account. 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 1200 days.

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

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

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,582,260

DATED : September 1, 2009 **DRAFT**

INVENTOR(S) : Dratz, 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 737 days

Delete the phrase "by 737 days" and insert -- by 1200 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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ROPES & GRAY LLP
PATENT DOCKETING 39/41
ONE INTERNATIONAL PLACE
BOSTON MA 02110-2624

MAILED

OCT 12 2010

OFFICE OF PETITIONS

In re Application of :
Eric R. Schott :
Application No. 10/761,884 : ON PETITION
Filed: January 20, 2004 :
Attorney Docket No. EQLC-P01-005 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 17, 2010, to revive the above-identified application.

The petition is **DISMISSED**.

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

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed September 30, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on December 31, 2009. The Notice of Abandonment was mailed May 11, 2010.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item(s) (1).

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). The amendment filed herewith petition ***does not*** prima facie place the application in condition for allowance.

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.

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

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

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

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

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

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

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

Enclosed: Examiner's Advisory Action PTOL-303

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/761,884	SCHOTT, ERIC R.	
	Examiner	Art Unit	
	DUC T. DOAN	2185	

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

THE REPLY FILED 17 September 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 _____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): 27 and 29.
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: *27 and 29*.
   Claim(s) rejected: *1-2, 8-12, 18-20, 22-26, 28 and 30-31*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

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

REQUEST FOR RECONSIDERATION/OTHER

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

/Duc T Doan/
Examiner, Art Unit 2185

Applicant argues at pages 8-9,

" ... In Dimitri, a storage medium is formatted into a plurality of "zones". Each zone comprises one or more circumferential tracks, with each track comprising a plurality of addressable sectors. The innermost zones have fewer sectors than the outermost zones. When a request is received to write a file to the storage medium, a "utilization factor" is determined for the file and a zone for the file is selected. The determined file utilization factor is an expected rate at which the file will need to be accessed by the application, not the measured performance of the medium itself. The file is then written to the selected zone. (See Dimitri, the Abstract). Thus, files with relatively low access rates are assigned to low performance areas, and files with relatively high access rates are assigned to relatively high performance areas on the storage medium. Applicants must therefore disagree with the Examiner's characterization of Fig. 4 of Dimitri. That figure is not "logic for determining a level of performance for storage locations." It is merely a table that describes the as-manufactured physical structure for the storage regions on the disk, including a number of sectors per revolution (revolutions per minute which are indicated as being the same for each zone) and a read rate in megabytes per second for the zone. It does not suggest performing a process as claimed for determining a measured level of performance for a plurality of storage locations. Nor does it suggest the claimed determining a level of performance by experimental read and write operations across a logical block main space, and then using those measurements to

aggregate various locations by a logical block Furthermore, the partitioning suggested by Fig. 4 in Dimitri is merely a predetermined partition based on the physical layout of storage areas on the disk, and not determined by measured levels of performance. For these reasons alone, the rejection under 35 U.S.C. 103(a) is prima facie deficient and should be withdrawn. Furthermore, at Column 8, lines 31-43, Dimitri is merely suggesting that a RAID controller would then write all data stripes to the same zone on different disks. This is because Dimitri is trying to ensure that the data transfer rate for all of the disks is the same, thereby avoiding a situation where the RAID controller performance is limited to the performance of the inner most zone of all the disks to which data is striped. But, this does not amount to Applicant's claimed mapping process to map partitioned regions of the storage locations and aggregating logical block names having an identical level of performance to a selected section of the logical block named space. **Dimitri mentions nothing whatsoever about logical block name spaces, and cannot therefore also suggest anything about logical block name spaces.**

A1) Applicant appears to argue that Dimitri does not suggest the claim's "a performance process configured to determine a measured level of performance for a plurality of storage locations".

In response, Examiner disagrees. Dimitri's col. 5 lines 42-60, Table 4 discloses performance values such as megabytes per second under head for zones of disk

storage, i.e locations in zones correspond to claim's plurality of storage locations. These different values of megabytes per second, i.e data transfer rate, of different zones teach the claim's measured level(s) of performance.

With regard to the argument "the partition suggested that Dimitri is merely a predetermined partition based on the physical layout of storage on the disk and not determined by measured levels of performance, Examiner disagrees.

Dimitri clearly discloses physical zones each has a different measured performance as discussed in item A1 above. Dimitri further teach to partition data to zones with different performance levels, the most frequently access data should be partitioned to zones with fast data transfer rate. For example operating system data, i.e claim's partition is stored in zones at outer edges with fast data transfer, and thereby the operating system data can quickly be accessed (Dimitri's col. 6 line 5-45 " ... Smaller files and files utilized less frequently can be written to a relatively inner zone because slower data transfer rates for such files will not have as adverse an effect on performance as a slow data transfer rate for a larger or more frequently accessed file. For instance, database files or files used by the operating system, such as the file allocation table (FAT), should be written to the outermost zones as they are frequently accessed".).

With regard to the teaching of logical block name space,

Dimitri further teaches the stored data / file in each zone having LBAs logical block addresses which constitute a logical block name space (see col. 1 line 10-40).

A2) With regard to the argument, "Nor does it suggest the claimed determining a level of performance by experimental read and write operations across a logical block main space, " .

In response, this argument is persuasive. However, the argument directs to limitation of dependent claims 27 and 29. Therefore,

Claims 27 and 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

A3) Applicant further argues, at pages 9-10

" .. Jacobson does disclose a RAID controller. However, item 26 in Jacobson is just a first set of disks that stores original data; duplicative redundant data is then stored on a paired second set of disks 28. See Column 3, lines 40-42 of Jacobson. Figure 1 of Jacobson just shows a group of disks arranged in a mirror group 18 of multiple disks 20 and a parity group 22 of multiple disks 24. This type of redundancy is considered to be a RAID level 1 or "disk mirroring" type implementation. Thus, the Examiner's reading of Jacobson appears to be less than accurate since there is no suggestion in Jacobson that different RAID levels be serviced by the same physical disk. Finally, Kim does describe a way to manage dynamic resizing of a logical volume. Kim also describes various RAID levels and that disk striping can be provided such that a single record can span multiple disks. Kim also mentions that better performance requires establishing

a stripe that is wide enough to hold a typical maximum sized record. (See Column 1, lines 55-65 in Kim). In Figure 2, Kim does show a logical volume that may have disks 1, 2, 3, and 4 divided into four partitions and disks 5, 6, 7, and 8 each having one partition. Column 7, lines 7-15 of Kim also does suggest that after a disk partition is created using an operating system tool and a logical RAID volume can be constructed. However, there is no suggestion Kim of pairing this RAID assignment to measured performance levels. In further aspects of Kim (at Column 8, lines 32-44), a logical volume map 72 includes information for identifying a logical volume, its extent size, a total number of extents in a corresponding volume, a stripe size, a RAID level, and a number of disk partitions. These are used to then construct the corresponding volume. However, this also does not amount to a suggestion of aggregating logical block names with the same measured performance criteria. Therefore, even if one incorporated the storage controller of Jacobson and Kim into Dimitri's system, one would not arrive at the claimed invention. One would not end up with a process that (a) measures performance of storage locations, (b) maps regions of like measured performance together as partitioned regions, and (c) aggregates their logical block names to provide different RAID level configurations on the same storage device.

In response, with regard to the arguments " .. Jacobson does not teach different RAID levels be serviced by the same physical disk.. ", and Kim does not teach "pairing

RAID assignment to measured performance levels. The arguments are not persuasive, since the assignment of regions of disk storage space to each RAID level respectively is already taught by Jacobson, see Fig 1. And Kim is relied for the teaching of RAID levels in the same storage device as stated in the rejection of claim 1. Thus by combining RAIDs in the same storage device in the Dmitry's system modified by Jacobsen, it results in the process and configuration as claimed.

Applicant is reminded pursuant to MPEP § 2145 (IV.), "[o]ne cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981)."

A4) Applicant further argues,

Furthermore, at Column 8, lines 31-43, Dimitri is merely suggesting that a RAID controller would then write all data stripes to the same zone on different disks. This is because Dimitri is trying to ensure that the data transfer rate for all of the disks is the same, thereby avoiding a situation where the RAID controller performance is limited to the performance of the inner most zone of all the disks to which data is striped. But, this does not amount to Applicant's claimed mapping process to map partitioned regions of the storage locations and aggregating logical block names having an identical level of performance to a selected section of the logical block named space. Dimitri mentions nothing whatsoever about logical block name spaces, and cannot therefore also suggest anything about aggregating logical block name spaces. Jacobson does disclose

a RAID controller. However, item 26 in Jacobson is just a first set of disks that stores original data; duplicative redundant data is then stored on a paired second set of disks 28. See Column 3, lines 40-42 of Jacobson. Figure 1 of Jacobson just shows a group of disks arranged in a mirror group 18 of multiple disks 20 and a parity group 22 of multiple disks 24. This type of redundancy is considered to be a RAID level 1 or "disk mirroring" type implementation. Thus, the Examiner's reading of Jacobson appears to be less than accurate since there is no suggestion in Jacobson that different RAID levels be serviced by the same physical disk. Finally, Kim does describe a way to manage dynamic resizing of a logical volume. Kim also describes various RAID levels and that disk striping can be provided such that a single requires establishing a stripe that is wide enough to hold a typical maximum sized record. (See Column 1, lines 55-65 in Kim). In Figure 2, Kim does show a logical volume that may have disks 1, 2, 3, and 4 divided into four partitions and disks 5, 6, 7, and 8 each having one partition. Column 7, lines 7-15 of Kim also does suggest that after a disk partition is created using an operating system tool and a logical RAID volume can be constructed. However, there is no suggestion Kim of pairing this RAID assignment to measured performance levels. In further aspects of Kim (at Column 8, lines 32-44), a logical volume map 72 includes information for identifying a logical volume, its extent size, a total number of extents in a corresponding volume, a stripe size, a RAID level, and a number of disk partitions. These are used to then construct the corresponding volume. However,

this also does not amount to a suggestion of aggregating logical block names with the same measured performance criteria. Therefore, even if one incorporated the storage controller of Jacobson and Kim into Dimitri's system, one would not arrive at the claimed invention. One would not end up with a process that (a) measures performance of storage locations, (b) maps regions of like measured performance together as partitioned regions, and (c) aggregates their logical block names to provide different RAID level configurations on the same storage device.

In response, Kim is relied mainly for the teaching of the teaching of RAID levels in the same storage device as stated in the rejection of claim 1. Thus by combining RAIDs in the same storage device in the Dimitri's system modified by Jacobsen, it results in the process and configuration as claimed. see the discussion in item A3 above.

Applicant is reminded pursuant to MPEP § 2145 (IV.), "[o]ne cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981)."

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Hamilton, Brook, Smith & Reynolds, P.C.
530 Virginia Road
P.O. Box 9133
Concord MA 01742

MAILED
DEC 14 2010
OFFICE OF PETITIONS

In re Application of :
Eric R. Schott :
Application No. 10/761,884 : ON PETITION
Filed: January 20, 2004 :
Attorney Docket No. 3721.1004-001 :

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed November 22, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of September 30, 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 December 31, 2010. The Notice off Abandonment was mailed May 11, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810, and the submission required by 37 CFR 1.114; (2) the petition fee of $1,620; and (3) a proper statement of unintentional delay.

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

This application is being referred to Technology Center AU 2185 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

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
1425 K Street NW
11th Floor
Washington DC 20005

MAILED
AUG 25 2011
OFFICE OF PETITIONS

In re Patent No. 7,435,744	:
Fanous et al.	: DECISION UPON REMAND AND
Issue Date: October 14, 2008	: RECONSIDERATION OF
Application No. 10/761,940	: PATENT TERM ADJUSTMENT
Filed: January 21, 2004	: AND NOTICE OF INTENT
Attorney Docket No. 1000546-0003	: TO ISSUE CERTIFICATE OF : CORRECTION
Title: Piperdine Derivatives as NMDA Receptor Antagonists	:

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

A telephone voice message was left for Joel Benson advising counsel for owner, that the determination of patent term adjustment was one day greater than the amount requested.

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 eight hundred and thirty-six(836) 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 eight hundred and thirty-six (836) 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 : 7,435,744

DATED : October 14, 2008 **DRAFT**

INVENTOR(S) : O'Brady 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 580 days

Delete the phrase "by 580 days" and insert – by 836 days--

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

Application Number*: 10761940 Search | Explanation of PTA Calculation | Explanation of PTE Calculation

PTA Calculations for Application: 10761940

Application Filing Date	01/21/2004	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent	10/14/2008	Non-Overlapping USPTO Delays:	678
A Delays	678	PTO Manual Adjustment	256
B Delays	0	Applicant Delay (APPL)	98
C Delays	0	Total PTA (days)	836

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
90	08/24/2011		P028	Adjustment of PTA Calculation by PTO	492		0
89	08/24/2011		P028	Adjustment of PTA Calculation by PTO		236	0
88	08/24/2011		P028	Adjustment of PTA Calculation by PTO		236	0
87	08/24/2011		P028	Adjustment of PTA Calculation by PTO	236		0
82	10/14/2008		PTAC	Patent Issue Date Used in PTA Calculation			0
82.5	09/24/2008	01/21/2007	PTA36M	PTA 36 Months	0		0
81	09/16/2008		EFDC	Export to Final Data Capture			0
80	09/15/2008		FIDC	Finished Initial Data Capture			0
79	09/15/2008		D1935	Dispatch to FDC			0
78	08/12/2008		PILS	Application Is Considered Ready for Issue			0
77	08/07/2008		N084	Issue Fee Payment Verified			0
76	08/07/2008		IFEE	Issue Fee Payment Received			0
75	07/07/2008		EIDC	Export to Initial Data Capture			0
74	07/03/2008	02/05/2008	MN/=.	Mail Notice of Allowance	149		61
73	07/02/2008		IREV	Issue Revision Completed			0
72	07/02/2008		DVER	Document Verification			0
71	06/20/2008		N/=.	Notice of Allowance Data Verification Completed			0
70	06/20/2008		DOCK	Case Docketed to Examiner in GAU			0
69	06/20/2008		CNTA	Allowability Notice			0
64	04/17/2008		FWDX	Date Forwarded to Examiner			0
62	04/17/2008		FWDX	Date Forwarded to Examiner			0
60	04/17/2008		ABN9	Disposal for a RCE / CPA / R129			0
58	04/17/2008		FWDX	Date Forwarded to Examiner			0
57	04/17/2008		MNRAB	Mail Notice of Rescinded Abandonment			0
56	04/17/2008		FWDX	Date Forwarded to Examiner			0
55	04/17/2008		NRAB	Notice of Rescinded Abandonment in TCs			0
63	10/05/2007		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
61	10/05/2007	09/07/2007	RCEX	Request for Continued Examination (RCE)		28	49
59	10/05/2007		XT/G	Request for Extension of Time - Granted			0
54	10/05/2007		BRCE	Workflow - Request for RCE - Begin			0
53	09/27/2007		MABN2	Mail Abandonment for Failure to Respond to Office Action			0
52	09/26/2007		ABN2	Aband. for Failure to Respond to O. A.			0
51	08/25/2007		FWDX	Date Forwarded to Examiner			0
50	08/15/2007		A.NE	Amendment after Final Rejection			0
49	06/07/2007		MCTFR	Mail Final Rejection (PTOL - 326)			0
48	06/06/2007		CTFR	Final Rejection			0
47	06/01/2007		IDSC	Information Disclosure Statement considered			0
46	06/01/2007		IDSC	Information Disclosure Statement considered			0
45	06/01/2007	03/23/2007	EIDS.	Electronic Information Disclosure Statement		70	39
43	06/01/2007		WIDS	Information Disclosure Statement (IDS) Filed			0
42	06/01/2007		WIDS	Information Disclosure Statement (IDS) Filed			0
41	04/02/2007		PA..	Change in Power of Attorney (May Include Associate POA)			0
40	03/29/2007		FWDX	Date Forwarded to Examiner			0
39	03/23/2007		A...	Response after Non-Final Action			0
38	12/26/2006		MCTNF	Mail Non-Final Rejection			0
37	12/21/2006		CTNF	Non-Final Rejection			0
34	10/14/2006		FWDX	Date Forwarded to Examiner			0
33	09/27/2006		ELC.	Response to Election / Restriction Filed			0
32	09/01/2006	03/21/2005	MCTRS	Mail Restriction Requirement	529		-1
31	08/31/2006		CTRS	Restriction/Election Requirement			0
30	08/04/2004		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
27	08/04/2004		DOCK	Case Docketed to Examiner in GAU			0
21	08/03/2004		DOCK	Case Docketed to Examiner in GAU			0
20	07/14/2004		WROIPE	Application Return from OIPE			0
19	07/13/2004		C.AD	Correspondence Address Change			0

18	05/06/2004	ROIPE	Application Return TO OIPE	0
17	05/06/2004	OIPE	Application Dispatched from OIPE	0
16	05/06/2004	COMP	Application Is Now Complete	0
13	05/06/2004	INCD	Notice Mailed--Application Incomplete--Filing Date Assigned	0
6	03/09/2004	L194	Cleared by OIPE CSR	0
5	03/09/2004	CLSS	CASE CLASSIFIED BY OIPE	0
4	03/08/2004	L194	Cleared by OIPE CSR	0
3	03/08/2004	CLSS	CASE CLASSIFIED BY OIPE	0
29	02/27/2004	RQPR	Request for Foreign Priority (Priority Papers May Be Included)	0
25	02/27/2004	RQPR	Request for Foreign Priority (Priority Papers May Be Included)	0
35	02/18/2004	IDSC	Information Disclosure Statement considered	0
26	02/18/2004	RCAP	Reference capture on IDS	0
24.7	02/18/2004	M844	Information Disclosure Statement (IDS) Filed	0
24	02/18/2004	WIDS	Information Disclosure Statement (IDS) Filed	0
15	02/18/2004	ADDFLFEE	Additional Application Filing Fees	0
14	02/18/2004	OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	0
2	01/30/2004	SCAN	IFW Scan & PACR Auto Security Review	0
36	01/21/2004	IDSC	Information Disclosure Statement considered	0
28	01/21/2004	RQPR	Request for Foreign Priority (Priority Papers May Be Included)	0
23	01/21/2004	RCAP	Reference capture on IDS	0
22.7	01/21/2004	M844	Information Disclosure Statement (IDS) Filed	0
22	01/21/2004	WIDS	Information Disclosure Statement (IDS) Filed	0
7	01/21/2004	NPRQ	PGPubs nonPub Request	0
1	01/21/2004	IEXX	Initial Exam Team nn	0

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APR 12 2011

OFFICE OF PETITIONS

FISH & RICHARDSON P.C. (BO)
P.O. BOX 1022
MINNEAPOLIS MN 55440-1022

In re Application of :
Nezu et al. :
Application No. 10/762,154 : ON APPLICATION FOR
Filed: January 21, 2004 : PATENT TERM ADJUSTMENT
Atty Docket No. 14875-057002/ :
C2-906DP1P :

This decision is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(b)," filed March 3, 2011. Applicants request the PTA determination for the above-identified application be corrected to nine hundred twenty-five (925) days.

The request for reconsideration of patent term adjustment is **DISMISSED** with respect to making any changes to the patent term adjustment of eight hundred ninety-five (895) days.

On December 3, 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 895 days. On March 3, 2011, applicants submitted the instant correspondence in which applicants request the patent term adjustment be reduced for the delay associated with filing a response to the September 27, 2007 final Office action.

37 CFR 1.704(b) provides that:

> With respect to the grounds for adjustment set forth in §§ 1.702(a) through (e), and in particular the ground of adjustment set forth in § 1.702(b), an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or

> action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

A final Office action was mailed on September 27, 2007. On February 25, 2008, applicants filed an amendment after final. On April 11, 2008 and August 1, 2008, the Office mailed Advisory Actions that state the February 25, 2008 amendment after final failed to place the application in *prima facie* condition for allowance.

On March 26, 2008 applicants filed a Notice of Appeal.

Applicants argue that because the Board of Patent Appeals and Interferences mailed a decision in favor of applicants on April 13, 2010, that the February 25, 2008 amendment was a complete and timely response to the final Office action of September 27, 2007.

Applicants' three month clock to respond to a final Office action did not stop until applicants filed a response in compliance with 1.113(c). Per the April 11, 2008 and August 1, 2008 Advisory Actions, the February 25, 2008 amendment after final failed to place the application in *prima facie* condition for allowance. The fact that the Board reversed the examiner does not mean that the response to the final Office action was a complete response to the final rejection. It is noted that applicants filed an appeal brief containing arguments subsequent to the filing of the February 25, 2008 amendment after final and March 26, 2008 Notice of Appeal. The Notice of Appeal is the 1.704(b) response that stops the clock and is used for purposes of calculating applicant delay.

Accordingly, a period of reduction of 90 days was properly entered for the period beginning on December 28, 2007, the day after the date that is three months after the date of mailing of

the final Office action, and ending on March 26, 2008, the date a Notice of Appeal was filed. No changes will be made.

In view thereof, the correct patent term adjustment at the time of mailing of the Notice of Allowance on December 3, 2010 remains **eight hundred ninety-five (895) days** (1140 days Office delay minus 245 days Applicant delay).

The Office acknowledges receipt 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). No additional fee is 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).

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

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

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

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HOVEY WILLIAMS LLP
10801 MASTIN BLVD.
SUITE 1000
OVERLAND PARK KS 66210

MAILED

AUG 15 2011

OFFICE OF PETITIONS

In re Application of	:	
Jeffrey Johnson	:	
Application No. 10/762,314	:	DECISION ON PETITION
Filed: January 23, 2004	:	
Attorney Docket No. T2316-907194US02	:	

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed July 06, 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 July 22, 2009, as required by the Notice of Allowance and Fee(s) Due, mailed April 22, 2009. Accordingly, the date of abandonment of this application is July 23, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,510.00 and the publication fee of $300.00, (2) the petition fee of $1,620.00; and (3) a proper statement of unintentional delay. The issue and publication fee payments are 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 the Office of Data Management for processing into a patent.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

cc: **JEFFREY JOHNSON**
14401 INDUSTRIAL PARK RD.
BRISTOL, VA 24203

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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.
10/762,364	01/23/2004	Roger Maitland	Q102939	4471

23373 7590 06/29/2011

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

EXAMINER	
TRAN, ELLEN C	

ART UNIT	PAPER NUMBER
2433	

NOTIFICATION DATE	DELIVERY MODE
06/29/2011	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):

sughrue@sughrue.com
PPROCESSING@SUGHRUE.COM
USPTO@SUGHRUE.COM

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

MAILED

JUN 28 2011

DIRECTOR OFFICE
TECHNOLOGY CENTER 2400

In re Application of: MAITLAND, Roger et. al.
Application No. **10/762,364**
Filed: January 23, 2004
Docket No. Q102939
Title: METHODS AND APPARATUS FOR PARALLEL IMPLEMENTATIONS OF TABLE LOOK-UPS AND CIPHERING

DECISION ON PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 C.F.R. § 1.181

This is a decision on petition filed **May 18, 2011** under 37 CFR § 1.181 to invoke Supervisory Authority of the Commissioner to seeks relief from Examiner's action in relation to Notice of Abandonment mailed April 22, 2011, namely, requesting the withdrawal of the notice of abandonment.

This petition is **GRANTED.**

REGULATION AND PROCEDURES

MPEP § 711.03(b) Holding Based on Failure To Reply Within Period

When an amendment reaches the U.S. Patent and Trademark Office after the expiration of the period for reply and there is no dispute as to the dates involved, no question of reconsideration of a holding of abandonment can be presented. However, the examiner and the applicant may disagree as to the date on which the period for reply commenced to run or ends. In this situation, as in the situation involving sufficiency of reply, the applicant may take issue with the examiner and point out to him or her that his or her holding was erroneous

§ 1.136 Extensions of time.

(a) (1) If an applicant is required to reply within a nonstatutory or shortened statutory time period, applicant may extend the time period for reply up to the earlier of the expiration of any maximum period set by statute or **five months** after the time period set for reply, if a petition for an extension of time and the fee set in § 1.17(a) are filed..

DECISION

Upon careful review of the file prosecution history, the above mentioned abandonment is deemed premature and hereby withdrawn.

For the reason(s) above-mentioned this petition is hereby **granted**.

Notice of Abandonment mailed April 22, 2011 is hereby **withdrawn**.

Application will be forwarded to respective Technical Support Staff for withdrawal of Notice of Abandonment mailed April 22, 2011. Application has been forwarded to examiner for proper treatment of Applicant's response mailed Supplemental Appeal Brief filed May 18, 2011, issuance of corresponding office action in due course.

Any inquiry regarding this decision should be directed the undersigned whose telephone number is (571) 272-3902. If attempts to reach the undersigned by telephone are unsuccessful, Chau T. Nguyen, Quality Assurance Specialist, can be reached at (571) 272-3126.

/Beatriz Prieto/ for Chau T. Nguyen

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

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FULBRIGHT & JAWORSKI L.L.P.
Attn: MN IP Docket
98 San Jacinto Boulevard
Suite 1100
Austin TX 78701-4255

MAILED

NOV 22 2011

OFFICE OF PETITIONS

In re Application of :
Madara et al. :
Application No 10/762,388 : ON PETITION
Filed: January 22, 2004 :
Attorney Docket No. BWHI-029/US3 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 20, 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 July 15, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is October 16, 2010. A Notice of Abandonment was mailed on September 12, 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 terminal disclaimer; (2) the petition fee of $1860; and (3) a proper statement of unintentional delay.

There is no indication that Petitioner herein was ever empowered to prosecute the instant application. If Petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney documentation must be submitted.

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

This application is being referred to Technology Center AU 1627 for processing in the normal course of business.

Charlema Grant
Petitions Attorney
Office of Petitions

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Alexandria, VA 22313-1450
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Paper No.

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

MAILED

OCT 01 2010

OFFICE OF PETITIONS

In re Patent No. 7,376,430	:	DECISION ON REQUEST FOR
Matsuda	:	RECONSIDERATION OF
Issue Date: May 20, 2008	:	PATENT TERM ADJUSTMENT
Application No. 10/762,541	:	and
Filed: January 23, 2004	:	NOTICE OF INTENT TO ISSUE
Atty Docket No. 017344-0328	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on November 24, 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 twenty-two (1122) 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 twenty-two (1122) days is **GRANTED.**

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 Court decision Wyeth v. Kappos, 591 F.3d 1364 (Fed. Cir. 2010) up to 180 days after the grant of the patent.*

As the initial petition for reconsideration of the patent term was filed on Monday, November 17, 2008, which was the first business day after 180 days after the patent issued, and only addressed the overlapping delay provisions of 35 U.S.C. § 154(b)(2)(A), it was filed within the outer limit of the USPTO's ability to conclude its PTA determination. The initial petition was dismissed on September 28, 2009, as the Office had not yet instituted the provision for limited waiver of the two-month deadline for filing a petition for reconsideration of a PTA determination under 37 CFR § 1.705(d). The present request for reconsideration of dismissal was filed within two (2) months of the mail date of the September 28, 2009 decision. As such, it was timely filed.

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 one hundred twenty-two (1122) days.

Telephone inquiries specific to this matter may 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 : 7,376,430 B2

DATED : **May 20, 2008** **DRAFT**

INVENTOR(S) : Matsuda

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

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 677 days

Delete the phrase "by 677 days" and insert – by 1122 days--

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 5/31/11

TO SPE OF : ART UNIT 3774

SUBJECT : Request for Certificate of Correction for Appl. No.: 10762816 Patent No.: 7854756

CofC mailroom date: 5/26/11

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

Note: Claims

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: Correction to claim dependencies.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

6/13/2011

SPE AU 3774

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OCT 28 2010

OFFICE OF PETITIONS

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

In re Application of :
Brown et al. :
Application No. 10/762,829 : ON PETITION
Filed: January 21, 2004 :
Attorney Docket No. 021318-002410US :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 2, 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 June 17, 2008. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were timely obtained. Accordingly, the date of abandonment of this application is September 18, 2008. A Notice of Abandonment was mailed June 9, 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 continuing application, (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 number 12/332,593.

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

Alicia Kelley
Petitions Examiner
Office of Petitions

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ROGER A. GILCREST
250 WEST STREET
COLUMBUS, OH 43215-2538

MAILED

JAN 25 2011

OFFICE OF PETITIONS

In re Application of :
Robert Vincent :
Application No. 10/762,952 : ON PETITION
Filed: January 22, 2004 :
Attorney Docket No. 104035-00009 :

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.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of March 3, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). A three (3) month extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is September 4, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810, and the submission required by 37 CFR 1.114; (2) the petition fee of $1620; and (3) a proper statement of unintentional delay.

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

This application is being referred to Technology Center AU 1631 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

April M. Wise
Petitions Examiner
Office of Petitions

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 19 2010

OFFICE OF PETITIONS

FOLEY & LARDNER LLP
P.O. BOX 80278
SAN DIEGO CA 92138-0278

In re Patent No. 7,606,366
Issued: October 20, 2009
Application No. 10/763,288
Filed: January 26, 2004
Attorney Docket No. 093196-0975

: 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 DISMISSAL OF REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705 filed on November 13, 2009, requesting that the patent term adjustment be corrected from 652 to 1025 days. Applicant requests this correction in part on the basis that the Office will take in excess of three years to issue this patent and in light of the court decision in Wyeth v. Dudas, No. 07-1492 (D.D.C. September 30, 2008).[1]

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by six hundred five 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 26, 2007 and ends on September 21, 2008, the day before the RCE was filed, and the B delay therefore is 604 days. See 35 U.S.C. 154(b)(1)(B)(i). Further, patentee fails to account for the filing of a Notice of Appeal on April 28, 2008. The 147 days of the over three year period consumed by appellate review, beginning on April 27, 2008 and ending on September 21, 2009 the date the RCE was filed, are not included in the B delay. *See* 35 U.S.C. § 154(b)(1)(B)(ii).

Additionally, Patentees renew there argument that the total Examination delay should be increased by 272 days. Patentees argue that an amendment was filed August 15, 2005 in response to a non- Final Office Action mailed July 5, 2005. A Final office action was then mailed November 3, 2005. However, in an Interview on December 20, 2005, the Examiner of record agreed to lift the finality of the November 3, 2005 Office Action and issue a new Action applying new art confirmed by an Interview Summary dated March 3, 2006. On September 13, 2006 a non-Final Office Action was mailed. Applicants argue further an entitlement to an additional 272 days of PTA pursuant to 37

[1]Reconsidered in light of the Court of Appeals for the Federal Circuit's decision in *Wyeth v. Kappos*, 2009-1120 (Fed. Cir. 1-7-2010).

CFR 1.702(a)(2) due to inaction by the PTO from December 15, 2005 (4 months after the August 15, 2005 response to office action filed by Applicant) until the mailing of the second non-Final office action on September 13, 2006.

As indicated in the previous decision, patentees argument is not persuasive. 37 CFR 1.702(a)(2) provides that: 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:

> Respond to a reply under 35 U.S.C. 132 or to an appeal taken under 35 U.S.C. 134 not later than four months after the date on which the reply was filed or the appeal was taken.

In this instance, the Office action mailed November 3, 2005 was mailed in response to and within four months of receipt of applicant's response filed August 15, 2005. The Office did not fail to take action in response to applicant's response within the time provided for in 37 CFR 1.702(a)(2). The fact that the Office subsequently mailed a further Office action withdrawing the finality of the November 3, 2005 Office action does not negate the fact that the Office took action within the meaning of 37 CFR 1.702(a)(2) on November 3, 2005. Accordingly, patentees argument has been reconsidered but entry of an additional period of adjustment of 272 days for examination delay pursuant to 37 CFR 1.702(a)(2) is not warranted.

As such, the patent term adjustment is 605 days (176 "A delay" days plus 604 "B delay" days minus 147 days consumed by Appellate Review minus 28 days for applicant delay).

The Office acknowledges the authorization to charge the $200.00 fee set forth in 37 CFR 1.18(e) to deposit account no. 19-0741.

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

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

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating

that the term of the above-identified patent is extended or adjusted by **six hundred five (605)** days.

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

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 : 7,606,366 B2

DATED : October 20, 2009

INVENTOR(S) : Rade Petrovic

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 (652) days

Delete the phrase "by 652 days" and insert – by 605 days--

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.
10/763,431	01/22/2004	Lutz Biedermann	7948-17	6801

25227 7590 11/24/2010

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

EXAMINER	
PHILOGENE, PEDRO	

ART UNIT	PAPER NUMBER
3733	

NOTIFICATION DATE	DELIVERY MODE
11/24/2010	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):

EOfficeVA@mofo.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

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

Applicant: Biedermann et al.
Appl. No.: 10/763,431
Filing Date: January 22, 2004
Title: BONE SCREW
Attorney Docket No.: 7948-17
Pub. No.: US 2004/0153077 A1
Pub. Date: August 5, 2004

This is a decision on the request for republication of patent application publication under 37 CFR 1.221(a), filed on September 23, 2010, for the above-identified application.

The request under 37 CFR 1.221(a) is DISMISSED.

37 CFR 1.221(a) requires "a copy of the application in compliance with the Office electronic filing system requirements and be accompanied by the publication fee set forth in § 1.18(d) and the processing fee set forth in § 1.17(i)". If the request for republication does not comply with the electronic filing system requirements, the republication will not take place and the publication fee set forth in § 1.18(d) will be refunded. The processing fee will be retained.

The applicant did not supply a copy of the application in compliance with the Office electronic filing system, as required by 37 CFR 1.221(a) because **the applicant submitted the papers as a "Document for an existing application", which are entered into the application file, and not as a "Pre-Grant Publication" submission**. The request for republication does not comply with the electronic filing system requirements, thus republication will not take place.

Any request for republication under 37 CFR 1.221(a), must be submitted via the EFS system, as a Pre-Grant publication submission and must include a copy of the application in compliance with the Office electronic filing system requirements. The applicant is directed to the following website for additional instructions on how to submit a Pre-Grant Publication submission via the electronic filing system:

http://www.uspto.gov/ebc/portal/efs/pgpub_quickstart.pdf

Any questions or requests for reconsideration of the decision should be addressed as follows:

By mail to: Mail Stop PGPUB
Commissioner for Patents
P.O. Box 1450
Alexandria, Va. 22313-1450

By facsimile: 571-273-8300

Telephone inquiries regarding this correspondence should be directed to The Office of Data Management at 571-272-4200.

Tammy J. Koontz
Office of Data Management
United States Patent & Trademark Office

Adjustment date: 11/24/2010 KKING1
09/24/2010 INTEFSW 00004019 031952 10763431
01 FC:1504 300.00 CR

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.

SIEMENS CORPORATION
INTELLECTUAL PROPERTY DEPT.
170 WOOD AVENUE SOUTH
ISELIN NJ 08830

MAILED

SEP 20 2010

OFFICE OF PETITIONS

In re Application of :
Fischer et al. : DECISION ON PETITION
Application No. 10/763,786 :
Filed: January 23, 2004 :
Atty Docket No. 2001P13794WOUS:

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b), filed February 10, 2010.

For the reasons stated herein, the petition is **DISMISSED**.

Any request for reconsideration must be filed within **TWO (2) MONTHS**.

By Notice of Abandonment mailed January 15, 2010, applicants were advised that the application was abandoned as a result of petitioner's failure to take appropriate action in a timely manner after the decision rendered on October 29, 2009, by the Board of Patent Appeals and Interferences (BPAI). Therefore, the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(c). As no claim was considered allowed, the application became abandoned.

The provisions of 37 C.F.R. § 1.137(b) provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent. A petition filed pursuant to 37 C.F.R. §1.137(b) must be accompanied by:

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

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

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the

filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and

(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

The petition includes a proposed reply in the form of an amendment, the required statement of unintentional delay and payment of the petition fee set forth in 37 CFR § 1.17(m). No terminal disclaimer is required. However, the instant petition does not satisfy requirement (1) above.

The amendment submitted does not place the application in condition for allowance. In view thereof, the petition must be dismissed. A courtesy copy of the Advisory Action is enclosed.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Advisory Action

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/763,786	**Applicant(s)** FISCHER ET AL.	
	Examiner Sunray R. Chang	**Art Unit** 2121	

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

THE REPLY FILED 10 February 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 *4* 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 *28 May 2008*. 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: *1-5,7 and 14*.
   Claim(s) withdrawn from consideration: *6 and 8-13*.

AFFIDAVIT OR OTHER EVIDENCE

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

REQUEST FOR RECONSIDERATION/OTHER

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

Continuation of 11. does NOT place the application in condition for allowance because: applicants amend the claims to delete some of the claimed options, which the forth rejections were based thereon; however, it's still not clear which field of process control system it relates to (still too broad), it could be any of manufacture process, software creation process, Internet based batabase usage process or network resource sharing process; even if specifying the field of invention, the whole invention is basically pay-per-use through Internet resource sharing (still not in the condition of allowance).

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Paper No.

SIEMENS CORPORATION
INTELLECTUAL PROPERTY DEPT.
170 WOOD AVENUE SOUTH
ISELIN NJ 08830

MAILED
JAN 25 2011
OFFICE OF PETITIONS

In re Application of :
Fischer et al. : DECISION ON PETITION
Application No. 10/763,786 :
Filed: January 23, 2004 :
Atty Docket No. 2001P13794WOUS:

This is a decision on the renewed PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b), filed November 22, 2010.

The petition is **GRANTED**.

By Notice of Abandonment mailed January 15, 2010, applicants were advised that the application was abandoned as a result of petitioner's failure to take appropriate action in a timely manner after the decision rendered on October 29, 2009, by the Board of Patent Appeals and Interferences (BPAI). By decision mailed September 20, 2010, the initial petition under 37 CFR 1.137(b) was dismissed. The proposed reply submitted on petition was not sufficient to meet the requirement reply element of 37 CFR 1.137(b).

On instant renewed petition, applicants submitted the required reply in the form of a request for continued examination (RCE), RCE fee and submission under 1.114 in the form of an amendment. All requirements have 37 CFR 1.137(b) have now been met.

Technology Center AU 2121 has been advised of this decision. The application is, thereby, forwarded to the examiner for consideration of the RCE filed November 22, 2010.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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PEPPER HAMILTON LLP
ONE MELLON CENTER, 50TH FLOOR
500 GRANT STREET
PITTSBURGH PA 15219

MAILED

SEP 03 2010

OFFICE OF PETITIONS

In re Application of :
SHANLER et al. : DECISION ON APPLICATION
Application No. 10/763,807 : FOR
Filed: January 22, 2004 : PATENT TERM ADJUSTMENT
Atty Docket No. 136519.00101 :

This is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT PURSUANT TO 37 CFR §1.705(b)," filed May 27, 2010. Applicants submit that the correct patent term adjustment to be indicated on the patent is 1548 days, not 728 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction partly on the basis that the Office will take in excess of three years to issue this patent. In addition, applicants contend that a period of adjustment of 116 days for Office delay pursuant to 37 CFR 1.702(a)(2) should be assessed.

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 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, 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].

---

[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 reconsideration of the patent term adjustment at the time of the mailing of the notice of allowance, the request is **DISMISSED**.

Applicants assert that the patent term should be adjusted by an additional 116 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. See 37 CFR 1.702(a)(2).

The Office has considered applicants' argument, but does not find it persuasive. Pursuant to 37 CFR 1.702(a),

> Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to:
>
> (2) Respond to a reply under 35 U.S.C. 132 or to an appeal taken under 35 U.S.C. 134 not later than four months after the date on which the reply was filed or the appeal was taken;

On April 15, 2008, the examiner responded to applicants' reply to the non-final Office action filed on January 11, 2008. The non-final Office action of April 15, 2008, met the minimum requirements of an action under 35 U.S.C. 132 and was mailed within four months of the January 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.

The subsequent mailing of the non-final Office action by the examiner vacating the Office action of April 15, 2008, does not negate the fact that the Office took action in this application within the meaning of § 1.702(a)(2) on April 15, 2008. Specifically, the Office notes that an examiner does not have the authority to vacate or rescind an Office action. Unless vacated by the Technology Center Director, the action originally mailed by the examiner on April 15, 2008, will be used for purposes of calculating patent term adjustment.

The Office will charge the Deposit Account for the $200.00 fee set forth in 37 CFR 1.18(e) as authorized. No additional fees are required.

Any request for reconsideration of the patent term adjustment at the time of the mailing of the notice of allowance must be filed within two months.

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).

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

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

Telephone inquiries specific to this matter should be directed to the undersigned (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
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	10764010
Filing Date	22-Jan-2004
First Named Inventor	Philipp Lang
Art Unit	3737
Examiner Name	JONATHAN CWERN
Attorney Docket Number	3104/109
Title	ASSESSING THE CONDITION OF A JOINT AND DEVISING TREATMENT

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	/Kathryn E. Noll, #48,811/
Name	Kathryn E. Noll
Registration Number	48811

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 : June 27,2011

In re Application of :

Philipp Lang

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 10764010

Filed : 22-Jan-2004

Attorney Docket No : 3104/109

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed June 27,2011 , to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

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

Petitioner is advised that the issue fee paid 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 3737 for processing of the request for continuing examination under 37 CFR 1.114 .

Office of Petitions

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CARDIAC TELECOM CORPORATION
R.D. 12, BOX 177
DONOHOE ROAD
GREENSBURG PA 15601

MAILED

AUG 11 2011

OFFICE OF PETITIONS

In re Application of :
Alois A. Langer :
Application No.: 10/764106 : DECISION ON
Filing or 371(c) Date: 01/23/2004 : PETITION
Attorney Docket Number: 3002201-0003-US :

This is a decision in response to the Petition for Revival of Application Abandoned Unintentionally Under 37 CFR 1.137(b), filed July 22, 2011.

This Petition is hereby **dismissed**.

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

The above-identified application became abandoned for failure to timely and properly respond to the Office communication, mailed January 16, 2008. The Office communication set a one (1) month period for reply. No response having been received, the application became abandoned on February 17, 2008. A Notice of Abandonment was mailed August 11, 2008.

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).

Applicant, the inventor of the present application, files the present petition and Amendment in response to the Office communication.

A review of office records reveals that an assignment of the invention was recorded with this Office on October 4, 2004, wherein the inventor assigned his entire right, title and interest in the present application to Cardiac Telecom Corporation.

The present petition lacks item (3). As to item (3), Applicant is advised that 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.

Analysis

In this instance, petitioner herein transferred his entire ownership interest in the present application to Cardiac Telecom Corporation in an assignment recorded in this Office on October 4, 2004, and thereafter the assignee acted in the application. As such, it is unclear whether petitioner is authorized to act in this application, or 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.

Conclusion

The petition is dismissed without prejudice. Petitioner should file a request for reconsideration of petition and provide evidence of petitioner's authority to act in the present application.

Finally, as to the correspondence address, the MPEP 601.03 provides, in relevant part:

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).

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:	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 concerning this petition Decision should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

CC: MR. ALOIS A. LANGER
111 SADDLEBROOK DRIVE
HARRISON CITY, PA 15636

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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PEDERSEN & COMPANY, PLLC
P.O. BOX 2666
BOISE, ID 83701

MAILED

OCT 17 2011

OFFICE OF PETITIONS

In re Application of	:	
Alois A. Langer	:	
Application No.: 10/764106	:	DECISION ON
Filing or 371(c) Date: 01/23/2004	:	PETITION
Attorney Docket Number: 3002201-0003-US	:	

This is a decision in response to the Renewed Petition for Revival of Application Abandoned Unintentionally Under 37 CFR 1.137(b), filed October 11, 2011.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely and properly respond to the Office communication, mailed January 16, 2008. The Office communication set a one (1) month period for reply. No response having been received, the application became abandoned on February 17, 2008. A Notice of Abandonment was mailed August 11, 2008.

Applicant files the present renewed petition, and a response to the Office communication was filed on July 22, 2011. The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that it includes (1) the reply in the form of a response to the Restriction/Election Requirement (filed July 22, 2011); (2) the petition; and (3) the required statement of unintentional delay[1]. Accordingly, the reply is accepted as having been unintentionally delayed.

This application is being forwarded to Technology Center Art Unit 3766 for processing of the response in due course.

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

/DW/

Derek Woods
Attorney
Office of Petitions

[1] Petitioner is advised that for a patent to issue to an assignee, the assignment must have been recorded or filed for recordation in accordance with 37 CFR 3.11. See, 37 CFR 3.81(a).

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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/764,106	01/23/2004	Alois A. Langer	3002201-0003-US

CONFIRMATION NO. 7913

27727
PEDERSEN & COMPANY, PLLC
P.O. BOX 2666
BOISE, ID 83701

POA ACCEPTANCE LETTER

OC000000050391756

Date Mailed: 10/14/2011

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 10/11/2011.

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.

/dlwoods/

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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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/764,106	01/23/2004	Alois A. Langer	3002201-0003-US

CONFIRMATION NO. 7913

CARDIAC TELECOM CORPORATION
R.D. 12, BOX 177
DONOHOE ROAD
GREENSBURG, PA 15601

POWER OF ATTORNEY NOTICE

Date Mailed: 10/14/2011

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 10/11/2011.

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

/dlwoods/

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

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

MAILED

JUN 17 2011

OFFICE OF PETITIONS

In re Application :
Rhoads :
Application No. 10/764,430 : PATENT TERM ADJUSTMENT
Filing or 371(c) Date: January 23, 2004 :
Dkt. No.: 098888-1820 :

This is in response to the application for patent term adjustment under 37 CFR 1.705(b), filed June 14, 2011.

Applicant submits that the correct patent term adjustment to be indicated on the patent is 938 days, not 520 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction on the basis that the Office will take in excess of three years to issue this patent.

Insofar 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 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.

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].

Receipt is hereby acknowledged of the required patent term adjustment application fee under 37 CFR 1.705(b) of $200.00. See, 37 CFR 1.18(e). As the fee is required, the request for refund is dismissed.

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

The application file is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

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

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
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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HODGSON RUSS LLP
THE GUARANTY BUILDING
140 PEARL STREET
SUITE 100
BUFFALO NY 14202-4040

In re Application of
ROHNERT, PETER et al. :
Application No.: 10/764,676 :
Filing or 371(c) Date: January 26, 2004 :
Attorney Docket Number: 13183.0037 :

OCT 20 2010

DECISION ON
PETITION

This is a decision on the Petition to Withdraw Holding of Abandonment received in the United States Patent and Trademark Office (USPTO) on March 4, 2009.

This petition is **DISMISSED**.

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 29, 2008 which set forth a three (3) month statutory period of reply. The Notice of Abandonment was mailed on February 23, 2009.

In order for a petition to be granted, the evidence must be sufficient according to one of the following standards:

MPEP 503 (postcard receipt as prima facie evidence)
Certificate of Mailing under 37 CFR 1.8(b)
"Express Mail" Mailing under 37 CFR 1.10

MPEP 503 states the following:

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all items listed thereon on the date stamped thereon by the USPTO.

Unfortunately MPEP 503 is not applicable since there is no record of receipt of the Return Receipt Postcard, which if received in the Office would have been stamped (referred to as "Office Date" stamp) acknowledging receipt of the items identified thereon.

Provisions under 37 CFR 1.8(b) requires that the petitioner (1) promptly inform the Office of the previous timely mailing or transmission after becoming aware that the Office has no evidence of receipt of the correspondence, (2) supply copies of the previously mailed correspondence with certificate of mailing thereon, and (3) include a statement which attests to the previous timely mailing.

37 CFR § 1.10 is not applicable since this procedure was not used.

The holding of abandonment cannot be withdrawn as this time.

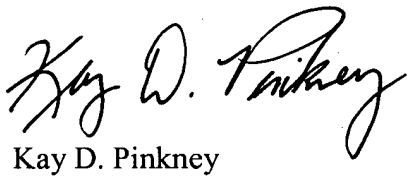
Although this petition for withdrawal of the holding of abandonment is being dismissed, other petition remedies are available for bringing about the withdrawal of the holding of abandonment. File a petition for Revival of Abandoned Application under CFR §1.137 (a) or (b). Forms are available at USPTO website http://www.uspto.gov

- Under 37 CFR 1.13(a), a petition for the revival of an ***unavoidable*** abandoned
- Under 37 CFR 1.137(b), a petition for the revival of an ***unintentionally***

Further correspondence with respect to the petition for revival under 37 CFR 1.137 should be directed to the Office Of Petition at 703-305-9282 or addressed as follows:

By mail:	Commissioner for Patents P O Box 1450 Mail Stop Petitions 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 (703) 756-1547.



Kay D. Pinkney
Application Assistance Unit
Office of Data Management

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,676	01/26/2004	Peter Rohnert	13183.0037	9441

26712 7590 11/23/2010

HODGSON RUSS LLP
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SUITE 100
BUFFALO, NY 14202-4040

EXAMINER	
SOLOLA, TAOFIQ A	

ART UNIT	PAPER NUMBER
1625	

MAIL DATE	DELIVERY MODE
11/23/2010	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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SUITE 100
BUFFALO NY 14202-4040

In re Application of :
Peter Rohnert, et al : **DECISION ON PETITION**
Application No. 10764676 :
Filed: 01/23/2004 :
Attorney Docket No. **13183.0037** :

This is a decision on the Resubmission of Petition to Withdraw Holding of Abandonment under 37 CFR 1.181 (a) received in the United States Patent and Trademark Office (USPTO) on November 17, 2010.

The Petition filed on November 17, 2010 is **GRANTED**.

The application was held abandoned for failure to timely submit the Issue and Publication fees as required by and within the three-month period set in, the Notice of Allowance mailed October 29, 2008. The Issue Publication Fees were not received within the time period for response. Therefore, the application was **properly** held abandoned and the Notice of Abandonment was mailed on February 23, 2009.

A Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181(a) was received at the USPTO on March 4, 2009. This petition contained a copy of the PTOL 85 Part B – Fee(s) transmittal including a properly executed Certificate of Mailing or Transmission. The Certificate of Mailing or Transmission was signed and dated January 21, 2009. The petition also included a copy of the check intended for payment of the fees showing an invoice date of January 21, 2009.

The Petition filed on March 4, 2009 was properly dismissed on October 20, 2010. However, as Petitioner points out in the Petition filed on October 20, 2010, the decision did not specifically state what was lacking. The Decision dismissing the original petition did list the requirements for granting a petition under 37 CFR 1.8(a), but the decision language could have been clearer as to specifically what requirement was lacking.

The Petition filed on November 17, 2010 contains the following:

An additional copy of the previously mailed or transmitted correspondence;
A properly completed Certificate of Mailing or Transmission dated January 29, 2009;
Authorization to charge the necessary fees due; and
A statement attesting on a personal knowledge basis to the previous timely mailing, transmission or submission

The Issue and Publication fees were charged against DA 08-2442 as authorized.

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

Kimberly Terrell, Manager
Office of Data Management
Patent Publication Branch

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,676	01/26/2004	Peter Rohnert	13183.0037	9441

26712 7590 11/23/2010

HODGSON RUSS LLP
THE GUARANTY BUILDING
140 PEARL STREET
SUITE 100
BUFFALO, NY 14202-4040

EXAMINER	
SOLOLA, TAOFIQ A	

ART UNIT	PAPER NUMBER
1625	

MAIL DATE	DELIVERY MODE
11/23/2010	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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SUITE 100
BUFFALO NY 14202-4040

In re Application of :
Peter Rohnert, et al : **DECISION ON PETITION**
Application No. 10764676 :
Filed: 01/23/2004 :
Attorney Docket No. **13183.0037** :

This is a decision on the Resubmission of Petition to Withdraw Holding of Abandonment under 37 CFR 1.181 (a) received in the United States Patent and Trademark Office (USPTO) on November 17, 2010.

The Petition filed on November 17, 2010 is **GRANTED**.

The application was held abandoned for failure to timely submit the Issue and Publication fees as required by and within the three-month period set in, the Notice of Allowance mailed October 29, 2008. The Issue Publication Fees were not received within the time period for response. Therefore, the application was **properly** held abandoned and the Notice of Abandonment was mailed on February 23, 2009.

A Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181(a) was received at the USPTO on March 4, 2009. This petition contained a copy of the PTOL 85 Part B – Fee(s) transmittal including a properly executed Certificate of Mailing or Transmission. The Certificate of Mailing or Transmission was signed and dated January 21, 2009. The petition also included a copy of the check intended for payment of the fees showing an invoice date of January 21, 2009.

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Authorization to charge the necessary fees due; and
A statement attesting on a personal knowledge basis to the previous timely mailing, transmission or submission

The Issue and Publication fees were charged against DA 08-2442 as authorized.

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

Kimberly Terrell, Manager
Office of Data Management
Patent Publication Branch

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NOV 09 2010

OFFICE OF PETITIONS

FOLEY HOAG, LLP
PATENT GROUP, WORLD TRADE CENTER WEST
155 SEAPORT BLVD
BOSTON MA 02110

In re Patent No. 7,759,082	:	DECISION ON REQUEST
Bowlin, et al.	:	FOR
Issue Date: July 20, 2010	:	RECONSIDERATION OF
Application No. 10/764,691	:	PATENT TERM ADJUSTMENT
Filed: January 26, 2004	:	and
Atty Docket No.OGA-007.03	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on September 20, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by either four hundred and forty (440) or four hundred and fifty-four (454) 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 thirty-eight (438) days is **GRANTED to the extent indicated herein.**

Patentees dispute the reductions of 43 days to the patent term adjustment pursuant to 37 CFR 1.704(c)(10) for the filing of an amendment under 37 CFR 1.132 on June 8, 2010. Patentees' assert the reduction to the patent term adjustment under 37 CFR 1.704(c)(10) should be 14 days. Patentees' argument has been considered, and is persuasive to the extent indicated below.

It is noted that 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;

In this instance, the record reveals that the Office took action in response to the filing of amendment under § 1.312 on June 17, 2010. Accordingly, the period of adjustment of the term of the patent should be reduced by 15 days, beginning on the date the amendment under 37 CFR 1.312 was filed, June 8, 2010 and ending on the mailing date of the response to the amendment under 37 CFR 1.312, June 17, 2010. Accordingly, the period of reduction of 43 days will be removed and a period of reduction of 15 days will be entered[1].

Accordingly, the patent term adjustment is 438 days (459 days of A delay + 430 days of B delay - 0 days of overlap - 451 days of applicant delay[2]).

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[1] It is noted that patentees assert that only 14 days of reduction to the patent term adjustment should be entered for the filing of the amendment under 37 CFR 1.312, however, the period of reduction to the patent term adjustment under 37 CFR 1.704(c)(10) begins on, and includes, the date the amendment under 37 CFR 1.312 was filed and ends on, and includes, the mailing date of the response to the amendment under 37 CFR 1.312. "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 reduction to the patent term adjustment is 15 days.

[2] Patentees' argument that no reduction to the patent term adjustment should be entered for the filing of the amendment under 37 CFR 1.312 because the amendment was filed to correct a data entry error made by the Office is not persuasive. The priority information for the application has been of record since 2004, giving patentees' ample opportunity to make any corrections to the record without the need for filing an amendment under 37 CFR 1.312. With very few exceptions, 37 CFR 1.704(c)(10) does not distinguish between papers filed in the ordinary course and papers filed to correct a purported error by the Office. An amendment under 37 CFR 1.312 does not fall within one of these exceptions. The record demonstrates that patentees' filed a paper after the mailing of the Notice of Allowance that may have caused substantial

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 **four hundred and thirty-eight (438)** 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

---

interference and delay in the patent issue process. It was, therefore, appropriate to reduce the patent term adjustment under 37 CFR 1.704(c)(10).

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,759,082 B2

DATED : Jul. 20, 2010

INVENTOR(S) : Bowlin 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 (410) days

Delete the phrase "by 410 days" and insert – by 438 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

MAILED

OCT 01 2010

OFFICE OF PETITIONS

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

In re Patent No. 6,916,250 :
Issue Date: July 12, 2005 :
Application No. 10/764,701 : ON PETITION
Filed: January 26, 2004 :
Attorney Docket No. RICIGLIANO-GOLF :

This is a decision in response to a petition filed August 19, 2010, under 37 CFR 1.378(c), to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on July 13, 2009, for failure to pay the 3 ½ year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

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

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

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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MAILED

APR 11 2011

OFFICE OF PETITIONS

KONRAD RAYNES & VICTOR, LLP
315 S. BEVERLY DRIVE
#210
BEVERLY HILLS CA 90212

In re Application of	:	
Marcus F. Fontoura et al	:	
Application No. 10/764,771	:	DECISION GRANTING PETITION
Filed: January 26, 2004	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. SVL920030116US1	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed April 6, 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 28, 2011 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 2162 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.*

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

OCT 29 2010

OFFICE OF PETITIONS

MORRISON & FOERSTER, LLP
555 WEST FIFTH STREET
SUITE 3500
LOS ANGELES, CA 90013-1024

In re Application of :
Takashi Ikeda et al :
Application No. 10/765,332 : ON PETITION
Filed: January 26, 2004 :
Attorney Docket No. 393032043200

This is a decision on the petition, filed October 27, 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 October 19, 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 3621 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

/Irvin Dingle/
Irvin Dingle
Petitions Examiner
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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.
10/765,345	01/27/2004	Steven Bress		1052

7590 08/29/2011

Steven Bress
7851-C Beechcraft Avenue
Gaithersburg, MD 20879

EXAMINER	
IWASHKO, LEV	
ART UNIT	PAPER NUMBER
2186	

MAIL DATE	DELIVERY MODE
08/29/2011	PAPER

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

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

UNITED STATES DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office
Address : COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10/765,345	27 January, 2004	BRESS ET AL.	

	EXAMINER	
Steven Bress 7851-C Beechcraft Avenue Gaithersburg, MD 20879	MATT KIM	
	ART UNIT	PAPER
	2186	20110825

DATE MAILED:

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

Commissioner for Patents

In re Patent No. 7,143,248
Issue Date: November 28, 2006
Appl. No: 10/765,345
Filed: January 27, 2004
For: Correction of Inventorship

This is a decision on the petition filed May 19, 2011, to correct inventorship under 37 CFR 1.324.

The petition is GRANTED.

The patented filed is being forwarded to Certificate of Corrections Branch for issuance of a certificate naming only the actual inventor or inventors.

/Matt Kim/
Supervisory Patent Examiner, Art Unit 2186

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)
7,229,845	2007-06-12	10/765,505	2004-01-26	SPEED-P001

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

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.

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Dennis S. Fernandez/	Date (YYYY-MM-DD)	2011-10-06
Name	Dennis S. Fernandez	Registration Number	34160

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. 7229845
Issue Date: June 12,2007
Application No. 10765505
Filed: January 26,2004
Attorney Docket No. SPEED-P001

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

This is a decision on the electronic petition, filed October 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 October 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.

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

AUG 11 2011

OFFICE OF PETITIONS

GEORGE CHESTER COX
APT#2B
1887 AMSTERDAM AVE
NEW YORK NY 10032

In re Application of :
Goerge Chester Cox :
Application No. 10/765,544 : ON PETITION
Filed: January 27, 2004 :
Attorney Docket No. None :

This is a decision in response to the petition filed July 18, 2011, which is being treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181 (no fee) in the above-identified application.

The petition under 1.181 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 application was held abandoned for failure to reply to the Final Office action mailed October 30, 2008, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on May 11, 2009.

Petitioner asserts that the Office action dated October 30, 2008, was not timely received and therefore asks that the abandonment be withdrawn and the time period for reply be restarted.

A review of the file record indicates that on October 30, 2008, the Office mailed a final Office action to the correspondence address of record at that time, which was P.O. Box 86 Bedford Hills, NY 10507. The final Office action was returned to the Office on November 12, 2008, no mail receptacle was specified as the reason for return. As annotate in the file record, a copy of the Office action dated October 30, 2008, was mailed to the applicant as a courtesy at the address provided on the last received response dated October 6, 2008. On May 11, 2009, the Office mailed a Notice of Abandonment, on June 2, 2009, that notice was also returned as undeliverable, attempted not known was specified as the reason for return. The file record confirms that the Office action mailed on October 30, 2008, was properly mailed to the address of record and therefore no irregularity in the mailing of the Office action occurred.

DISCUSSION OF PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

Petitioner argues that the alleged remailing of the Final Office action did not leave him enough time to respond to the Office action and that the remailing of that Office action should have reset the response period. As pointed out by petitioner, a remailing of an Office action should reset the period for response as discussed in MPEP 707.13. Although Office records do not show formal remailing of that Office action, the copy of the remailed envelope provided with the petition shows a date stamp of January 7, 2009. Resetting the period for response would have required a response due by April 7, 2009. However, petitioner did not file a response until July 8, 2009 which was six months after the reset response period requested by petitioner. No extension of time was requested. Therefore, even if the Office had formally reset the period for response to the final Office action, petitioner's response was still late and the application properly held abandoned at that point.

ALTERNATIVE VENUE

Petitioner is strongly encouraged to consider filing a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application instead of filing a renewed petition under 37 CFR 1.181 or a petition under 37 CFR 1.137(a).

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

> (1) The reply required to the outstanding Office action or notice, unless previously filed. In nonprovisional utility application abandoned for failure to respond to a non-final Office action, the required reply may be met by filing either (A) an argument or amendment under 37 CFR 1.111 or (B) a continuing application under 37 CFR 1.53(b).
>
> (2) The petition fee as set forth in 37 CFR 1.17(m), **$810.00 for a small entity**;
>
> (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

A form for filing a petition to revive an unintentionally abandoned application accompanies this decision for petitioner's convenience. If petitioner desires to file a petition under 37 CFR 1.137(b) instead of filing a request for reconsideration, petitioner must complete the enclosed petition form (PTO/SB/64) and pay the $810.00 petition fee.

Petitioner may wish to consider hiring a registered patent attorney or agent to assist in the prosecution of this application. Additionally, petitioner is encouraged to contact the Inventors Assistance Center (IAC) by telephone at 800-786-9199 or 571-272-1000, Monday through Friday from 8:30 AM to 5:30 PM (EST). The IAC provides patent information and services to the public and is staffed by former Supervisory Patent Examiners and experienced Primary Examiners who answer general questions concerning patent examining policy and procedure.
Further correspondence with respect to this matter should be addressed as follows:

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

By Hand: Customer Service Window

Randolph Building
401 Dulany Street
Alexandria, VA 22314

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

Telephone inquiries related to this decision may be directed to Alicia Kelley-Collier at (571) 272-6059.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

Enclosures: Petition For Revival Of An Application For Patent Abandoned Unintentionally Under CFR 1.137(b); Form PTO/SB/64, Privacy Act Statement.

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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GEORGE CHESTER COX
1887 AMSTERDAM AVE
APT 2B
NEW YORK, NY 10032

MAILED
OCT 14 2011
OFFICE OF PETITIONS

In re Application of :
George Chester Cox :
Application No. 10/765,544 : ON PETITION
Filed: January 27, 2004 :
Attorney Docket No. :

This is in response to the renewed communication, filed September 1, 2011, to revive the above-identified application, which is being treated as a petition to withdraw the holding of abandonment.

The petition is **DISMISSED**.

A final Office action was mailed October 30, 2008 to the proper address of record. This action was returned as undelivered on November 12, 2008. A Notice of Abandonment was mailed to the address of record on May 11, 2009 and was returned as undelivered on June 2, 2009. Petitioner indicates the final Office action was remailed and received by applicant "on or about" January 5, 2009. Applicant filed a response to the final rejection on July 8, 2009.

DISCUSSION OF PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

The final action was mailed to the address of record. Petitioner notes that his response to the non-final Office action, filed October 6, 2008, included a new address under his signature. Petitioner implies this should have been seen by the Office as a request for change in correspondence address. A change in correspondence address must be formally requested as such. The fact that a paper was filed and contained an address different than the correspondence address does not constitute a formal request to change the correspondence address.

Petitioner indicates that the response time to the final rejection should have been reset based on the remailing of the action. Although the Office has no official record of the remailing of the final action, petitioner provides evidence to suggest the action was remailed as per MPEP 707.13. While no official mail date is recorded, petitioner states he received the action "on or

about" January 5, 2009. Resetting the period for response of three (3) months would have required applicant to file a response by April 5, 2009 or July 5, 2009 with a three month extension of time. Petitioner filed his response on July 8, 2009 which was six months after the alleged remailing of the final rejection. Petitioner states an extension of time was filed with the response as evidenced by the "Extension of Time Request" box checked off on the transmittal form. However, merely checking off this box does not constitute a proper request for extension of time as applicant did not provide the fee required for petition for extension of time as set forth in 37 CFR 1.136(a)(3). Therefore, a proper extension of time was not provided and the response was not timely filed.

Petitioner cites MPEP 714.05 in regard to contacting applicant if the response is incomplete. But, to do so there must be sufficient time remaining to correct any response deficiencies. There was no time remaining as the six month period for response to the remailed final rejection had already expired.

Given the above facts, if the final rejection had been remailed on or about January 5, 2009, applicant failed to file a timely response and the application went abandoned on April 6, 2009. While the Notice of Abandonment mailed May 11, 2009 was premature the application is nonetheless abandoned. Therefore, the petition to withdraw the holding of abandonment is **dismissed**.

ALTERNATIVE VENUE

Petitioner is strongly encouraged to consider filing a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application instead of filing a renewed petition under 37 CFR 1.181 or a petition under 37 CFR 1.137(a).

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

> (1) The reply required to the outstanding Office action or notice, unless previously filed. In nonprovisional utility application abandoned for failure to respond to a non-final Office action, the required reply may be met by filing either (A) an argument or amendment under 37 CFR 1.111 or (B) a continuing application under 37 CFR 1.53(b).
>
> (2) The petition fee as set forth in 37 CFR 1.17(m), **$810.00 for a small entity**;
>
> (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

A form for filing a petition to revive an unintentionally abandoned application accompanies this decision for petitioner's convenience. If petitioner desires to file a petition under 37 CFR 1.137(b) instead of filing a request for reconsideration, petitioner must complete the enclosed petition form (PTO/SB/64) and pay the $810.00 petition fee.

Petitioner may wish to consider hiring a registered patent attorney or agent to assist in the prosecution of this application. Additionally, petitioner is encouraged to contact the Inventors

Assistance Center (IAC) by telephone at 800-786-9199 or 571-272-1000, Monday through Friday from 8:30 AM to 5:30 PM (EST). The IAC provides patent information and services to the public and is staffed by former Supervisory Patent Examiners and experienced Primary Examiners who answer general questions concerning patent examining policy and procedure.

Any request for reconsideration of this decision should be submitted within **TWO (2) 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).

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

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

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

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

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

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

Enclosures: Petition For Revival Of An Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b); Form PTO/SB/64, Privacy Act Statement;

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 2/23/12

TO SPE OF : ART UNIT: 1656

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/765,664 Patent No. 7,790,678

CofC mailroom date 6/21/11

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Ernest C. White, LIE

Certificates of Correction Branch
703-756-1814 _____

Thank You For Your Assistance

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

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

Comments: _____

SPE

1656
Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/21/11

TO SPE OF : ART UNIT 2183

SUBJECT : Request for Certificate of Correction for Appl. No.: 10765867 Patent No.: 7178011

CofC mailroom date: 03/15/11

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580
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: _____

_____

_____

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

/Eddie P Chan/ SPE AU2183 5/10/2011

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED

APR 07 2011

OFFICE OF PETITIONS

JAMES C. WRAY
1493 CHAIN BRIDGE ROAD
SUITE 300
MCLEAN VA 22101

In re Application of:
Isabel N. Gonzalez
Application No. 10/765,995 : DECISION ON PETITION
Filing Date: January 29, 2004
Attorney Docket No. TH3551 (US)

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

The petition is **GRANTED**.

The above-identified application became abandoned for failure to file a proper reply in a timely manner to the Notice to File Corrected Application Papers mailed June 14, 2008, which set a shortened statutory period for reply of two (2) months. No extensions of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on August 15, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the required drawings, (2) the petition fee of $810, and (3) a proper statement of unintentional delay. Accordingly, the reply to the Notice to File Corrected Application Papers of June 14, 2008 is accepted as having been unintentionally delayed.

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

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at 571-272-3231.

The application is being referred to the Office of Patent Application Processing for further processing.

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

James C. Wray
1493 Chain Bridge Road
Suite 300
McLean, VA 22101

MAILED

APR 03 2012

OFFICE OF PETITIONS

In re Application of :
Isabel N. Gonzalez :
Application No. 10/765,995 : DECISION ON PETITION
Filed: January 29, 2004 : TO WITHDRAW
: FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed March 2, 2012.

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 James C. Wray on behalf of all attorneys of record. All attorneys/agents have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the first named inventor Isabel N. Gonzalez at the address indicated below.

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

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

cc: **Isabel N. Gonzalez**
1406 Langley Place
McLean, VA 22101

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
10/765,995	01/29/2004	Isabel N. Gonzalez	

CONFIRMATION NO. 2949

POWER OF ATTORNEY NOTICE

49801
JAMES C. WRAY
1493 CHAIN BRIDGE ROAD
SUITE 300
MCLEAN, VA 22101

OC000000053412884

Date Mailed: 03/29/2012

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 03/02/2012.

- 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.

/tsjohnson/

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
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In re Patent No. 7126914
Issue Date: October 24,2006
Application No. 10766314
Filed: January 28,2004
Attorney Docket No. 1033-NW1001

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

This is a decision on the electronic petition, filed January 5,2011 ,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 5,2011 .
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)
7,126,914	2006-10-24	10/766,314	2004-01-28	1033-NW1001

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

	Fee	Code
◉	3 ½ year	(1551)
○	7 ½ year	(1552)
○	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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.

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	/Jeffrey G. Toler/	Date (YYYY-MM-DD)	2011-01-04
Name	Jeffrey G. Toler	Registration Number	38342

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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MAILED
OCT 04 2011
OFFICE OF PETITIONS

OLIVE & OLIVE, P.A.
500 MEMORIAL STREET
PO BOX 2049
DURHAM NC 27702

In re Patent No. 7,249,858 :
Issue Date: July 31, 2007 :
Application No. 10/766,397 : ON PETITION
Filed: January 23, 2004 :
Attorney Docket No. :
BLA06234.P.US1/PUKM5008

This is a decision on the petition under 37 CFR 1.378(c), filed September 21, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

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 M. Henry Heines 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, M. Henry Heines 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 M. Henry Heines, the petitioner herein. However, until otherwise instructed, all future correspondence regarding this application file will be directed solely to the above-noted correspondence address of record.

This patent expired at midnight July 31, 2011, for failure to pay the 3½ 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 petition is hereby **GRANTED**.

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

A petition to accept the unintentionally delayed payment of a maintenance fee under 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. 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.

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 decision should be directed to JoAnne Burke at (571) 272-4584.

JoAnne Burke
Petitions Examiner
Office of Petitions

cc: M. Henry Heines
Two Embarcadero Center
Eighth Floor
San Francisco, CA 94111

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED

MAY 10 2011

OFFICE OF PETITIONS

In re Application of	:	
Helmut FITZ	:	
Application No. 10/766,478	:	DECISION ON PETITION
Filed: January 29, 2004	:	
Attorney Docket No. 2004_0121A	:	

This is a decision on the petition, filed April 20, 2011, 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 became abandoned as a result of petitioner's failure to take appropriate action in a timely manner after the decision of August 18, 2009 by the Board of Patent Appeals and Interferences. Therefore, the proceedings as to the rejected claims were terminated. *See* 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on October 19, 2009. *See* MPEP 1214.06.

Petitioner asserts that a timely reply was mailed on October 16, 2009 and request withdrawal of the abandonment mailed October 23, 2009.

A review of the Office indicated that a reply was filed in the Office on October 16, 2009, which would have rendered the reply timely if received.

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 August 18, 2009 is hereby withdrawn and the application restored to pending status.

Telephone inquiries concerning this decision should be directed to Michelle R. Eason at (571) 272-4231.

This application is being referred to Technology Center AU 3637 for appropriate action in the normal course of business on the reply received October 16, 2009.

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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Alex L. Yip
Kaye Scholer LLP
425 Park Avenue
New York NY 10022

MAILED

JAN 24 2011

OFFICE OF PETITIONS

In re Application of :
Elsey, et al. :
Application No. 10/766,498 : ON PETITION
Filed: January 27, 2004 :
Attorney Docket No. 41698.1112 :
For: TECHNIQUE FOR EFFECTIVELY PROVIDING CONCIERGE-LIKE SERVICES IN A DIRECTORY ASSISTANCE SYSTEM

This is a decision on the petition under 37 CFR 1.181, filed November 1, 2010, requesting that the Office withdraw the holding of abandonment of the above-identified application.

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

Any reconsideration petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. This is **not** a final agency action within the meaning of 5 U.S.C.§ 704.

The application became abandoned for failure to reply within the meaning of 37 CFR 1.113 to the final Office action, mailed April 9, 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 10, 2010. A Notice of Abandonment was mailed on October 25, 2010.

Petitioners request withdrawal of the holding of abandonment. However, the petition is not among the papers filed on November 1, 2010. The petition is dismissed.

There is no indication that the petition is signed by a specifically empowered patent attorney or patent agent. However, in accordance with 37 CFR 1.34, the signature of Mr. Sofer 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. Sofer desires to receive correspondence regarding this file, the appropriate power of attorney documents must be submitted. A courtesy copy of this decision is being mailed to Mr.Sofer , the petitioner herein. However, until otherwise instructed, all future correspondence

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

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)

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

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

CC: JOSEPH SOFER
317 MADISON AVENUE
SUITE 910
NEW YORK, NY 11017

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Alex L. Yip
Kaye Scholer LLP
425 Park Avenue
New York NY 10022

MAILED
JUN 16 2011
OFFICE OF PETITIONS

In re Application of :
Elsey, et al. :
Application No. 10/766,498 : ON PETITION
Filed: January 27, 2004 :
Attorney Docket No. 41698.1112 :
For: TECHNIQUE FOR EFFECTIVELY PROVIDING CONCIERGE-LIKE SERVICES IN A DIRECTORY ASSISTANCE SYSTEM

This is a decision on the renewed petition under 37 CFR 1.181, filed February 16, 2011, requesting that the Office withdraw the holding of abandonment of the above-identified application.

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

Any reconsideration petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. This is **not** a final agency action within the meaning of 5 U.S.C.§ 704.

The application became abandoned for failure to reply within the meaning of 37 CFR 1.113 to the final Office action, mailed April 9, 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 10, 2010. A Notice of Abandonment was mailed on October 25, 2010.

Petitioners assert that the April 9, 2010 final Office action was not received by practitioner because the failure of the USPTO to enter a power of attorney and change of correspondence address, filed on June 12, 2008, resulted in the April 9, 2010 final Office action being directed to an out-of-date address. Therefore applicants requests withdrawal of the holding of abandonment.

MPEP Section 402.07 states that a power of attorney by an assignee of the entire interest revokes all powers of attorney given by an application and prior assignees if the assignee establishes their right to take action as provided in 37 CFR 3.73(b). See 324.

MPEP Section 324(V)(A) discusses positions that have apparent authority to sign a 3.73(b) statement on behalf of an assignee. The same logic applies to positions that have authority to sign a power of attorney.

MPEP 324(V)(A) states, with emphasis added,

The submission may be signed by a person in the organization having apparent authority to sign on behalf of the organization. 37 CFR 3.73(b)(2)(ii). An officer (chief executive officer, president, vice-president, secretary, or treasurer) is presumed to have authority to sign on behalf of the organization. The signature of the chairman of the board of directors is acceptable, but not the signature of an individual director. Modifications of these basic titles are acceptable, such as vice-president for sales, executive vice-president, assistant treasurer, vice-chairman of the board of directors. In foreign countries, a person who holds the title "Manager" or "Director" is normally an officer and is presumed to have the authority to sign on behalf of the organization. A person having a title (administrator, *general counsel*) that does not clearly set forth that person as an officer of the assignee is not presumed to have authority to sign the submission on behalf of the assignee. A power of attorney (37 CFR 1.32(b)(4)) to a patent practitioner to prosecute a patent application executed by the applicant or the assignee of the entire interest does not make that practitioner an official of an assignee or empower the practitioner to sign the submission on behalf of the assignee.

In the instant case, a Revocation of Power of Attorney with New Power of Attorney and Change of Correspondence Address executed by Zachely Green, Global General Counsel, was filed on June 12, 2008. The document was accompanied by a proper 3.73(b) statement executed by Attorney Sofer. Unfortunately, Mr. Green, as general counsel of an unspecified company, does not have apparent authority to bind the assignee, Grape Technology Group, Inc., as would an officer of the company.

In short, the Office received a revocation/power of attorney/change of correspondence address signed by an individual who lacked apparent authority to bind the assignee. Therefore, the Office was not in error when it did not enter the requested changes and the April 9, 2010 final Office action was properly mailed to the correspondence address of record. It is noted that three other Office actions were mailed to the correspondence address of record after the June 12, 2008 Revocation of Power of Attorney with New Power of Attorney and Change of Correspondence Address was filed, and applicant did not attempt to update the correspondence address when they timely responded to those Office actions. The petition to withdraw the holding of abandonment due to non-receipt is dismissed.

Petitioners are strongly encouraged to file a petition to revive under the unintentional standard of 137(b). 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).

As discussed above, Mr. Sofer has not been specifically empowered. However, in accordance with 37 CFR 1.34, the signature of Mr. Sofer 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. Sofer desires to receive correspondence regarding this file, the appropriate power of attorney documents must be submitted. A courtesy copy of this decision is being mailed to Mr.Sofer. However, until otherwise instructed, all future correspondence regarding this application file will be directed solely to the above-noted correspondence address of record.

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)

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

CC: JOSEPH SOFER
317 MADISON AVENUE
SUITE 910
NEW YORK, NY 11017

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Alex L. Yip
Kaye Scholer LLP
425 Park Avenue
New York NY 10022

MAILED

JAN 11 2012

OFFICE OF PETITIONS

In re Application of :
Elsey, et al. :
Application No. 10/766,498 : ON PETITION
Filed: January 27, 2004 :
Attorney Docket No. 41698.1112 :
For: TECHNIQUE FOR EFFECTIVELY PROVIDING CONCIERGE-LIKE SERVICES IN A DIRECTORY ASSISTANCE SYSTEM

This is a decision on the renewed petition under 37 CFR 1.181, filed June 27, 2011, requesting that the Office withdraw the holding of abandonment of the above-identified application.

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

Any reconsideration petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. This is **not** a final agency action within the meaning of 5 U.S.C.§ 704.

The application became abandoned for failure to reply within the meaning of 37 CFR 1.113 to the final Office action, mailed April 9, 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 10, 2010. A Notice of Abandonment was mailed on October 25, 2010.

Petitioners assert that the April 9, 2010 final Office action was not received by practitioner because the failure of the USPTO to enter a power of attorney and change of correspondence address, filed on June 12, 2008, resulted in the April 9, 2010 final Office action being directed to an out-of-date address. Therefore applicants requests withdrawal of the holding of abandonment.

MPEP Section 402.07 states that a power of attorney by an assignee of the entire interest revokes all powers of attorney given by an application and prior assignees if the assignee establishes their right to take action as provided in 37 CFR 3.73(b). See 324.

MPEP Section 324(V)(A) discusses positions that have apparent authority to sign a 3.73(b) statement on behalf of an assignee. The same logic applies to positions that have authority to sign a power of attorney.

MPEP 324(V)(A) states, with emphasis added,

The submission may be signed by a person in the organization having apparent authority to sign on behalf of the organization. 37 CFR 3.73(b)(2)(ii). An officer (chief executive officer, president, vice-president, secretary, or treasurer) is presumed to have authority to sign on behalf of the organization. The signature of the chairman of the board of directors is acceptable, but not the signature of an individual director. Modifications of these basic titles are acceptable, such as vice-president for sales, executive vice-president, assistant treasurer, vice-chairman of the board of directors. In foreign countries, a person who holds the title "Manager" or "Director" is normally an officer and is presumed to have the authority to sign on behalf of the organization. A person having a title (administrator, *general counsel*) that does not clearly set forth that person as an officer of the assignee is not presumed to have authority to sign the submission on behalf of the assignee. A power of attorney (37 CFR 1.32(b)(4)) to a patent practitioner to prosecute a patent application executed by the applicant or the assignee of the entire interest does not make that practitioner an official of an assignee or empower the practitioner to sign the submission on behalf of the assignee.

In the instant case, a Revocation of Power of Attorney with New Power of Attorney and Change of Correspondence Address executed by Zachery Green, Global General Counsel, was filed on June 12, 2008. The POA states "I am the ... Assignee of record of the entire interest" and is then signed by "Zachery Green (Global General Counsel)." Therefore, the form is asserting the assignee of record is Zachery Green, although arguments could also be made that the form is asserting Global General Counsel is the assignee. The fact the form does indicate the assignee, via an officer or approved party, must sign the form, is not an indication Green can assert he is the assignee. The 3.73(b) statement filed at same time states "Grape Technology Group, Inc." is the assignee of the entire interest and that Joseph Sofer may act on the corporation's behalf. Had Mr. Green signed the 3.73(b) statement, the outcome would have been different.

At the time the revocation/power of attorney/change of address was filed, applicants did not submit sufficient documentation/statements to establish Zachery Green could act on the assignee's behalf and "Zachery Green (Global General Counsel)" does not have apparent authority to bind the assignee, Grape Technology Group, Inc., as would an officer of the company.

In short, the Office received a revocation/power of attorney/change of correspondence address signed by an individual who lacked apparent authority to bind the assignee. Therefore, the Office was not in error when it did not enter the requested changes and the April 9, 2010 final Office action was properly mailed to the correspondence address of record.

It is noted that three other Office actions were mailed to the correspondence address of record after the June 12, 2008 Revocation of Power of Attorney with New Power of Attorney and Change of Correspondence Address was filed, and applicants did not attempt to update the

correspondence address when they timely responded to those Office actions. The petition to withdraw the holding of abandonment due to non-receipt is dismissed.

Petitioners are once again strongly encouraged to file a petition to revive under the unintentional standard of 137(b). 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).

As discussed above, Mr. Sofer has not been specifically empowered. However, in accordance with 37 CFR 1.34, the signature of Mr. Sofer 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. Sofer desires to receive correspondence regarding this file, the appropriate power of attorney documents must be submitted. A courtesy copy of this decision is being mailed to Mr. Sofer.

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)

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

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

CC: JOSEPH SOFER
317 MADISON AVENUE
SUITE 910
NEW YORK, NY 11017

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February 10, 2012

WOLF GREENFIELD & SACKS, P.C.
600 ATLANTIC AVENUE
BOSTON MA 02210-2206

In re Application of	:	
Henrich Cheng	:	**DECISION ON PETITION**
Application No. 10766530	:	
Filed: 01/29/2004	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. **L0735.70003US00**	:	***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) July 23, 2007.

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

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.
10/766,642	01/28/2004	Anthony Atala	105447-2	4621

21125 7590 11/09/2010

NUTTER MCCLENNEN & FISH LLP
SEAPORT WEST
155 SEAPORT BOULEVARD
BOSTON, MA 02210-2604

EXAMINER	
FORD, ALLISON M	

ART UNIT	PAPER NUMBER
1651	

NOTIFICATION DATE	DELIVERY MODE
11/09/2010	ELECTRONIC

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

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

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

docket@nutter.com

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NOV 0 9 2010

NUTTER MCCLENNEN & FISH LLP
Seaport West
155 Seaport Boulevard
Boston, Massachusetts 02210-2604

In re Application of: Anthony Atala et al	:	
Serial No: 10/766,642	:	DECISION
Filed: January 28, 2004	:	ON
Attorney Docket No: 105447-2	:	PETITION
Title: Enhancement Of Angiogenesis To Grafts Using Cells Engineered To Produce Growth Factors	:	

This letter is in response to the Petition under 37 CFR 1.181 filed on August 16, 2010.

BACKGROUND

On January 28, 2004 instant application was filed.

On January 27, 2005, a FOAM was issued. Examiner made a telephonic restriction with Mr. Engellenner on January 4, 2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-13 and 23-29. The examiner presented the following groups:

Group I. Claims 1-13 and 23-29, drawn to a method of organ augmentation
Group II. Claims 14-22 and 30-32, drawn to a method of tissue repair

On July 27, 2005, a response was filed. Applicant confirmed the election with traverse but did not distinctly and specifically point out the supposed errors in the restriction requirement.

On September 20, 2005, a final Office action was mailed. Page 2, under election/restriction, examiner states: "Applicant's election of Group I, claims 1-13 and 23-29, in the reply filed on July 27 2005 is acknowledged. Because applicant didn't distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP 818.03(a)). The restriction was made Final."

Three RCEs have been filed on March 22, 2006, July 16, 2007 and September 15, 2008 respectively.

On January 4, 2010, a response was filed in response to non-final Office action dated September 2, 2009. New claims 38-43 were added.

On March 30, 2010, a Final action was mailed. Examiner withdrew the newly added claims 38-43 as they are drawn to different invention.

On June 30, 2010, an amendment after final was filed.

On July 13, 2010, Advisory action was mailed. Examiner maintained the final rejection.

On August 16, 2010, the present petition was filed requesting reconsideration and withdrawal of the restriction requirement and the premature "final" rejection as maintained in the Advisory action dated July 15, 2010.

DISCUSSION

The prosecution history and petition have been carefully reviewed.

37CFR 1.181(f) states:
"Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable."

The Final Office action was mailed on March 30, 2010. The instant petition was filed on August 16, 2010. Therefore, the petition is untimely.

DECISION

The petition is **Dismissed** for the reasons set forth above.

The application is being forwarded to examiner for further action after mailing of this decision. Applicant may consider filing a petition on reconsideration of restriction under 37 CFR 1.144. In addition, applicant's attention is invited to 37 CFR 1.181(f), it states: "The mere filing of a petition will not stay any period for reply that may be running against, nor act as a stay of other proceedings. "

Should there be any questions about this decision, please contact Supervisory Patent examiner Cecilia Tsang, by letter addressed to Director, Technology Center 1600, at the address listed above, or by telephone at 571-272-0562 or by facsimile sent to the general Office facsimile number, 571-273-8300.

Jacqueline Stone
Director, Technology Center 1600

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,642	01/28/2004	Anthony Atala	105447-2	4621

21125 7590 11/16/2011
NUTTER MCCLENNEN & FISH LLP
SEAPORT WEST
155 SEAPORT BOULEVARD
BOSTON, MA 02210-2604

EXAMINER	
FORD, ALLISON M	

ART UNIT	PAPER NUMBER
1653	

NOTIFICATION DATE	DELIVERY MODE
11/16/2011	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):

docket@nutter.com

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NOV 1 6 2011

Thomas J. Engellenner
NUTTER MCCLENNEN & FISH LLP
Seaport West
155 Seaport Boulevard
Boston, Massachusetts 02210-2604

In re Application of	:
Atala	:
Serial No.:10/766,642	: Decision on Petition
Filed: 28 January 2004	:
Attorney Docket No.: 105447-2	:

This letter is in response to the petition under 37 CFR 1.144 filed 30 December 2010 requesting reconsideration of the final rejection maintained in the Advisory Action mailed 15 July 2010.

BACKGROUND

On 27 January 2005, in a first Office action on the merits, the examiner divided claims 1-32 into two groups and confirmed that applicants had provisionally elected Group I, claims 1-13 and 23-29, with traverse. No election of species was required. Claims 1-13 and 23-29 were then examined on the merits. Independent claim 1 was directed to a method of organ augmentation comprising the steps of transfecting a population of cells with a plasmid encoding an angiogenesis modulating agent and implanting the transfected cells into a target tissue area. Dependent claims 4 and 7 were directed to transfecting populations of vascular endothelial cells (EC).

On 4 January 2010, following several rounds of prosecution with no further restriction or election of species requirement, applicants amended claim 7 to recite population of endothelial progenitor cells. Newly added claims 38, 39 and 42 also recited endothelial progenitor cells. Applicants also broadened claims 1 and 23 by removing the step of "encapsulating the transfected first population of cells."

On 30 March 2010, in the final Office action, the examiner withdrew claims 7, 38, 39 and 42 as being drawn to non-elected subject matter since "the populations of vascular endothelial cells and myoblasts have been constructively elected by original presentation for prosecution on the

merits." The examiner then rejected claims 1-4, 6, 12, 23, 25, 26, 28, 40, 41 and 43 under the new grounds as being obvious over Badylak (US 2003/0216811) in light of Badylak (1999) and Penn (US 2004/0161412). An additional rejection was made under 35 U.S.C. 103(a) relying upon the Badylak references in combination with Stewart (US 2006/0251630).

On 30 June 2010, applicants requested reconsideration of withdrawn claims 7, 38, 39 and 42 and reconsideration of the finality.

On 15 July 2010, the examiner mailed an advisory action which maintained the examiner's treatment of the withdrawn claims and the new grounds of rejection, reasoning that the new rejections were necessitated by applicant's amendment.

On 16 August 2010, applicants filed a petition under 37 CFR 1.181 for reconsideration of the restriction requirement withdrawing claims 7, 38, 39 and 42 from examination, which was then dismissed as untimely.

On 30 December 2010, applicants filed this petition under 37 CFR 1.144 for reconsideration of the final Office action, along with a request for continued examination.

DISCUSSION

The application, file history and petition have been considered carefully.

The petition filed 9 November 2011 concerns the finality of the Office action mailed 30 March 2010. While applicants agrees that the amendment filed 4 January 2010 broadens claims 1 and 23 by deleting the step "encapsulating the transfected first population of cells," the petition argues that this limitation is not at issue in and could not have prompted the new grounds of rejection. A review of the final rejection shows that the Badylak reference was newly relied upon in order to teach the limitations concerning the polymeric matrix material. This limitation was present in claim 1 as originally filed and had not altered by amendment. The newly made rejection was not set forth to address by whether or not the first transfected populations of cells were encapsulated (the limitation removed by the 4 January 2010 amendment). For this reason, the amendment did not prompt new grounds of rejection and the finality was premature.

Next, it is noted that a petition filed under 37 CFR 1.181 (dismissed as untimely on 9 November 2010) had requested examination of claims 7, 38, 39 and 42 which are drawn to progenitor endothelial cells. The petition provided reasoning that because the method of using vascular endothelial cells in general had already been examined on the merits, claims reciting a method of using a subset of vascular endothelial cells (progenitor endothelial cells) should also be examined on the merits. In support of their position that the progenitor endothelial cells are a type of vascular endothelial cells, the petition pointed to paragraph [0120] of the specification which lists out various types of vascular endothelial cells, including progenitor endothelial cells.

This is persuasive and in keeping with the final sentence of MEP 821.03, which indicates that withdraw of claims by original presentation is only when a restriction could have been properly made between the examined claims and the withdrawn claims. In this instance, the examiner has

set forth a restriction between the genus of all vascular endothelial cells and the subset of those cells which are progenitor endothelial cells. Because the Office cannot restrict between a genus and a species, this requirement cannot be maintained.

DECISION

The petition under 37 CFR 1.144 filed 30 December 2010 for reconsideration of the final Office action is **GRANTED**.

The final Office action mailed 30 March 2010 is withdrawn.

The withdrawal of Claims 7, 38, 39 and 42 by election by original presentation is unwarranted.

Claims 7, 38, 39 and 42 will be examined on the merits along with other already-examined claims.

The application will be returned to the examiner for consideration of the papers filed 30 December 2010 and for preparation of an Office action consistent with this decision.

Should there be any questions regarding this decision, please contact Quality Assurance Specialist Julie Burke, by mail addressed to Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at (571) 272-0512 or by Official Fax at 571-273-8300.

George C Elliott

George Elliott
Director, Technology Center 1600

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MAILED
AUG 11 2011
OFFICE OF PETITIONS

FISH & RICHARDSON P.C.
SMITH & NEPHEW, INC.
150 Minuteman Road
Andover MA 01810

In re Patent of Iki et al.	:	DECISION ON REQUEST FOR
Patent No. 7,951,142	:	RECONSIDERATION OF
Issued: May 31, 2011	:	PATENT TERM ADJUSTMENT &
Application No. 10/766,894	:	NOTICE OF INTENT TO
Filed: January 30, 2004	:	ISSUE CERTIFICATE OF
Atty Docket No. 00167-0491001/ PT-2634-US	:	CORRECTION

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705(d)," filed August 1, 2011. Patentees request 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 seventeen (1017) days.

The petition 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 **eight hundred eighty-six (886)** days.

On May 31, 2011, the above-identified application matured into U.S. Patent No. 7,951,142, with a revised patent term adjustment of 944 days. On August 1, 2011, patentees timely submitted a petition for reconsideration of patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 1017 days.

Pursuant to their duty of good faith and candor to the Office, patentees disclose the Office failed to enter a 58 day period of reduction, pursuant to 37 CFR 1.704(c)(8), for an Information Disclosure Statement filed on January 20, 2010. After applicants filed a proper reply on November 23, 2009 to a final Office action, applicants submitted a supplemental reply or paper in the form of an Information Disclosure Statement (IDS) on January

20, 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 January 20, 2010, reveals that applicants did not include a statement under 37 CFR 1.704(d).[1] Thus, applicants failed to engage in reasonable efforts to conclude prosecution of the application. The patent term adjustment should have been reduced by 58 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, November 24, 2009, and ending on the date that the IDS was filed,January 20, 2010. Accordingly, a period of reduction of 58 days will be entered.

Patentees argue that the Director erred in the calculation of patent term adjustment by subtracting from the period of B Delay a period of time that was not "consumed by continued examination of the application." The first Request for Continued Examination (RCE) was filed on April 26, 2007. On January 21, 2011, the Office mailed a Notice of Allowance. Patentees argue no continued examination took place during the 131 day period from January 21, 2011 (the mailing date of the Notice of Allowance) until May 31, 2011 (the date the patent issued). Thus, patentees argue 131 days should have been added to the 85 days accorded by the Director for the B Delay period (beginning January 31, 2007 and ending on April 25, 2007, the day before the first RCE was filed).

Patentees conclude that the correct patent term adjustment is 1017 days (the sum of 913 days of "A delay" and 216 days of "B delay" minus 112 days of Applicant delay).

---

[1] Pursuant to 37 CFR § 1.704(d):

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

RELEVANT STATUTE AND REGULATIONS

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including –

(i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

(ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or

(iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

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

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:

(1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);

(2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);

(3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;

(4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or

(5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

Patentees' arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 4 days based on the application having been filed under 35 U.S.C. 111(a) on January 30, 2004 and the patent not having issued as of the day after the three year date, January 31, 2007, and a request for continued examination being filed on April 26, 2007. In other words, the 131-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)[2]. 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

---

[2] 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.

date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

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

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)[3]. 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

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[3] 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.

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[4] 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

[4] 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.

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 April 26, 2007, and the patent issued by virtue of that request on May 31, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on January 21, 2011 and ending on May 31, 2011 is not included in calculating Office delay.

CONCLUSION

In light thereof, the correct patent term adjustment is 886 days, which is 913 days of delay under 35 U.S.C. 154(b)(1)(A) plus 85 days of delay under 35 U.S.C. 154(b)(1)(B) reduced by 112 days of Applicant delay.

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

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

Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). 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 eight hundred eighty-six (886)** days.

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,951,142 B2

DATED : **May 31, 2011** **DRAFT**

INVENTOR(S) : Iki 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 944 days

Delete the phrase "by 944 days" and insert – by 886 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

In re Patent of Iki et al.	:	FINAL AGENCY DECISION
Patent No. 7,951,142	:	ON REQUEST FOR
Issued: May 31, 2011	:	RECONSIDERATION OF
Application No. 10/766,894	:	DECISION ON APPLICATION
Filed: January 30, 2004	:	FOR PATENT TERM
Atty Docket No. 00167-0491001/ PT-2634-US		

This is a decision on the "RESPONSE TO DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT AND NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION," filed September 12, 2011, requesting reconsideration of the decision of August 11, 2011, and requesting that the patent term adjustment determination under 35 U.S.C. § 154(b) in the decision of August 11, 2011, be changed from 886 days to 1017 days.

Patentees request that the decision on this renewed request for reconsideration of patent term adjustment be deferred or delayed until a final decision has been rendered in Abbott Biotherapeutics Corp. v. Kappos.

The request for reconsideration of the decision of August 11, 2011, is granted to the extent that the decision of August 11, 2011, has been reconsidered; however, the request for reconsideration is **DENIED** with respect to making any change in the patent adjustment determination under 35 U.S.C. § 154(b) of 886 days indicated in the decision of August 11, 2011. 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 May 31, 2011, the above-identified application matured into U.S. Patent No. 7,951,142, with a revised patent term adjustment of 944 days. On August 1, 2011, patentees timely submitted a petition for reconsideration of patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 1017 days. On August 11, 2011, the Office mailed a decision indicating the patent term adjustment is 886 days and affording patentees with a 30 day/1 month period to contest the decision. Patentees timely filed the present petition on Monday, September 12, 2011.

Patentees maintain that the Office incorrectly calculated Office delay pursuant to 37 CFR 1.702(b). Patentees contend that the Office erred in subtracting from the "B delay" a period of time that was not "consumed by continued examination of the application." Specifically, Patentees argue that (after the filing of the request for continued examination) the Office mailed a Notice of Allowance on January 21, 2011, thereby closing examination of the application on that date. Thus, Patentees argue no continued examination took place during the 131 day period from January 21, 2011(the mailing date of the Notice of Allowance) until May 31, 2011 (the date the patent was issued). Thus, Patentees argue 131 days should have been added to the 85 days accorded by the Director for the B Delay period (beginning January 31, 2007 and ending on April 25, 2007, the day before the first RCE was filed).

Patentees conclude that the correct patent term adjustment is 1017 days (the sum of 913 days of "A delay" and 216 days of "B delay" minus 112 days of Applicant delay).

RELEVANT STATUTE AND REGULATIONS

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

> Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including –

(i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

(ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or

(iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

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

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:

(1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);

(2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);

(3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;

(4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or

(5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

Patentees' arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 85 days based on the application having been filed under 35 U.S.C. 111(a) on January 30, 2004 and the patent not having issued as of the day after the three year date, January 31, 2007, and a request for continued examination being filed on April 26, 2007. In other words, the 131-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.

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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.

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

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

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

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a

patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F.Supp.2d 138 (D.D.C., September 30, 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in

clauses (i)-(ii)[2]. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. *Websters Collegiate Dictionary*, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(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

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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.

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

[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.

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 April 26, 2007, and the patent issued by virtue of that request on May 31, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on January 21, 2011 and ending on May 31, 2011 is not included in calculating Office delay.

CONCLUSION

Accordingly, the decision on application for patent term adjustment has been reconsidered and the request for additional patent term is **DENIED.**

The patent term adjustment remains 886 days, as indicated in the decision of August 11, 2011. 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 **eight hundred eighty-six (886)** days.

Deposit account no. 06-1050 will be refunded the $200.00 petition fee submitted with the instant petition, as Patentees previously paid the $200.00 petition fee on August 1, 2011.

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

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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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VOLPE AND KOENIG, P.C.
DEPT. ICC
UNITED PLAZA
30 SOUTH 17TH STREET
PHILADELPHIA PA 19103

MAILED
MAR 09 2012
OFFICE OF PETITIONS

In re Application of :
Foore, et al. : DECISION ON PETITION
Application No. 10/767,016 :
Filed: 29 January, 2004 :
Attorney Docket No. TAN-2-1400.06.US :

This is a decision on the petition filed on 9 February, 2012, pursuant to the regulations at 37 C.F.R. §1.47 and §1.48.

NOTE:

While the Notice of Allowance in this matter was mailed on 28 December, 2011, the instant petitions were not submitted for consideration until 9 February, 2012—more than six (6) weeks later.

Petitioner's attachments indicate that The petitions pursuant to 37 C.F.R. §1.47(a) and §1.48 are **DISMISSED**.

Rule 47/48 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Pursuant to 37 C.F.R. §1.47 and §1.48," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Any extensions of time will be governed by 37 C.F.R. §1.136(a).

This is **not** a final agency action within the meaning of 5 U.S.C. §704.

RULE 47

A grantable petition pursuant to 37 C.F.R. §1.47(a) requires: petition and fee; proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification: description, claims and drawings); an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; and a statement of the last known address of the non-signing inventor(s)—with diligence in the effort to ascertain the validity of the address set forth as the reasonably believed to be last known/current/valid address.

Petitioner does not seem to have worked through the requirements of the petition, as set forth above, in satisfaction of those requirements. (*See, generally:* MPEP §409.03, and §409.03(a)—the applicable statute (35 U.S.C.§ 116).

RULE 48

A grantable petition pursuant to 37 C.F.R. §1.48 requires: a request to correct the inventorship that sets forth the desired inventorship change; a statement from each person being added as an inventor that the addition is necessitated by amendment of the claims and that the inventorship error occurred without deceptive intention on his or her part; an oath or declaration by the actual inventors as required by §1.63 or as permitted by §1.42, §1.43, or §1.47; the processing fee set forth in §1.17(i); if an assignment has been executed by any of the original named inventors, the written consent of the assignee (see 37 C.F.R. §3.73(b)). Petitioner must present in support of the petition pursuant to 37 C.F.R. §1.48 an oath or declaration in compliance with 37 C.F.R. §§1.63 and 1.64.

Petitioner must present in support of the petition pursuant to 37 C.F.R. §1.48 an oath or declaration in compliance with 37 C.F.R. §§1.63 and 1.64.

In particular, Petitioner has not as of this writing satisfied the requirement(s) of the petition as listed above and discussed below.

Petitioners always are reminded that for transmission by Email of any document to be accepted by the Office, written acknowledgment of receipt and readability of the message and all applicable attachments of required materials must be provided.

BACKGROUND

The record reflects as follows:

The application was deposited on 29 January, 2004, with, *inter alia*, a fully executed oath/declaration, and prosecuted thereafter.

Following a series of amendments and the Notice of Allowance/Allowability and Fees Due mailed on 28 December, 2011, Petitioner Joseph P. Gushue (Reg. No. 59,819) filed on 9 February, 2012, *inter alia*, petitions pursuant to 37 C.F.R. §1.47 and §1.48, an oath/declaration signed by co-inventors Amalfitano and Gorsuch—notably, it appears that Petitioner failed to pay the fee for the petition pursuant to 37 C.F.R. §1.47—and:

- naming an inventive entity now comprised of Mr. Amalfitano and Mr. Gorsuch, as well as non-signing inventors Lawrence R. Foore (Mr. Foore) and James A. Proctor (Mr. Proctor) and

- executed by Mr. Amalfitano and Mr. Gorshuch for themselves and on behalf of non-signing co-inventors Mr. Foore and Mr. Proctor.

Aside from the unexplained delay in submission of the petitions until 9 February, 2012—letters submitted with the petitions evidence transmittal dates of October 18 and December 7, 2011, and, as noted above, the Office mailed the Notice of Allowance/Allowability and Fees Due on 28 December, 2011—there is a lack of clarity in the record due to the absence of any documentary support evidencing the diligent effort to ascertain accuracy as to a valid/current/reasonably believed to be last known addresses for the non-signing inventors. This is of concern because deliveries were made by a courier driver to the "front porch" (*e.g.*, for Mr. Foore), or the "front door" (*e.g.*, for Mr. Proctor)—and so leaving unclear as to the validity of the addresses used. (It is noted that a request has been made of the Examiner to state his concurrence or not in the alteration of the inventive entity.)

Thus, Petitioner may find it beneficial to step through the requirements of a grantable petition pursuant to 37 C.F.R.:

- §1.47(a) (i.e., (1) petition and fee; (2) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification: description, claims and drawings); (3) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; and (4) a statement of the last known address of the non-signing inventor(s)—with diligence in the effort to ascertain the validity of the address set forth as the reasonably believed to be last known/current/valid address) and satisfy himself that he has complied with these requirements on submission of any renewed petition. (*See also*: the guidance in the Commentary at MPEP §409.03, and §409.03(a), et seq.)

- §1.48 (i.e., (1) a request to correct the inventorship that sets forth the desired inventorship change; (2) a statement from each person being added as an inventor that the addition is necessitated by amendment of the claims and that the inventorship error occurred without

deceptive intention on his or her part; (3) an oath or declaration by the actual inventors as required by §1.63 or as permitted by §1.42, §1.43, or §1.47; (4) the processing fee set forth in §1.17(i); (5) if an assignment has been executed by any of the original named inventors, the written consent of the assignee (see 37 C.F.R. §3.73(b)))

The present incompleteness of the record makes granting of the instant petition inappropriate.

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

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

Petitioner has failed to establish that the non-signing inventors have been presented with the full application and have refused to sign the declaration (the proof of the pertinent events must be made by a statement of someone with first hand knowledge of the events with support of the registered practitioner prosecuting this matter) or cannot be reached.

A copy of the entire application must be sent to the last known addresses of the non-signing inventors with a request that they sign the declaration for the patent application. A forwarding address should be requested, if the papers are returned, and other attempts to locate the inventor, e.g. through e-mail or the telephone continue to fail, then applicant will have established that the inventor cannot be reached. Alternatively, an oath or declaration for the patent application in compliance with 37 C.F.R. §§1.63 and 1.64 must be presented. The declaration must set forth the inventor's residence, citizenship and post office address. An oath or declaration in compliance with 37 C.F.R. §§1.63 and 1.64 signed by the Rule 1.47 applicant is required.[2]

Accordingly, the petitions pursuant to 37 C.F.R. §1.47 and §1.48 must be and hereby are **dismissed.**

---

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

[2] *See*: MPEP 409.03(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
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

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

While telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[3]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

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

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

§1.2 Business to be transacted in writing.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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MYERS BIGEL SIBLEY & SAJOVEC
PO BOX 37428
RALEIGH NC 27627

MAILED

JAN 20 2011

OFFICE OF PETITIONS

In re Patent No. 7,785,621
Issue Date: August 31, 2010
Application No. 10/767,352
Filed: January 30, 2004
Attorney Docket No. 9022-41

DECISION DISMISSING
PETITION UNDER 37 CFR 1.10(c)

This is a decision on the petition filed December 30, 2010, which is properly treated as a petition under 37 CFR 1.10(c) requesting that the above-identified application be considered as filed on January 29, 2004, which is the "date-in" or other official USPS notation on the Express Mail Mailing Label, instead of the currently accorded filing date of January 30, 2004.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within **TWO MONTHS** of the date of this decision in order to be considered timely (see 37 CFR 1.181(f)). No extensions of time pursuant to the provisions of 37 CFR 1.136 are permitted.

37 CFR 1.10(c) sets forth procedures for filing a petition to the Director for a filing date as of the date of deposit with the USPS, where there is a discrepancy between the filing date initially accorded by the Office and the "date in" entered by the USPS or other official USPS notation.

To be grantable, a petition must:

(1) be filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) include a showing that the number of the "Express Mail" mailing label was placed on each piece of correspondence prior to the original mailing; and

(3) include a true copy of the "Express Mail" mailing label showing the "date in" or other official notation by the USPS.

This petition lacks item (1) above.

Petitioner requests the filing date of January 29, 2004 on the basis that there is a discrepancy between the filing date the USPTO has currently accorded this application and the "date-in" or other official USPS notation on the "Express Mail" mailing label.

Petitioner has failed to establish that this petition was filed promptly. A review of the record shows that the request for an earlier filing date was not raised throughout the prosecution of the application. The issue of the filing date was not raised until after the patent issued. The Office has limited jurisdiction once an application has issued as a patent. The fact that the Office no longer has jurisdiction over the patent upon issuance except as provided in 35 U.S.C. 135, 35 U.S.C. 251 through 256, 35 U.S.C. 302 through 307 and 35 U.S.C. 311 through 316 precludes the Office from changing the filing date in an issued patent, where the issue was not raised prior to issuance of that patent. See MPEP 1305.

Accordingly, the request to correct the filing date is dismissed.

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

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

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

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

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

Charlema Grant
Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : April 11, 2012.

TO SPE OF : ART UNIT 2485
SUBJECT : Request for Certificate of Correction for Appl. No.: 10/767386 Patent No.: 7705877

Co f C mailroom date: 7-27-10

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Note: _____

_____

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: _____

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_____ _____
SPE **Art Unit**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : April 11, 2012.

TO SPE OF : ART UNIT 2485
SUBJECT : Request for Certificate of Correction for Appl. No.: 10/767386 Patent No.: 7705877

Co f C mailroom date: 7-27-10

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Note: _____

_____

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: _____

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SPE 2485 Art Unit

PAGE 1/2 * RCVD AT 4/11/2012 6:45:34 AM [Eastern Daylight Time] * SVR:W-PTOFAX-001/39 * DNIS:2709942 * CSID:7033055679 * DURATION (mm-ss):01-00

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DANIEL S. POLLEY, P.A.
7251 WEST PALMETTO PARK ROAD
SUITE 202
BOCA RATON FL 33433

MAILED

MAR 23 2011

OFFICE OF PETITIONS

In re Application of :
Terry Keith BRYANT : DECISION DISMISSING PETITION
Application No. 10/767,396 : UNDER 37 CFR 1.102(c)(1)
Filed: January 23, 2004 :
Atty. Docket No.: 1023.8009 :

This is a decision on the petition under 37 CFR 1.102(c)(1), filed January 23, 2004, to make the above-identified application special based on applicant's health as set forth in M.P.E.P. § 708.02, Section III.

The petition is **DISMISSED**.

Applicant is given TWO MONTHS from the mailing date of the decision to reply correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition under 37 CFR 1.102(c)(1)".

A grantable petition to make an application special under 37 CFR 1.102(c)(1) and MPEP § 708.02, Section III: Applicant's Health, must be accompanied by evidence, such as a doctor's certificate or other medical certificate, showing that the state of health of the applicant is such that he or she might not be available to assist in the prosecution of the application if it were to run its normal course. No fee is required

Whereas the instant petition does include a letter from a physician, Bruce H. Berman, supporting medical problems of the inventor, the doctor's note fails to assert that the inventor will not be able to assist if prosecution of the application were to run its normal course.

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14).

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

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

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

By FAX: (571) 273-8300

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 3769 for continuing action on the pending application.

for 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

JOHN BRUCKNER PC
P.O. BOX 17569
SUGAR LAND TX 77496-7569

MAILED

SEP 21 2010

OFFICE OF PETITIONS

In re Application of :
Mosteret et al. :
Application No. 10/767,401 : DECISION ON PETITION
Filed: January 29, 2004 :
Attorney Docket No.: AUROR1190-1 :

This is a decision on the renewed petition filed under 37 CFR 1.137(b) in the above-identified application filed on June 11, 2010.

The petition is **GRANTED.**

This application became abandoned for failure to timely submit a reply to the non-final Office action mailed on June 8, 2009. The Notice set an extendable three-month reply period of September 8, 2009. Accordingly, this application became abandoned on September 9, 2009. A Notice of Abandonment was mailed on December 29, 2010. A petition filed on February 5, 2010 was dismissed on June 7, 2010.

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

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

This application is being referred to Technology Center AU 2613 for appropriate action by the Examiner in the normal course of business on the reply received

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

VERIZON
PATENT MANAGEMENT GROUP
1320 North Court House Road
9th Floor
ARLINGTON VA 22201-2909

In re Application of
CULVER, TIMOTHY
Application No. 10/767,500
Filed: January 29, 2004
Attorney Docket No.: RIC97073C1

OCT 20 2010

DECISION ON PETITION

This is a decision on the Petition To Withdraw Holding of Abandonment under 37 C.F.R. 1.181, received in the United States Patent and Trademark Office (USPTO) on February 11, 2010 for the above identified application.

The application was held abandoned for applicant's failure to timely pay the issue fee, as Required in the new Notice of Allowance and Fee(s) Due mailed October 26, 2009.

The petition is **DISMISSED.**

Any request for reconsideration of the decision, or as explained below, filing a petition seeking revival under 37 CFR 1.137, must be filed within TWO MONTHS (2) from the mail date of this decision.

The request to apply the issue fee to the new Notice could have been satisfied by simply Completing and returning the new Issue Fee Transmittal Form PTOL-85B.

Also, Petitioner appears to not have read the bold text in the new Notice of Allowance and Fee(s) Due, which states:

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THE STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THE APPLICATION. THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

Failure to submit the PTOL-85B, Fee(s) Transmittal resulted in the proper abandonment of the application. As previously advised the applicant may seek relief by filing a petition for Revival of Abandoned Application under CFR § 1.137 (a) or (b). (Forms are available at USPTO website http://www.uspto.gov)

- Under 37 CFR 1.137(a), a petition for the revival of an ***unavoidable*** abandoned application
- Under 37 CFR 1.137(b), a petition for the revival of an ***unintentionally*** abandoned application

Further inquires with respect to filing a petition under 37 CFR § 1.137 may be directed to the Office of Petitions at 571-272-3282 or addressed as follows:

By mail:	Mail Stop Petitions Commissioner for Patents Office of Petitions P O Box 1450 Alexandria, VA 22313-1450
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 (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

VERIZON
PATENT MANAGEMENT GROUP
1320 North Court House Road
9th Floor
ARLINGTON VA 22201-2909

MAILED
MAR 22 2011
OFFICE OF PETITIONS

In re Application of	:	
Timothy Culver	:	
Application No.: 10/767500	:	DECISION ON
Filing or 371(c) Date: 01/29/2004	:	PETITION
Attorney Docket Number:	:	
RIC97073C1	:	

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

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowance and Issue Fee Due, mailed October 26, 2009. The Notice set a non-extendable three (3) month period for reply. No reply having been received, the application became abandoned January 27, 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; (2) the petition fee; and (3) a proper statement of unintentional delay.

The issue fee paid August 4, 2009 has been refunded to petitioner's deposit account as authorized in the Issue Fee Transmittal Form filed August 4, 2010.

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

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

/DLW/

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

BRIAN MCKEON
11A BOORALIE RD.
TERREY HILLS, NSW 2084 AU AUSTRALIA

MAILED
FEB 14 2011
OFFICE OF PETITIONS

In re Application of :
Brian Bernard McKeon :
Application No. 10/767,529 : DECISION ON PETITION
Filed: January 29, 2004 :
Attorney Docket No. :

This is a decision on the renewed petition, filed January 26, 2009, 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 May 29, 2008, which set a shortened statutory period for reply of three (3) months. Accordingly, a reply was due on or before August 29, 2008.

Petitioner states that a timely reply was received in the USPTO on August 27, 2008, 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 May 29, 2008 is hereby **withdrawn** and the **application restored to pending status**.

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 27, 2008.

/Carl Friedman/
Carl Friedman
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)
7040754	2006-05-09	10767536	2004-01-29	103731.010100

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity	Fee	Code	Small Entity	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

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.

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	/Barry J. Schindler/	Date (YYYY-MM-DD)	2010-09-28
Name	Barry J. Schindler	Registration Number	32938

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
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P.O. Box 1450
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In re Patent No. 7040754
Issue Date: May 9,2006
Application No. 10767536
Filed: January 29,2004
Attorney Docket No. ELTE 02894 PTUS

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

This is a decision on the electronic petition, filed September 28,2010 ,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 28,2010 . 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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P.O. Box 1450
Alexandria, VA 22313-1450
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BRUNDIDGE & STANGER, P.C.
2318 MILL ROAD, SUITE 1020
ALEXANDRIA VA 22314

MAILED

OCT 06 2010

OFFICE OF PETITIONS

In re Application of :
Murphy et al. :
Application No. 10/767,815 : DECISION ON PETITION
Filed: January 30, 2004 :
Attorney Docket No. 1674.00001 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 10, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a proper and timely manner to the Notice to File Missing Parts of Nonprovisional Application (Notice), mailed June 18, 2004 and the Notice of Incomplete Reply (Nonprovisional) mailed February 7, 2005. The original Notice set a period for reply of two (2) months from the mail date of the Notice. A five-month extension of time under the provisions of 37 CFR 1.136(a) was timely obtained. Accordingly, the application became abandoned on January 19, 2005. A Notice of Abandonment was mailed March 27, 2006.

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

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

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

This application is being referred to the Office of Patent Application Processing for further processing in accordance with this decision on petition.

Joan Olszewski
Petition Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAR 09 2011

OFFICE OF PETITIONS

MINTZ LEVIN COHN FERRIS GLOVSKY & POPEO
ONE FINANCIAL CENTER
BOSTON MA 02111

In re Patent No. 7,842,457	:
Issued: November 30, 2010	: DECISION ON REQUEST FOR
Application No. 10/767,899	: RECONSIDERATION OF
Filed: January 28, 2004	: PATENT TERM ADJUSTMENT
Attorney Docket No. **21465-508001US**	:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM INDICATED ON FACE OF PATENT UNDER 37 C.F.R. §1.705(d)" filed January 28, 2011.

The request is **DISMISSED.**

Patentees are 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 § 1.136.

On November 30, 2010, the above-identified application matured into U.S. Patent No. 7,842,457 with a revised patent term adjustment of 413 days. On January 28, 2011, patentees timely submitted this application for patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 427 days.

Patentee disputes the reduction of 14 days for applicant delay and argues that the IDS filed September 9, 2010 included a certification statement, pursuant to 37 C.F.R. § 1.704(d), and should "not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under 37 C.F.R. § 1.704(c)(8)."

Applicant's argument has been considered but is not found to be persuasive.

A review of the file reveals that 14 days was deducted for applicant delay for the filing of the IDS on September 9, 2010, pursuant to 37 C.F.R. § 1.704(c)(10) not 37 C.F.R. § 1.704(c)(8) as the IDS was filed after the mailing of the Notice of Allowance on July 14, 2010.

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;

The reduction has been considered a proper a basis for reduction of patent term adjustment pursuant to § 1.704(c)(10).

As stated in MPEP 2732:

> 37 CFR 1.704(c)(10) establishes submission of an amendment under 37 CFR 1.312 or other paper after a notice of allowance has been given or mailed as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. The submission of amendments (or other papers) after an application is allowed may cause substantial interference with the patent issue process.
>
> Certain papers filed after allowance are not considered to be a failure to engage in reasonable efforts to conclude processing or examination of an application. See *Clarification of 37 CFR 1.704(c)(10) – Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance has been Mailed*, 1247 Off. Gaz. Pat. Office 111 (June 26, 2001). The submission of the following papers after a "Notice of Allowance" is not considered a failure to engage in reasonable efforts to conclude processing or examination of an application: (1) Fee(s) Transmittal (PTOL-85B); (2) Power of Attorney; (3) Power to Inspect; (4) Change of Address; (5) Change of Status (small/not small entity status); (6) a response to the examiner's reasons for allowance or a request to correct an error or omission in the "Notice of Allowance" or "Notice of Allowability;" and (7) letters related to government interests (e.g., those between NASA and the Office). Papers that will be considered a failure to engage in reasonable efforts to conclude processing or examination of an application include: (1) a request for a refund; (2) a status letter; (3) amendments under 37 CFR 1.312; (4) late priority claims; (5) a certified copy of a priority document; (6) drawings; (7) letters related to biologic deposits; and (8) oaths or declarations.

In view thereof, the patent term adjustment indicated in the patent is properly reflected.

The Office acknowledges the submission of the required fee of $200.00 set forth in 37 CFR 1.18(e) .

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

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

MINTZ LEVIN COHN FERRIS GLOVSKY & POPEO
ONE FINANCIAL CENTER
BOSTON MA 02111

In re Patent No. 7,842,457
Issued: November 30, 2010
Application No. 10/767,899
Filed: January 28, 2004
Attorney Docket No. **21465-508001US**

:DECISION ON REQUEST
: FOR RECONSIDERATION
: OF PATENT TERM ADJUSTMENT
: AND
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the SECOND REQUEST FOR RECONSIDERATION OF PATENT TERM INDICATED ON FACE OF PATENT UNDER 37 C.F.R. §1.705(d).filed on April 4, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected from 413 days to 427 days.

The request for review of the patent term adjustment is **GRANTED.**

On November 30, 2010, the above-identified application matured into U.S. Patent No. 7,842,457 with a revised patent term adjustment of 413 days. On January 28, 2011, patentees timely submitted an application for patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 427 days.

Patentees disputed the reduction of 14 days for applicant delay and argued that the IDS filed September 9, 2010 included a certification statement, pursuant to 37 C.F.R. § 1.704(d), and should "not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under 37 C.F.R. § 1.704(c)(8)."

Patentee's argument was considered but not found to be persuasive because notwithstanding the statement under 37 C.F.R. § 1.704(d), the IDS was filed after the mailing of the Notice of Allowance and thus subject to the provisions of 37 C.F.R. § 1.704(c)(8) and not 37 C.F.R. § 1.704(c)(10)[1].

[1] 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;

Patentee argues further that "This reasoning is not consistent with the rule set forth in 37 C.F.R. §1.704(d), which specifies that "[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 the appropriate statement. It is undisputed on this record that the IDS submitted on September 9, 2010 contained the proper statement under 37 C.F.R. § 1.704(d). Accordingly, this IDS should not be considered a failure to engage under any of paragraphs (c)(6), (c)(8), (c)(9), or (c)(10)."

Patentee's argument has been re-considered. The reduction of 14 days has been found to be incorrect. A review of the file, as stated by Patentee, supports a conclusion that the IDS received September 9, 2010 included a 37 CFR 1.704(d) statement.

> 37 CFR 1.704(d) provides that 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.

In view thereof, the patent term adjustment indicated in the patent should have been four hundred twenty-seven **(427)** days.

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 twenty-seven (427) days**.

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

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 : 7,842,457 B2

DATED : November 30, 2010

INVENTOR(S) : Jan Berka

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 (413) days

Delete the phrase "by 413 days" and insert – by 427 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

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HONEYWELL INTERNATIONAL INC.
PATENT SERVICES
101 COLUMBIA ROAD
P O BOX 2245
MORRISTOWN NJ 07962-2245

MAILED
OCT 06 2011
OFFICE OF PETITIONS

In re Patent No. 7,261,242 :
Issue Date: August 28, 2007 :
Application No. 10/768,095 : NOTICE
Filed: February 2, 2004 :
Attorney Docket No. 12214-3US :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed September 22, 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 petition is **GRANTED**.

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

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

This file is being forwarded to Files Repository.

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

/Kimberly Inabinet/
Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: James C. Wray
1493 Chain Bridge Road
Suite 300
McLean, VA 22101

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JUL 29 2011

OFFICE OF PETITIONS

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

In re Patent No. 7,475,261 :
Issue Date: January 6, 2009 :
Application No. 10/768,136 : DECISION ON PETITION
Filed: February 2, 2004 :
Patentee: Y. TOTSUKA et al. :
Attorney Docket No. ASA-788-02

This is a decision on the renewed petitions filed September 30, 2010, requesting under the provisions of 37 CFR 1.182 or in the alternative under 37 CFR 1.183, a review of the Decision mailed July 30, 2010, that dismissed the petitioner's request for a review of the Office's decision of August 4, 2009 denying patentee's request for Certificate of Correction filed July 6, 2009.

The petitions are **DENIED**.

BACKGROUND

1. On February 2, 2004, the instant application was filed as a continuation of Application having the serial number 09/308,488.

2. The non-final Office action dated March 25, 2008 included a rejection under the grounds of non-statutory obviousness-type double patenting noting that the claims were unpatentable "over claims 1-9 of U.S. Patent No. 6,715,090 in view of Smith et al., and in view of Martin, U.S. Patent No. 5,111,058."

3. The applicants filed a response on June 25, 2008 that included a Terminal Disclaimer signed by the petitioner herein, disclaiming the terminal part of the statutory term of the instant patent "which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173, as presently shortened by any terminal disclaimer, of U.S. Patent No. 6,715,090 and U.S. Patent No. 5,111,058."

4. The Terminal Disclaimer was accepted and a Notice of Allowance was mailed on September 2, 2008.

5. The instant patent issued on January 6, 2009.

6. On July 6, 2009 petitioner filed a request for a certificate of correction to have the Terminal Disclaimer filed August 25, 2008, corrected by directing the Certificate of Corrections Branch to issue the Certificate of Correction by deleting "and U.S. Patent No. 5,111,058", in said Terminal Disclaimer "in order to clarify the record so that the patent is only disclaimed with respect to co-owned U.S. Patent No. 6,715,090."

7. In a decision filed August 4, 2009, the request was not approved.

8. A petition was filed on October 7, 2009 seeking a review of this earlier decision by the Office that disapproved the request for a certificate of correction.

9. In a decision mailed July 30, 2010 the petition was dismissed.

10. The instant petition was filed September 30, 2010 requesting a review of the earlier decisions refusing to grant the requested certificate of correction.

STATUTE, REGULATION, AND EXAMINING PROCEDURE

35 U.S.C. § (2)(B)(2) provides, in part, that:

> *The Office-- may, establish regulations, not inconsistent with law, which*
>
> *(A) shall govern for the conduct of proceedings in Office.*

35 U.S.C. 253 Disclaimer

> *Whenever, without any deceptive intention, a claim of a patent is invalid the remaining claims shall not thereby be rendered invalid. A patentee, whether of the whole or any sectional interest therein, may, on payment of the fee required by law, make disclaimer of any complete claim, stating therein the extent of his interest in such patent. Such disclaimer shall be in writing and recorded in the Patent and Trademark Office, and it shall thereafter be considered as part of the original patent to the extent of the interest possessed by the disclaimant and by those claiming under him.*
>
> *In like manner any patentee or applicant may disclaim or dedicate to the public the entire term, or any terminal part of the term, of the patent granted or to be granted.*

35 U.S.C. 255 Certificate of correction of applicant's mistake

Whenever a mistake of a clerical or typographical nature, or of minor character, which was not the fault of the Patent and Trademark Office, appears in a patent and a showing has been made that such mistake occurred in good faith, the Director may, upon payment of the required fee, issue a certificate of correction, if the correction does not involve such changes in the patent as would constitute new matter or would require reexamination. Such patent, together with the certificate, shall have the same effect and operation in law on the trial of actions for causes thereafter arising as if the same had been originally issued in such corrected form.

37 CFR § 1.182 Questions not specifically provided for

All situations not specifically provided for in the regulations of this part will be decided in accordance with the merits of each situation by or under the authority of the Director, subject to such other requirements as may be imposed, and such decision will be communicated to the interested parties in writing. Any petition seeking a decision under this section must be accompanied by the petition fee set forth in § 1.17(f).

37 CFR § 1.183 Suspension of rules

In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, sua sponte, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(f).

37 CFR 1.321. Statutory disclaimers, including terminal disclaimers - states in the pertinent part:

(b) An applicant or assignee may disclaim or dedicate to the public the entire term, or any terminal part of the term, of a patent to be granted. Such terminal disclaimer is binding upon the grantee and its successors or assigns. The terminal disclaimer, to be recorded in the Patent and Trademark Office, must:
(1) be signed:
(i) by the applicant, or
(ii) if there is an assignee of record of an undivided part interest, by the applicant and such assignee, or
(iii) if there is an assignee of record of the entire interest, by such assignee, or
(iv) by an attorney or agent of record;
(2) specify the portion of the term of the patent being disclaimed;
(3) state the present extent of applicant 's or assignee 's ownership interest in the patent to be granted; and

(4) be accompanied by the fee set forth in § 1.20(d).

(c) A terminal disclaimer, when filed to obviate judicially created double patenting in a patent application or in a reexamination proceeding except as provided for in paragraph (d) of this section,

must:

(1) Comply with the provisions of paragraphs (b)(2) through (b)(4) of this section;

(2) Be signed in accordance with paragraph (b)(1) of this section if filed in a patent application or in accordance with paragraph (a)(1) of this section if filed in a reexamination proceeding; and

(3) Include a provision that any patent granted on that application or any patent subject to the reexamination proceeding shall be enforceable only for and during such period that said patent is commonly owned with the application or patent which formed the basis for the judicially created double patenting.

37 CFR § 1.325 Other mistakes not corrected

Mistakes other than those provided for in §§ 1.322, 1.323, 1.324, and not affording legal grounds for reissue or for reexamination, will not be corrected after the date of the patent.

MPEP §1490(VII) - Withdrawing A Recorded Terminal Disclaimer

B. After Issuance Of Patent

The mechanisms to correct a patent — Certificate of Correction (35 U.S.C. 255), reissue (35 U.S.C. 251), and reexamination (35 U.S.C. 305) — are not available to withdraw or otherwise nullify the effect of a recorded terminal disclaimer. As a general principle, public policy does not favor the restoration to the patent owner of something that has been freely dedicated to the public, particularly where the public interest is not protected in some manner — e.g., intervening rights in the case of a reissue patent. See, e.g., Altoona Publix Theatres v. American Tri-Ergon Corp., 294 U.S. 477, 24 USPQ 308 (1935).

Certificates of Correction (35 U.S.C. 255) are available for the correction of an applicant's mistake. The scope of this remedial provision is limited in two ways — by the nature of the mistake for which correction is sought and the nature of the proposed correction. In re Arnott, 19 USPQ2d 1049 (Comm'r Pat. 1991). The nature of the mistake for which correction is sought is limited to those mistakes that are:

(A) of a clerical nature;

(B) of a typographical nature; or

(C) of a minor character.

The nature of the proposed correction is limited to those situations where the correction does not involve changes which would:

(A) constitute new matter, or

(B) require reexamination.

A mistake in filing a terminal disclaimer does not fall within any of the categories of mistake for which a certificate of correction of applicant's mistake is permissible, and any attempt to remove or nullify the effect of the terminal disclaimer would typically require reexamination of the circumstances under which it was filed.

Although the remedial nature of reissue (35 U.S.C. 251) is well recognized, reissue is not available to correct all errors. It has been the Office position that reissue is not available to withdraw or otherwise nullify the effect of a terminal disclaimer recorded in an issued patent.

OPINION

Petitioner seeks by way of the instant petition to amend the previously recorded terminal disclaimer in the instant patent over U.S. Patents 6,715,090 and 5,111,058. The specific relief requested by the petitioner is that "that the Certificate of Corrections Branch be directed to issue the Certificate of Correction filed July 6, 2009 which deletes "and U.S. Patent No. 5,111,058" in the Terminal Disclaimer in order to clarify the record so that the record is clear that the only patent which is the target of the Terminal Disclaimer is co-owned U.S. Patent No. 6,715,090."

Petitioner's arguments and the declaration of Lynn Maxwell concerning the instant request for a certificate of correction have been considered. However, as noted in MPEP §1490, a mistake in filing a terminal disclaimer does not fall within any of the categories of mistake for which a certificate of correction of applicant's mistake is permissible. Applicants should have filed a corrected terminal disclaimer during the prosecution of the application, i.e., prior to its issuance as a patent. The USPTO will not grant a request to withdraw or amend a recorded terminal disclaimer in an issued patent as the rules of practice and 35 USC 253 do not include a mechanism for withdrawal or amendment of such a terminal disclaimer. Unfortunately, once a patent issues, the USPTO cannot remove the effect of a recorded terminal disclaimer in an issued patent. See MPEP §1490; Bayer AG v. Carlsbad Technology Inc., 298 F.3d 1377, 64 USPQ2d 1045, 1048-49 (CAFC 2002) (hereafter "Bayer AG").While petitioner may now consider the previously filed disclaimer to be unnecessary, or unnecessarily limiting, petitioner is, nevertheless, confronted with what has been characterized as "an unhappy circumstance," rather than a circumstance necessitating relief. See In re Jentoft, 392 F.2d 633, 639 n. 6, 157 USPQ 363, 368 n. 6 (CCPA 1968); MPEP 1490(A).

In arguing that the petition meets the requirements for a certificate of correction, petitioner states that: (a) "the mistake is of a clerical nature as the wrong patent number was added to the Terminal Disclaimer in addition to the correct patent number at the time of preparation and filing of the Terminal Disclaimer"; (b) "the U.S. Patent No. 5,111,058 is not related (by 35 U.S.C.§ 120) to the '261 patent and not commonly owned by the assignee"; (c) "the correction of the mistake requested by the Certificate of Correction will not require examination as a result, for the same reasons"; and (d) "further, entry of the proposed correction will not introduce new matter."

Petitioner's request for issuance of a Certificate of Correction under 35 U.S.C. § 254 to correct the alleged error in the expiration date of the above-identified patent is refused. By statue (§ 254) and regulation (37 CFR 1.322), for a Certificate of Correction to be issued, there must be (1) a mistake in the patent that is (2) clearly disclosed by the records of the Office. However, the records of the Office do not clearly disclose a mistake in the patent within the meaning of the statute and regulation. Petitioner is reminded that this or any patent is printed in accordance with the record in the USPTO of the application as passed to issue by the examiner. Here, the original application for patent was passed to issue by the examiner on September 2, 2008, upon receipt of the terminal disclaimer filed June 25, 2008, which set forth that it "disclaims...the terminal part of the statutory term of any patent granted on the above-identified application, which would extend beyond the expiration date of the full statutory term of U.S. Patent No. 6,715,090 and U.S. Patent No. 5,111,058." While petitioner also proposed amending the terminal disclaimer by way of a Certificate of Correction, the alleged error is not an error within the meaning of 35 U.S.C. § 254 and 37 CFR 1.322, and even assuming it were such an error it is not subject matter for and amenable to the proposed correction by the proffered Certificate of Correction under 35 U.S.C. § 254 and its promulgating regulation 37 CFR 1.322. What is here controlling is that petitioner seeks to correct an issued patent. The statutory authority for amendment or correction of an issued patent is found in title 35, chapter 25. The instant petition does not involve correction of the named inventor which is provided for by 35 U.S.C. § 256 and 37 CFR 1.324, which is, by statute, a part of the patent (i.e., "shall contain"). See 35 U.S.C. § 154(a)(1). In addition, 35 U.S.C. § 254 merely authorizes the correction of the patent; it does not authorize correction of a terminal disclaimer.

Petitioner argues that "[s]till further, the public would have no expectation that the Terminal Disclaimer that was filed actually dedicated any term to the public. Terminal Disclaimers typically do not disclaim any term, as a result of the changes made by the URAA. The public sees only the indication on the front page of the '261 patent "Notice: This patent is subject to a terminal disclaimer." This Notice does not provide expiration date information as in many factually similar cases decided by the Patent Office. Further, the Notice would remain unchanged after the issuance of the Certificate of Correction, thereby providing no change in Notice to the public." Petitioner's argument is not well formed. The public is on notice that the patent is subject to a Terminal Disclaimer and that reference must be made to the file wrapper to determine the period disclaimed. Thus, it is not seen how one can argue that the public has no expectation of terminal disclaimer to USP 5,11,058 since by the very nature of the patne, reference must be made to the file wrapper. The public is entitled to rely on the public record, including the prosecution history of the a patent in determining the scope of the patent's claims. See Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1583, 39 USPQ2d 1573, 1577 (Fed. Cir. 1996); Vectra Fitness v. TNWK Corp., 162 F3d 1379, 1384, 49 USPQ2d 1144, 1148 (Fed Cir. 1998). This reliance enables businesses, as well as others, to plan their future conduct in as certain an environment as possible. Vitronics, Id.

Petitioner's arguments concerning the ambiguity in the expiration date of the instant patent have been noted. Petitioner is asserting that "the Terminal Disclaimer in the '261 [patent] must be corrected to clarify the ambiguity so that the record is clear with respect to the intention on the part of the patentee to disclaim the '261 patent only with respect to U.S. Patent No. 6,715,090,

which is the parent, commonly owned patent." In comparing the instant situation to that in Bayer AG, where an ambiguity in the expiration of the patent was resolved by the Office, petitioner notes that, "the difference in the expiration dates [here] arises as a result of a clerical mistake made by petitioner, not as a result of operation of law as in Bayer AG." However, the Patent and Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and applicant is bound by the consequences of those actions or inactions. Link v. Wabash, 370 U.S. 626, 633-34 (1962); Huston v. Ladner, 973 F.2d 1564, 1567, 23 USPQ2d 1910, 1913 (Fed. Cir. 1992); see also Haines v. Quigg, 673 F. Supp. 314,317, 5 USPQ2d 1130, 1132 (D.N. Ind. 1987).

Petitioner's argument regarding the Office policy on permitting a replacement of a Terminal Disclaimer in an issued patent, as stated in MPEP § 1490, has been noted. As also noted by the petitioner, the procedure of allowing a replacement of Terminal disclaimer is limited to a situation where there is an inadvertent transposition of numbers in the terminal disclaimer filed and the inadvertency is clear from the record. Furthermore, as noted in MPEP § 1490, "If the transposing error resulted in an earlier patent term expiration date than provided by the corrected terminal disclaimer, a statement must be included in the corrected terminal disclaimer to retain that earlier expiration date. The absence of such a statement will result in the Office declining to exercise its discretion to grant relief." Assuming *arguendo* that the Office would regard the listing of the '058 patent in the Terminal disclaimer of record to be inadvertent, the relief sought by the petitioner herein cannot be granted as there is nothing the instant petition that clearly shows a retention of the earlier expiration date indicated by the Terminal Disclaimer of record in the instant patent. As Congress has already enacted legislation for patent term adjusting, extending, or restoring provisions in four sections (154, 155, 155(a), and 156) of the patent statute, and has not seen fit to create any additional statutory term modifying remedies, it is inappropriate for the Office to now create an additional, extra-legislative means of adjusting, extending, or restoring, the term of the original patent by now removing or amending the terminal disclaimer filed June 25, 2008 by way of a petition under 37 CFR 1.182, or by way of a certificate of correction as requested here.

What is controlling here is that the petitioner seeks to correct an issued patent. The statutory authority for amendment or correction of an issued patent is found in title 35, chapter 25. The instant petition does not involve correction of a mistake by the USPTO (35 USC § 254) or correction of the named inventor (35 USC § 256). In addition, while the instant petition involves a disclaimer, 35 USC § 253 merely authorizes the filing and recording of disclaimers; it does not authorize the amendment of a terminal disclaimer. Bayer AG, supra.

Unless a "mistake" is provided for in 37 CFR 1.322, 1.323, or 1.324, or affords legal grounds for reissue or for reexamination, such "mistake" will not be corrected subsequent to the issuance of an application as a patent. See 37 CFR 1.325; MPEP 1490. As further noted in MPEP 1490, the mechanisms to correct a patent (i.e., certificate of correction (35 USC § 255), reissue (35 USC § 251), and reexamination (35 USC § 305)) are not available to withdraw or other nullify the effect of a recorded terminal disclaimer.

In this regard, an applicant's use, and Office's acceptance, of a terminal disclaimer is in the public interest because such encourages the disclosure of additional developments, the earlier filing of patent applications, and the earlier expiration of patents whereby the inventions covered become freely available to the public. See In re Jentoft, *supra.* It is brought to petitioners' attention that the principle against recapturing something that has been intentionally dedicated to the public dates back at least to Leggett v. Avery, 101 U.S. 246 (1879).

The USPTO will not grant a request to withdraw or amend a recorded disclaimer in an issued patent on the grounds that the rules of practice and 35 U.S.C. § 253 do not include a mechanism for withdrawal or amendment of such a disclaimer. Id.; see also MPEP 1490. Petitioner's contention that the USPTO has misinterpreted Bayer AG with the unfortunate result herein of not permitting removal or correction of the terminal disclaimer filed September 6, 1996, is not persuasive. The USPTO neither withdrew nor failed to give effect to the terminal disclaimer recorded against the Bayer patent. Id. The USPTO noted that the two dates recited in the recorded terminal disclaimer created an ambiguity as to the date of expiration, and resolved the ambiguity in favor of the patent holder. Id. The USPTO did not vacate or amend the recorded terminal disclaimer, or accept a substitute disclaimer in lieu of the recorded disclaimer, notwithstanding the ambiguity in the recorded terminal disclaimer. Id. The Federal Circuit noted with the approval the USPTO's underlying reasoning and its conclusion. Id. The court itself noted the date of expiration of the Bayer patent was automatically extended by operation of the URAA amendments to the patent statute on the term of the patent referenced in the recorded terminal disclaimer. What is especially significant is that the USPTO and the Federal Circuit both considered the recorded but flawed terminal disclaimer to remain in force on the Bayer patent. Id. Applying the facts of that case to the present situation, the terminal disclaimer of June 25, 2008, properly remains recorded against the issued patent and that disclaimer will not be withdrawn or amended on petition. See Bayer AG, supra; MPEP 1490(B).

Furthermore, equitable powers should not be invoked to excuse the performance of a condition by, as here, a party that has not acted with reasonable, due care and diligence. U.S.v. Lockheed Petroleum Services, 709 F.2d 1472, 1475 (Fed. Cir. 1983). Petitioner had more than six months in which to correct, under the provisions of MPEP 1490(A), the filing of the disclaimer of June 25, 2008, before the patent issued. It is well settled that the public has a right to rely on the public record of a patent. See Vitronics Id.; Vectra Fitness, Id. Petitioner does not offer any reason that would excuse the inordinate delay in this case. Any contention that petitioner was diligent in seeking correction of this matter is simply not supported by the record. The Office, where it has the power to do so, should not relax the requirements of established practice in order to save an applicant from the consequence(s) of his delay. See Ex Parte Sassin, 1906 Dec. Comm'r. Pat. 205, 206 (Comm'r Pat. 1906) and compare Ziegler v. Baxter v. Natta, 159 USPQ 378,379 (Comm'r Pat. 1968) and Williams v. The Five Platters, Inc., 510 F.2d 963, 184 USPQ 744 (CCPA 1975).

PETITION under 37 CFR 1.183

As an initial matter, the petition fee of $400 under 37 CFR 1.17(f), required for consideration of a petition under 37 CFR 1.183, has been charged to Deposit Account 50-1417, as authorized.

In regard to the request under 37 CFR 1.183, it is noted that 37 CFR 1.183 states that only in an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, *sua sponte,* or on petition of the interested party, subject to such other requirements as may be imposed. Petitioner, has not, however, shown an extraordinary circumstance where justice requires suspension of the rules. Applicants should have filed a corrected terminal disclaimer during the prosecution of the application, i.e., prior to its issuance as a patent. Applicants had more than six months to correct the Terminal disclaimer prior to the issuance of the instant application.

The term of this patent was set by way of 35 USC § 154(b), and, by way of the disclaimer filed June 25, 2008, under § 253. Since the patent statue at sections §§ 154, 155, 155(a), and 156 limits the adjustment, extension, or restoration, of the term of a given patent to the causes and conditions specified therein; it would be inappropriate, by way of a petition under 37 CFR 1.183 to fashion yet another manner of adjusting, extending, or restoring, the term of the above-identified patent beyond the statutory scheme already provided by Congress. Further in this regard, a standard principle of statutory construction is: *expressio unius est exclusion alterius* (the mention of one thing implies exclusion of another thing), namely absent legislative intent to the contrary, when a statute expressly provides a specific remedy for a specific situation, the statute is deemed to exclude other remedies for such situation. See National R.R. Passenger Corp. v. National Ass'n Of R.R. Passengers, 414 U.S. 453, 458 (1974); see also Botany Worsted Mills v. United States, 278 U.S. 282, 289 (1929) ("when a statute limits a thing to be done in a particular mode, it includes the negative of any other mode"). That is, the patent statue at sections §§ 154, 155, 155(a), and 156 (and their promulgating regulations at 37 CFR 1.701 et seq.) provides a specific mechanism grounded on specific delays (arising from judicial, regulatory agency, or internal USPTO delay) whereby a party may petition the Office to adjust, extend, or restore the term of a given patent. As Congress has already enacted legislation for patent term adjusting, extending, or restoring provisions in four sections (154, 155, 155(a), and 156) of the patent statute, and has not seen fit to create any additional statutory term modifying remedies, it is inappropriate for the Office to now create an additional, extra-legislative means of adjusting, extending, or restoring, the term of the original patent by now removing or amending the terminal disclaimer filed June 25, 2008 by way of petition under 37 CFR 1.183 (or 1.182).

The contested terminal disclaimer clearly complies with 37 CFR 1.321(b). While petitioner argues that the common ownership requirements of 37 CFR 1.321 (c)(3) were not met by the recorded disclaimer, common ownership is not a condition required for a viable terminal disclaimer under 37 CFR 1.321(b). Indeed, even where 37 CFR 1.321(c)(4) requires common ownership, such is mentioned in conjunction with enforcement *vel non* of the disclaiming patent and is not mentioned in conjunction with, or as a condition of, the forfeiture of a given period of time.

37 CFR 1.183 should not be considered a panacea for applicant's tactical errors in prosecution in the original patent, as the failure to file a disclaimer over the patent actually relied upon in the obviousness-type double patenting rejection was a circumstance that was not beyond the control of petitioner, or petitioner's counsel. Rather, as any disclaimer of additional term over the '058 patent could have been avoided the by exercise of reasonable care and diligence, petitioner has failed to show that waiver of the rules is appropriate. See Nitto Chem. Indus. Co. v. Comer, 39 USPQ2d 1778, 1782 (D.D.C. 1994) (circumstances are not extraordinary, and do not require waiver of the rules, when counsel makes an avoidable mistake in filing papers); Vincent v. Mossinghoff, 230 USPQ 621,625 (D.D.C. 1985) (petitioner's failure to take adequate notice of USPTO procedures will not be permitted to shift, in equity, his lack of diligence onto the USPTO). The Patent and Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and applicant is bound by the consequences of those actions or inactions. Link v. Wabash, *supra*; Huston v. Ladner, *supra*; see also Haines v. Quigg, *supra*.

The instant petition requesting a waiver under 37 CFR 1.183, of applicable regulation, is therefore **DENIED**.

DECISION

For the above-stated reasons, the petition to withdraw the terminal disclaimer and issue a certificate of correction is **denied**.

This is a **final agency action** within the meaning of 5 U.S.C. § 704. The Director will undertake no further reconsideration or review of this matter.

Telephone inquiries concerning this decision should be directed to Ramesh Krishnamurthy at (571) 272-4914.

Anthony Knight
Director,
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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SEATTLE WA 98101-4010

MAILED

APR 25 2011

OFFICE OF PETITIONS

In re Application of	:	
Marcos TZANNES et al.	:	
Application No. 10/768,138	:	DECISION ON PETITION
Filed: February 02, 2004	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 120531-168585	:	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed November 09, 2010, 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.

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

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 Michelle R. Eason at (571) 272-4231. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to Technology Center Art Unit 2616 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed applications.

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
10/768,138	02/02/2004	2616	770	120531-168585	6	3

CONFIRMATION NO. 6431

CORRECTED FILING RECEIPT

60172
SCHWABE, WILLIAMSON & WYATT, P.C.
1420 FIFTH AVENUE, SUITE 3400
SEATTLE, WA 98101-4010

Date Mailed: 04/25/2011

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)

Marcos Tzannes, Orinda, CA;
George Kechriotis, Arlington, MA;
Pui Wu, Malden, MA;

Assignment For Published Patent Application

Aware, Inc., Bedford, MA

Power of Attorney: The patent practitioners associated with Customer Number 60172

Domestic Priority data as claimed by applicant

This application is a DIV of 09/421,835 10/20/1999 PAT 6,798,735
which is a CON of 08/873,421 06/12/1997 PAT 6,072,779
which claims benefit of 60/019,637 06/12/1996

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: 10/05/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/768,138**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Adaptive allocation for variable bandwidth multicarrier communication

Preliminary Class

370

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).

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 06/21/11

TO SPE OF : ART UNIT 3643

SUBJECT : Request for Certificate of Correction for Appl. No.: 10768208 Patent No.: 6883266

CofC mailroom date: 06/17/11

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
You can fax the Director's SPE response to 571-273-3421

Note: Address

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.

XApproved	**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

/Peter M. Poon/_____ 3643_____

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

In re Patent No. 7152535
Issue Date: December 26,2006
Application No. 10768225
Filed: January 30,2004
Attorney Docket No. HYLOFT03-05CIP

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

This is a decision on the electronic petition, filed March 26,2012 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of March 26,2012 .
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)
7152535	2006-12-26	10768225	2004-01-30	HYLOFT03-05CIP

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

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.

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	/Robert Ryan Morishita/	Date (YYYY-MM-DD)	2012-03-26
Name	Robert Ryan Morishita	Registration Number	42907

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

Paper No.

SANDOZ INC
506 CARNEFIE CENTER
PRINCETON NJ 08540

MAILED

JUN 21 2011

OFFICE OF PETITIONS

In re Application of :
Nandi et al. : DECISION ON
Application No. 10/768,562 : PETITION
Filed: January 30, 2004 :
Attorney Docket No. G-33422P2 :

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b), filed May 23, 2011.

The petition is **GRANTED**.

The above-identified application was abandoned for failure to file a timely and proper reply to the final Office action sent July 14, 2010. This Office action set a shortened statutory period for reply of three (3) months from the mail date of the action. A terminal disclaimer, made timely by an extension of time within the second month, was filed on December 14, 2010; however, it was disapproved. No proper reply having been received and no further extension of time obtained the application became abandoned effective December 15, 2010. A courtesy Notice of Abandonment was sent on March 22, 2011.

On petition, petitioner submitted a Request for Continued Examination (RCE) and submission under §1.114 (in the form of a terminal disclaimer)(and RCE fee); paid the petition fee; and made the required statement of unintentional delay.

Technology Center AU 1615 has been advised of this decision. The application is, thereby, forwarded to the examiner for consideration of the RCE and submission submitted on petition filed May 23, 2011.

The address set forth on the petition is different from the address of record. A courtesy copy of this decision is being mailed to the address on the petition. All future correspondence will be mailed to the address of record until such time as a proper change of correspondence address is made of record.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

cc: LUEDEKA, NEELY & GRAHAM, P.C.
P.O. Box 1871
Knoxville TN 37901

UNITED STATES PATENT AND TRADEMARK OFFICE

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

EUGENE S INDYK
366 RUE ROAD
MONROE TOWNSHIP NJ 08831

MAILED
JAN 12 2012
OFFICE OF PETITIONS

In re Application of :
Jeremy Condie : DECISION ON PETITION
Application No. 10/768,598 :
Filed: January 30, 2004 :
Attorney Docket No. 1962.001US1 :

This is a decision on the petition filed December 23, 2011, pursuant to 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to timely file a proper reply to the Notification of Non-Compliant Appeal Brief, mailed November 18, 2010. This Notice set an extendable period for reply of one month. Applicant filed an Amendment on December 1, 2010. However, the Amendment was not entered because it was not limited to cancelling claims or rewriting dependant claims. The Office mailed an Advisory Action advising Applicant of this on December 1, 2010. No further reply having been filed, the application became abandoned on December 19, 2010. The Office mailed a Notice of Abandonment on May 24, 2011.

With the instant petition, petitioner paid the petition fee, made the proper statement of unintentional delay, and filed the required reply in the form of a "Response to Notification of Non-Compliant Appeal Brief".

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 is being forwarded to Group Art Unit 3694 for consideration of the "Response to Notification of Non-Compliant Appeal Brief", filed December 23, 2011.

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

Cliff Congo
Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110510B

DATE : May 10, 2011

TO SPE OF : ART UNIT 1652

SUBJECT : Request for Certificate of Correction on Patent No.: 7,238,842

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:

/ROBERT MONDESI/
Supervisory Patent Examiner.Art Unit 1652

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAY 09 2011

OFFICE OF PETITIONS

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

In re Application of :
Chen et al. :
Application No. 10/769,173 : ON PETITION
Filed: January 30, 2004 :
Attorney Docket No. 15415US01 :

This is a decision on the petition under 37 C.F.R. § 1.182, filed March 31, 2011, and the Supplemental petition filed April 15, 2011, to change the name of an inventor.

The petition is **GRANTED**.

The name will be changed from "Steve Rodgers" to -- Stephane Rodgers --.

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.

The required petition fee of $400.00 will be charged to petitioner's deposit account as authorized March 31, 2011.

Telephone inquiries regarding this decision should be directed to Joan Olszewski at (571) 272-7751. All other inquiries should be directed to the Technology Center.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

Enclosure: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
10/769,173	01/30/2004	2435	1234	15415US01	41	4

CONFIRMATION NO. 7811

CORRECTED FILING RECEIPT

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

Date Mailed: 05/05/2011

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)

Sherman (Xuemin) Chen, San Diego, CA;
Stephane Rodgers, San Diego, CA;

Power of Attorney:
Ognyan Beremski--51458

Domestic Priority data as claimed by applicant

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: 06/14/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/769,173**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Secure key authentication and ladder system

Preliminary Class

713

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.

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

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

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

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

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

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

JAN 13 2012

OFFICE OF PETITIONS

SCHWABE WILLIAMSON & WYATT
PACWEST CENTER, SUITE 1900
1211 SW FIFTH AVENUE
PORTLAND OR 97204

In re Application of
Thomas R. Apel et al
Application No. 10769,571
Filed: January 30, 2004
Attorney Docket No. 112693-178139

: DECISION GRANTING PETITION
: UNDER 37 CFR 1.313(c)(1)

This is a decision on the petition filed January 11, 2012, which is being treated under 37 CFR 1.313(c)(1), to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

37 CFR 1.313(c) provides that:

Once the issue fee has been paid, the application will not be withdrawn from issue upon petition by the applicant for any reason except:

(1) Unpatentability of one of more claims, which petition 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;

(2) Consideration of a request for continued examination in compliance with 37 CFR 1.114; or

(3) Express abandonment of the application. Such express abandonment may be in favor of a continuing application.

The petition complies with the requirements of 37 CFR 1.313(c)(1). Accordingly, the above-identified application is withdrawn from issue.

Application No. 10/769,571

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.[1]

Telephone inquiries should be directed to the undersigned at (571) 2723-3208.

The application is being referred to Technology Center AU 2815 for consideration of the amendment submitted with the petition.

KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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

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United States Patent and Trademark Office
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JUN 21 2011

OFFICE OF PETITIONS

LEVINE BAGADE HAN LLP
2400 GENG ROAD, SUITE 120
PALO ALTO CA 94303

In re Application of :
Sunil K. RAO et al. : ON PETITION
Application No. 10/769,621 :
Filed: January 30, 2004 :
Atty. Docket No.: IPHLNZ00301

This is a decision on the petition under 37 CFR 1.137(b), filed May 6, 2011, to revive the above-identified application.

The petition is **GRANTED.**

The application went abandoned for failure to reply in a timely manner to the nonfinal Office action mailed October 15, 2008, which set a shortened statutory period for reply of three (3) months. No reply was received. The application became abandoned on January 16, 2009. A Notice of Abandonment was mailed May 6, 2009.

The petition satisfies the conditions for revival pursuant to 37 CFR 1.137(b) by including (1) a reply in the form of Response to the nonfinal Office action mailed October 15, 2008, (2) a petition fee of $810 (small entity), and (3) a statement of unintentional delay. The reply to the nonfinal 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.

Telephone inquires regarding this decision should be directed to Robert DeWitty, Petitions Attorney, Office of Petitions (571-272-8427).

The application will be referred to Technology Center Art Unit 2618 for further action on the filed Response.

for

David Bucci
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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(Apple) WONG, CABELLO, LUTSCH, RUTHERFORD
& BRUCCULERI, LLP
20333 Tomball Parkway
SUITE 600
HOUSTON TX 77070

MAILED
DEC 07 2011
OFFICE OF PETITIONS

In re Patent No. 8,065,418	:	DECISION ON APPLICATION
ABUAN et al.	:	FOR RECONSIDERATION OF
Issue Date: November 12, 2011	:	PATENT TERM ADJUSTMENT
Application No. 10/769,841	:	AND NOTICE OF INTENT TO
Filing Date: February 2, 2004	:	ISSUE CERTIFICATE OF
Docket No. P3229US1 (119-0023US)	:	CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT", filed on November 22, 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 two thousand eleven (2011) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.** The term of the above-identified patent is extended or adjusted by **two thousand three hundred fifty-one (2351) days.**

In the present petition, patentee asserts:

> The A-Time calculation of 1206 days and B-Time calculation of 1340 days each appear accurate. However, the Notification accounts for 121 days of overlap between A-Time and B-Time. It appears to Applicants that the overlap of A-Time and B-Time should be 535 days. B-Time should begin on 3 February 2007 and continue till 22 November 2011 (minus deductions) and A-Time appears to have been calculated from 14 months after filing till 21

> July 2008 (mailing of Restriction Requirement). Therefore, the period of time from 3 February 2007 till 21 July 2008 appear to be overlapping. This duration is 535 days as opposed to the 121 days reflected in the calculation of the Issue Notification. If Applicants determination of overlap is accurate, then Applicants submit that the correct PTA should be 2011 days rather than the 2425 days indicated.

Petition, p. 2.

The Office has considered patentees' assertion but finds that it is without merit.

37 CFR 1.703(b) indicates that the period of adjustment under 37 CFR 1.702(b) ("over three year period") is the number of days, if any, in the period beginning on the day after the date that is three years after the actual filing date of the application and ending on the date a patent was issued. 35 U.S.C. 154(b)(1)(B).

In this instance, the "over three year period" is 1754 days, beginning on February 3, 2007, the date after the date that is three years after the filing date of the application and ending on November 22, 2011, the date the patent issued.

However, 37 CFR 1.703(b) also sets forth the limitations on patent term adjustment specified in 35 U.S.C. 154(b)(1)(B)(i) and (ii). Specifically, 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).

A further review of the application history reveals that the Office incorrectly calculated the period consumed by appellate review as four hundred fourteen (414) days, beginning on May 22,

2009, the date of filing of the notice of appeal, and ending on July 9, 2010, the mail date of an Office communication.

Pursuant to 37 CFR 1.703(b)(4):

> 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:
>
> > The number of days, if any, in the period beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31 of this title and ending on the date of the last decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145, or on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first, if the appeal did not result in a decision by the Board of Patent Appeals and Interferences.

The Office communication mailed July 9, 2010, is not an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151. Accordingly, the period consumed by appellate review is six hundred nine (609) days, beginning on May 22, 2009, the date of filing of the notice of appeal and ending on January 20, 2011, the subsequent date of the mailing of the non-final Office action under 35 U.S.C. 132. Thus, B delay is one thousand one hundred forty-five days (1754-609) days.

Additionally, the Office incorrectly calculated the period of overlap between A delay and B delay as one hundred twenty-one (121) days. The Office notes that the number of days of overlap between A delay and B delay is any A delay that occurs during the period beginning on October 4, 2008, and ending on November 22, 2011. Considering this excluded period, the Office has determined that there are zero (0) days of overlap.

Accordingly, the patent term adjustment is 2351 days (1206 days of A delay + 1145 days of B delay - 0 days of overlap - 0 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 37 CFR 1.136.

It is noted that the Office issued a Notice of proposed rulemaking entitled *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review and Information Disclosure Statements*, 76 FR 18990 (April 6, 2011). To the extent that the final rule on *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review* revises the interpretation of appellate review applied in this decision, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the date of the final rule to file a request for reconsideration. No extensions of time will be granted under 37 CFR 1.136.

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

The Office acknowledges the submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the petition under 37 CFR 1.705(d). No additional fees are required.

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **two thousand three hundred fifty-one (2351) 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

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 8,065,418 B1

DATED : Nov. 22, 2011

INVENTOR(S) : Abuan 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 (2425) days.

Delete the phrase "by 2425 days" and insert – by 2351 days--

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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P.O. Box 1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/770,145	02/02/2004	Dennis Doyle	FMC 1683 PUS/81093318	2065

22844 7590 10/27/2011

FORD GLOBAL TECHNOLOGIES, LLC
FAIRLANE PLAZA SOUTH, SUITE 800
330 TOWN CENTER DRIVE
DEARBORN, MI 48126

EXAMINER	
ROBERTSON, DAVID	

ART UNIT	PAPER NUMBER
2121	

MAIL DATE	DELIVERY MODE
10/27/2011	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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FORD GLOBAL TECHNOLOGIES, LLC
FAIRLANE PLAZA SOUTH, SUITE 800
330 TOWN CENTER DRIVE
DEARBORN MI 48126

In re Patent No. 7,613,627
Issue Date: November 3, 2009
Appl No.: 10/770,145
Filed: February 2, 2004
For: **COMPUTER-IMPLEMENTED METHOD AND SYSTEM FOR COLLECTING AND COMMUNICATING INSPECTION INFORMATION FOR A MECHANISM**

DECISION GRANTING PETITION
37 CFR 1.324

This is a decision on the petition under 37 CFR 1.48, filed December 20, 2010. In view of the fact that the patent has already issued, the request under 37 CFR 1.48 has been treated as a petition to correct inventorship under 37 CFR 1.324.

The petition is **GRANTED**.

The patented file is being forwarded to Certificate of Corrections Branch for issuance of a certificate naming only the actual inventor or inventors.

/Eddie C. Lee/

Quality Assurance Specialist
Technology Center 2100
571-272-1732

UNITED STATES PATENT AND TRADEMARK OFFICE

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SATIUS, INC.
C/O CHARLES ABRAHAM, CEO
P.O. BOX 731
CLARKSVILLE MD 21029

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JAN 3 1 2011

OFFICE OF PETITIONS

In re Application of :
Charles Abraham, et al. :
Application No. 10/770,342 : ON PETITION
Filed: February 2, 2004 :
Attorney Docket No. :

This is in response to the communication, filed December 20, 2010, to revive the above-identified application, which is being treated as a petition to withdraw the holding of abandonment.

The petition is **DISMISSED**.

On August 3, 2010, the Office mailed a final Office action, which set a three month shortened statutory period to reply. The application became abandoned on December 4, 2010, for failure to submit a timely response to the final Office action. The Notice of Abandonment has not been mailed in this application.

In the present petition, petitioner requests that the Office withdraw the holding of abandonment due to the timely filing of a reply to the final Office action. Specifically, petitioner states that a reply was timely filed on December 6, 2010 with a certificate of mailing dated for December 3, 2010.

DISCUSSION OF PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

The petition is 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 (Charles Abraham) was ever given a power of attorney to act on behalf of inventor Hongbo Yan, James Fisch, John Jarels and Alexander M. Sutton, 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 improper and unacceptable.

Further the power of attorney filed is not accepted. In order for an assignee to take action in a case before the Office, compliance with 37 CFR 3.73(b) must be satisfied. More specifically, 37 CFR 3.73(b) provides that: (1) when an assignee seeks to take action in a matter before the Office, the assignee must establish its ownership of the property to the satisfaction of the Commissioner; (2) ownership is established by submitting to the Office, in the Office file related to the matter in which action is sought to be taken, documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment submitted for recording) or by specifying (e.g., reel and frame number) where such evidence is recorded in the Office; (3) the submission establishing ownership must be signed by a party authorized to act on behalf of the assignee; and (4) documents submitted to establish ownership may be required to be recorded as a condition to permitting the assignee to take action in a matter pending before the Office. A blank 37 CFR 3.73(b) accompanies this decision.

ALTERNATIVE VENUE

Petitioner is strongly encouraged to consider filing a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application instead of filing a renewed petition under 37 CFR 1.181 or a petition under 37 CFR 1.137(a).

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed. In nonprovisional utility application abandoned for failure to respond to a non-final Office action, the required reply may be met by filing either (A) an argument or amendment under 37 CFR 1.111 or (B) a continuing application under 37 CFR 1.53(b).

(2) The petition fee as set forth in 37 CFR 1.17(m), **$810.00 for a small entity**;

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

A form for filing a petition to revive an unintentionally abandoned application accompanies this decision for petitioner's convenience. If petitioner desires to file a petition under 37 CFR 1.137(b) instead of filing a request for reconsideration, petitioner must complete the enclosed petition form (PTO/SB/64) and pay the $810.00 petition fee.

Petitioner may wish to consider hiring a registered patent attorney or agent to assist in the prosecution of this application. Additionally, petitioner is encouraged to contact the Inventors Assistance Center (IAC) by telephone at 800-786-9199 or 571-272-1000, Monday through Friday from 8:30 AM to 5:30 PM (EST). The IAC provides patent information and services to the public and is staffed by former Supervisory Patent Examiners and experienced Primary Examiners who answer general questions concerning patent examining policy and procedure.

Any request for reconsideration of this decision should be submitted within **TWO (2) 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).

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

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

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

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

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

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

Enclosures: Petition For Revival Of An Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b); Form PTO/SB/64, Privacy Act Statement; and a Blank copy of the statement under 37 CFR 3.73(b)and a power of attorney form.

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C/O CHARLES ABRAHAM, CEO
P.O. BOX 731
CLARKSVILLE MD 21029

MAILED
MAY 23 2011
OFFICE OF PETITIONS

In re Application of :
Charles Abraham, et al. :
Application No. 10/770,342 : ON PETITION
Filed: February 2, 2004 :
Attorney Docket No. :

This is in response to the renewed petition, filed March 24, 2011, to revive the above-identified application, which is being treated as a petition to withdraw the holding of abandonment.

The petition is **DISMISSED**.

On August 3, 2010, the Office mailed a final Office action, which set a three month shortened statutory period to reply. The application became abandoned on December 4, 2010, for failure to submit a timely response to the final Office action. The Notice of Abandonment has not been mailed in this application.

In the present petition, petitioner continues to argue that the Office withdraw the holding of abandonment due to the timely filing of a reply to the final Office action. Specifically, petitioner states that a reply was timely filed on December 6, 2010 with a certificate of mailing dated for December 3, 2010.

DISCUSSION OF PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

The petition is 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.

While it is noted that Mr. Abraham provided the Office with a copy of the statement under 37 CFR 3.73(b) the statement is improper. The statement filed did not include the required documentary evidence of a chain of title from the original owners to the assignee recorded in the assignment records with corresponding reel and frame numbers nor did application provide a copy of the recorded assignments, the statement cannot be accepted at the present time.

In order for an assignee to take action in a case before the Office, compliance with 37 CFR 3.73(b) must be satisfied. More specifically, 37 CFR 3.73(b) provides that: (1) when an assignee seeks to take action in a matter before the Office, the assignee must establish its ownership of the property to the satisfaction of the Commissioner; (2) ownership is established by submitting to the Office, in the Office file related to the matter in which action is sought to be taken, documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment submitted for recording) or by specifying (e.g., reel and frame number) where such evidence is recorded in the Office; (3) the submission establishing ownership must be signed by a party authorized to act on behalf of the assignee; and (4) documents submitted to establish ownership may be required to be recorded as a condition to permitting the assignee to take action in a matter pending before the Office.

ALTERNATIVE VENUE

Petitioner is strongly encouraged to consider filing a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application instead of filing a renewed petition under 37 CFR 1.181 or a petition under 37 CFR 1.137(a).

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed. In nonprovisional utility application abandoned for failure to respond to a non-final Office action, the required reply may be met by filing either (A) an argument or amendment under 37 CFR 1.111 or (B) a continuing application under 37 CFR 1.53(b).

(2) The petition fee as set forth in 37 CFR 1.17(m), **$810.00 for a small entity**;

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

A form for filing a petition to revive an unintentionally abandoned application accompanies this decision for petitioner's convenience. If petitioner desires to file a petition under 37 CFR 1.137(b) instead of filing a request for reconsideration, petitioner must complete the enclosed petition form (PTO/SB/64) and pay the $810.00 petition fee.

Petitioner may wish to consider hiring a registered patent attorney or agent to assist in the prosecution of this application. Additionally, petitioner is encouraged to contact the Inventors Assistance Center (IAC) by telephone at 800-786-9199 or 571-272-1000, Monday through Friday from 8:30 AM to 5:30 PM (EST). The IAC provides patent information and services to the public and is staffed by former Supervisory Patent Examiners and experienced Primary Examiners who answer general questions concerning patent examining policy and procedure.

Any request for reconsideration of this decision should be submitted within **TWO (2) 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).

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

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

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

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

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

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

Enclosures: Petition For Revival Of An Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b); Form PTO/SB/64, Privacy Act Statement; and a Blank copy of the statement under 37 CFR 3.73(b)and a power of attorney form.

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OFFICE OF PETITIONS

SATIUS, INC.
C/O CHARLES ABRAHAM, CEO
P.O. BOX 731
CLARKSVILLE, MD 21029

In re Application of
Charles Abraham, et al.
Application No. 10/770,342
Filed: February 2, 2004
Attorney Docket No.

DECISION ON PETITION

This is a decision on the renewed petition, filed July 18, 2011, 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 final Office action of August 3, 2010, which set a three (3) month shortened statutory period for reply. Accordingly, a reply was due on or before November 3, 2010.

Petitioner states that a timely reply was mailed via certificate of mailing on December 3, 2010, which included the following papers: a one (1) month extension of time, a Request for Continued Examination (RCE), an amendment and a Notice of Appeal. 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 August 3, 2010 is hereby **withdrawn** and the **application restored to pending status**.

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 2611 for processing of the amendment previously filed December 6, 2010.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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In re Patent No. 7079077
Issue Date: July 18,2006
Application No. 10770540
Filed: February 2,2004
Attorney Docket No. SMU-001

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

This is a decision on the electronic petition, filed September 20,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of September 20,2010 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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)
7079077	2006-07-18	10770540	2004-02-02	SMU-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

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.

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	/Ira S. Matsil/	Date (YYYY-MM-DD)	2010-09-16
Name	Ira S. Matsil	Registration Number	35272

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

PHILIP CHIDI NJEMANZE
NO 1 URATTA/MCC ROAD
P O BOX 302
OWERI POB30-2 NG NIGERIA

MAILED

FEB 10 2011

OFFICE OF PETITIONS

In re Application of :
PHILIP CHIDI NJEMANZE :
Application No. 10/770606 :
Filing or 371(c) Date: 02/03/2004 : ON PETITION
Title of Invention: :
TRANSCRANIAL DOPPLER :
SPECTROSCOPY FOR ASSESSMENT :
OF BRAIN COGNITIVE FUNCTIONS :

This is a decision on the petition to revive an application for patent abandoned unavoidably under 37 CFR 1.137(a), filed November 9, 2010.

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 and properly reply to the non-final Office action, mailed October 2, 2006. 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).

Applicant filed a reply/amendment on October 31, 2006; however, the amendment was not entered because the amended claims were not properly marked with status identifiers, and the replacement drawings were not marked "amended." Applicant was so notified in a Notice of Non-Compliant Amendment mailed to Applicant on November 31, 2006.

Applicant filed a second response to the Office action on December 11, 2006, which also was not entered because claims 1-20 were missing, and the claims were not provided with proper status

identifiers. Applicant was so notified in a second Notice of Non-Compliant Amendment mailed on December 19, 2006.

Applicant filed a third reply on February 8, 2007, which was again not entered because the reply at that time required an extension of time fee to have been considered timely. The Examiner also notes in the Notice of Abandonment mailed May 6, 2009, that the reply filed February 8, 2007 would also have been non-compliant as the amended portions of he claims did not contain the proper underlining/strikethrough to show which parts were amended.

The Examiner notes that a fee deficiency mailed to Applicant on July 23, 2007, was mailed in error.

No complete and proper reply to the non-final Office action, mailed October 2, 2006, having been received, the application became abandoned on January 3, 2006. A Notice of Abandonment was mailed on May 6, 2009, detailing the above noted sequence of events.

The present petition

Applicant files the present petition and states that the reason for the delay in filing a complete and proper reply to the Office action, mailed October 2, 2006, was because the reply he filed on February 3, 2007 was received after the expiration of the response period. Applicant avers that the delay in mail getting to him was due to the December Holiday period during which time there were political election registration holidays in Nigeria with major mail backlogs. Applicant asserts that the factors of receiving mail on time during peak holiday period, disrupted by political issues were beyond his control and he was not made aware of the abandonment until he checked the status on the internet. Petitioner notes that the last communication he received from this Office was a letter communicating a fee requirement of $60.00, mailed on July 23, 2007, which Applicant responded to by check.

A Grantable Petition Under 37 CFR 1.137(a)

A grantable petition pursuant to this paragraph must be accompanied by:
(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in § 1.17(m);
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and
(4)Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

Applicant lacks items (1) and (3) as set forth above.

As to item (1), Applicant has filed a reply to the Office action on February 8, 2007; however, as noted in the Notice of Abandonment by the Examiner, the reply/amendment is again non-

compliant as the amended portions of he claims did not contain the proper underlining/strikethrough to show which parts were amended.

As to item (3), Applicant must provide 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.

Applicable Law, Rules and MPEP

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

> The word unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.
> In re Mattullath , 38 App. D.C. 497, 514-15 (1912)(quoting Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 667-68 (D.D.C. 1963), aff 'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

Delay resulting from the lack of knowledge or improper application of the patent statute, rules of practice or the MPEP, however, does not constitute "unavoidable" delay. See Haines, 673 F. Supp. at 317, 5 USPQ2d at 1132; Vincent v. Mossinghoff, 230 USPQ 621, 624 (D.D.C. 1985); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (1891). For example, as 37 CFR 1.116 and 1.135(b) are manifest that proceedings concerning an amendment after final rejection will not operate to avoid abandonment of the application in the absence of a timely and proper appeal, a delay is not "unavoidable" when the applicant simply permits the maximum extendable statutory period for reply to a final Office action to expire while awaiting a notice of allowance or other action. Likewise, as a "reasonably prudent person" would file papers or fees in compliance with 37 CFR 1.8 or 1.10 to ensure their timely filing in the USPTO, as well as preserve adequate evidence of such filing, a delay caused by an applicant's failure to file papers or fees in compliance with 37 CFR 1.8 and 1.10 does not constitute "unavoidable" delay. See Krahn, 15 USPQ2d at 1825. **Finally, a delay caused by an applicant's lack of knowledge or improper application of the patent statute, rules of practice or the MPEP is not rendered**

"unavoidable" due to: (A) the applicant's reliance upon oral advice from USPTO employees; or (B) the USPTO's failure to advise the applicant of any deficiency in sufficient time to permit the applicant to take corrective action. See In re Sivertz, 227 USPQ 255, 256 (Comm'r Pat. 1985). 35 U.S.C. 133 and 151 each require a showing that the "delay" was "unavoidable," which requires not only a showing that the delay which resulted in the abandonment of the application was unavoidable, but also a showing of unavoidable delay until the filing of a petition to revive. See In re Application of Takao, 17 USPQ2d 1155 (Comm'r Pat. 1990).

The burden of continuing the process of presenting a grantable petition in a timely manner likewise remains with the applicant until the applicant is informed that the petition is granted. Id. at 1158. Thus, an applicant seeking to revive an "unavoidably" abandoned application must cause a petition under 37 CFR 1.137(a) to be filed without delay (i.e., promptly upon becoming notified, or otherwise becoming aware, of the abandonment of the application).Specifically, petitioner's delay caused by the actions or inactions of his voluntarily chosen representative does not constitute unavoidable delay within the meaning of 35 USC 133 or 37 CFR 1.137(a). Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (D. Ind. 1987); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (Comm'r Pat. 1891). In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913).

Finally, Applicant is advised that when he chooses to prosecute without the assistance of counsel, he is obligated to either familiarize himself with the requirements of successfully prosecuting this application, or retain counsel. Persons seeking patent rights have no "right" to the assistance of counsel during the application process. Boyden v. Commissioner of Patents, 441 F.2d 1041, 168 USPQ 680 (D.C. Cir. 1971).

Analysis

Initially applicant is advised that the application became abandoned because applicant failed to file a complete and proper reply to the non-final Office action mailed October 2, 2006. The applicable Rule, 37 CFR § 1.135, Abandonment for failure to reply within time period, states

> (a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.
> (b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment. (Emphasis added).

Here, Applicant filed a reply to the Office action on October 31, 2006; and on December 11, 2006. Both times the replies were not entered because the amendments were non-compliant. Applicant had failed to file a complete and proper reply to the Office action. Thereafter, Applicant filed a reply to the Office action on February 8, 2007; however, the reply was due on or before January 2, 2007. The reply filed February 8, 2007 required an extension of time to have been considered timely. Moreover, the reply was again not a complete and proper reply as noted by the Examiner. It is reiterated that the application became abandoned for failing to file a complete and proper reply to the Office action mailed October 2, 2006.

As to unavoidable delay, Applicant is advised that, as stated above, the lack of knowledge or improper application of the patent laws and rules do not constitute unavoidable delay. Likewise, the USPTO's failure to advise the applicant of any deficiency in sufficient time to permit the applicant to take corrective action, also does not constitute unavoidable delay. When an Applicant chooses to prosecute without the assistance of counsel, he is obligated to either familiarize himself with the requirements of successfully prosecuting this application, or retain counsel. Persons seeking patent rights have no "right" to the assistance of counsel during the application process.

Conclusion

Applicant has failed to file a complete and proper reply to the Office action, and failed to demonstrate that the failure to file a complete and proper reply to the Office action was unavoidable. The petition is dismissed.

Applicant is advised that a list of registered practitioners is available at www.uspto.gov/main/patents. Applicant is further advised that the Inventor's Assistance Center is available, at 1-800-786-9199, for assistance in prosecuting the patent application.

A refund of the $60.00 extension of time fee may be requested by writing to the Office of Finance, Refund Section Director for Patents, PO Box 1450, Alexandria, VA 22313-1450. Alternatively, Applicant may wish to file a petition based upon an unintentional abandonment of the application as discussed below, and request this Office accply the $60.00 to the fee for the petition to revive the application based upon unintentional abandonment.

Alternate venue

Applicant is strongly urged to file a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in was "unavoidable." An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required fee, currently $770.00 for a small entity.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay can not make a statement that the delay was unintentional unless the entire delay, including the delay from the

date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revive under 37 CFR 1.137(b).

In order for the petition under 37 CFR 1.137(b) to be considered a grantable petition, the petition, the petition fee, and a complete and proper reply to the Office action mailed October 2, 2006, are required.

Applicant is advised that a list of registered practitioners is available at www.uspto.gov/main/patents. Applicant is further advised that the Inventor's Assistance Center is available to provide assistance, at 1-800-786-9199, for assistance in prosecuting the patent application.

A copy of the Manual of Patent Examining Procedure can be found at http://www.uspto.gov/web/offices/pac/mpep/mpep.htm.

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 concerning this Decision only should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO PC
ONE FINANCIAL CENTER
BOSTON MA 02111

MAILED
APR 25 2011
OFFICE OF PETITIONS

In re	:
Application No. 10/770,639	: DECISION REGARDING
Filed: February 2, 2004	: PATENT TERM ADJUSTMENT
Patent No. 7,867,475	: and NOTICE OF INTENT
Issued: January 11, 2011	: TO ISSUE
Attorney Docket No. 27331-501CIP2A	: CERTIFICATE OF CORRECTION
	:

This decision is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED ON FACE OF PATENT UNDER 37 CFR § 1.705(d)", filed March 11, 2011. Patentees request that the determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from one thousand three hundred seventy-two (1372) days to one thousand three hundred seventy-four (1374) days.

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

On January 11, 2011, the application issued into Patent No. 7,867,475 with a patent term adjustment of one thousand three hundred seventy-two (1372) days. Patentees timely submitted an application for patent term adjustment on March 11, 2011, asserting that the correct number of days of PTA is one thousand three hundred seventy-four (1374) days. According to Patentees, the Office erroneously accorded eight (8) days of applicant delay under 37 CFR 1.704(c)(10) for the submission of an IDS on November 8, 2010, after the Office had mailed a Notice of Allowance on August 25 2010. Patentees state that the IDS contained a 37 CFR 1.704(d) statement, and therefore no applicant delay should have been accorded.

A review of the IDS filed November 8, 2010 confirms that it contained a proper 37 CFR 1.704(d) statement. Accordingly, zero (0) days of Applicant delay should have been assessed for this filing.

In addition, Patentees state that they should have been assessed an additional six (6) days of Applicant delay pursuant to 37 CFR 1.704(b). The Office mailed a Notice to File Missing Parts on May 12, 2004. Applicants filed a response on August 18, 2004, made timely by obtaining a two month extension of time. As this response was not filed within three months, pursuant to 37 CFR 1.704(b), six (6) days of delay should have been assessed.

In view thereof, the correct determination of PTA at the time of issuance is one thousand, three hundred seventy-four (1374) days (1533 days of PTO delay, reduced by 159 days of Applicant delay).

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

The application is being forwarded to the Certificate of Correction Branch for issuance of a certificate of correction in order to rectify the error regarding the patent term information. See 35 U.S.C. § 254 and 37 C.F.R. § 1.322. The certificate of correction will indicate that the term of the above-identified patent is extended or adjusted by **one thousand three hundred seventy-four (1374)** days, subject to any disclaimers.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

Anthony Knight
Director
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

DRAFT CERTIFICATE OF CORRECTION

PATENT : 7,867,475 B2

DATED : **January 11, 2011**

INVENTOR(S) : Sanchez-Madrid 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 1372 days.

Delete the phrase "by 1372 days" and insert – by 1374 days--

APPROVED: /L.S./ (04/27/2011)

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 8/31/10 **Paper No.:** —

TO SPE OF : ART UNIT 2626

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/770748 Patent No.: 7756709 B2

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

FOR IFW FILES: Changes to Claims 1 and 21.

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: _____

/Leonard Saint-Cyr/ (04/27/2011) 04/27/2011

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.
10/770,804	02/02/2004	John N. Gross	JNG 2004-2	1483

23694 7590 03/15/2011
Law Office of J. Nicholas Gross, Prof. Corp.
PO BOX 9489
BERKELEY, CA 94709

EXAMINER	
AHMED, AFFAF	

ART UNIT	PAPER NUMBER
3622	

NOTIFICATION DATE	DELIVERY MODE
03/15/2011	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):

jngross@pacbell.net
anthonygreek@gmail.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

MAR 14 2011

Law Office of J. Nicholas Gross, Prof. Corp.
P.O. Box 9489
Berkeley, CA 94709

In re Application of:
John N. Gross
Application No. 10/770,804
Filed: February 2, 2004
For: SYSTEM FOR PROVIDING ACCESS TO PLAYABLE MEDIA

DECISION ON PETITION FILED UNDER 37 CFR 1.181

This is in response to the petition under 37 CFR 1.181 received August 9, 2010 requesting to designate new grounds of rejection in an Examiner's Answer.

The petition is **GRANTED**.

Petitioner asserts that the examiner has "cited and relied upon three (3) new pieces of prior art in the Answer, which prima facie meets the definition of a new rejection per MPEP 1207.03 and 37 CFR 41.39."

A review of the final rejection mailed July 2, 2008 indicates that claims 1-18 and 20-40 are rejected under 35 USC 103(a) as being unpatentable over Hastings. In the rejection the examiner relied upon applicant's own admission and references the website Auction Sniper referred to by the Appellant in the disclosure. In section (10) Response to Argument of the Examiner's Answer mailed July 21, 2010, in response to arguments by Appellant in the Appeal Brief, the examiner expounded on the rejection of claims 1-18 and 20-40 by presenting the new pieces of evidence all pertaining to the website Auction Sniper. Since the examiner's rejections can not be supported by the admitted prior art disclosed solely in the application, the introduction of the new pieces of evidence in the Response to Argument section tantamount to new grounds of rejection.

Accordingly, the application will be returned to the examiner to either reopen prosecution or to designate the rejections in the Examiner's Answer as new grounds of rejection.

Any inquiries regarding this decision should be directed to Teri P. Luu, Quality Assurance Specialist, at (571) 272-7045

Wynn Coggins, Director
Patent Technology Center 3600
(571) 272-5350

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 10/07/11

TO SPE OF : ART UNIT 3729

SUBJECT : Request for Certificate of Correction for Appl. No.: 10770806 Patent No.: 7284317

CofC mailroom date: 09/26/11

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580
You can fax the Directors/SPE response to 571-273-3421

Note: Should the changes in the claims be approved?

Yes.

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

X **Approved** — **All** changes apply.

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

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

Comments: Approved as note affecting scope of claims.

/Derris H. Banks/ — 3729

SPE — **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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AUG 16 2010

OFFICE OF PETITIONS

CARLSON, GASKEY & OLDS, P.C.
400 WEST MAPLE ROAD
SUITE 350
BIRMINGHAM MI 48009

In re Application of
Shihong Gary Song
Application No. 10/770,893
Filed: February 3, 2004
Attorney Docket No. EH11083U:67097-022

DECISION ON PETITIONS

This is a decision on the communication filed March 5, 2010, entitled, "APPEAL BRIEF," with a petition embedded in the communication, which is being treated as a "PETITION TO WITHDRAW HOLDING OF ABANDONMENT (37 CFR 1.181 (a)) OR, IN THE ALTERNATIVE, PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)". This is also a decision on the Request for Refund filed June 30, 2010.

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

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

A Notice of Appeal accompanied by a Pre-Appeal Brief Request For Review was filed on June 30, 2009. A Notice of Panel Decision from Pre-Appeal Brief Review was mailed on July 30, 2009.

Petitioner states that "Appellant did not receive this Notice but desires to continue this application and appeal. Examiner Kessler called Appellant's representative on March 2, 2010. Examiner Kessler has either not abandoned this or has withdrawn the apparent abandonment due to appellant's non-receipt of the Notice."

Petitioner should be aware that the application became abandoned by operation of law on January 31, 2010. The Notice mailed July 30, 2009 states that, "The time period for filing an appeal brief will be reset to be one month from mailing this decision, or the balance of the two-month time period running from the receipt of the notice of appeal, whichever is greater. Further, the time period for filing of the appeal brief is extendible under 37 CFR 1.136 based upon the mail date of this decision or the receipt date of the notice of appeal, as applicable." An Appeal Brief

accompanied by a five month extension of time was filed on March 5, 2010, which is outside of the extendable period to reply.

As to the petition under 37 CFR 1.181(a):

The evidence provided for in the above petition has been considered but is not convincing to substantiate the granting of the petition to withdraw holding of abandonment under 37 CFR 1.181(a). Therefore, the petition is dismissed.

The Office requirements for granting a petition to withdraw the holding of abandonment based upon non-receipt of an Office communication have been modified. The Office requires a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the U.S.P.T.O. The statement should establish that the docketing system is sufficiently reliable. In addition, a copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question. The above was not provided.

As to the petition under 37 CFR 1.137(b):

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice mailed July 30, 2009, is accepted as having been unintentionally delayed.

As to the Request for Refund filed June 30, 2010:

In view of the granting of the petition under 37 CFR 1.137(b), the request for refund of the petition fee is dismissed. However, since the brief was filed after the case was abandoned, the extension of time fee submitted on March 5, 2010, is being credited to petitioner's deposit account number as authorized.

Petitioner is reminded of 37 CFR 1.4(c), where each distinct subject matter should be filed separately.

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

This application is being referred to Technology Center AU 1793 for appropriate action by the Examiner in the normal course of business on the reply received July 22, 2010.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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INNOVATION DIVISION
CANTOR FITZGERALD, L.P.
110 EAST 59TH STREET (6TH FLOOR)
NEW YORK NY 10022

MAILED
AUG 09 2011
OFFICE OF PETITIONS

In re Application of :
Asher, et al. :
Application No. 10/771,076 : DECISION
Filed/Deposited: 3 February, 2004 :
Attorney Docket No. 04-7103 :

This is a decision on the papers filed on 23 June, 2011, for revival of an application abandoned due to unintentional delay under 37 C.F.R. §1.137(b).

NOTE:

The record (including the petition filed on 23 June, 2011) does not necessitate a finding that the delay between midnight 24 October, 2009 (the date of abandonment), and 23 June, 2011 (the date of the filing of grantable petition), was not unintentional.

Rather, the Patent and Trademark Office is relying in this matter on the duty of candor and good faith of Petitioner/ Counsel David E. Boundy (Reg. No. 36,461) when accepting Petitioners' representation that the delay in filing the response was unintentional.[1]

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

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee

[1] See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 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).

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(II).

BACKGROUND

The record reflects as follows:

Applicant failed to reply timely and properly to the Notice of Non-Compliant Appeal Brief mailed on 24 September, 2009, with reply due absent extension of time on or before 24 October, 2009.

The application went abandoned by operation of law after midnight 24 October, 2009.

The Office mailed the Notice of Abandonment on 7 June, 2010.

On 23 June, 2011, Petitioner filed, *inter alia*, a petition (with fee) pursuant to 37 C.F.R. §1.137(b) to revive the application as having been abandoned due to unintentional delay, a reply in the form of an amended brief and made the statement of unintentional delay.

As noted above, the record (including the petition filed on 23 June, 2011) does not necessitate a finding that the delay between midnight 24 October, 2009 (the date of abandonment), and 23 June, 2011 (the date of the filing of grantable petition), was not unintentional.

Rather, the Patent and Trademark Office is relying in this matter on the duty of candor and good faith of Petitioner/ Counsel David E. Boundy (Reg. No. 36,461) when accepting Petitioners' representation that the delay in filing the response was unintentional.[2]

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c) as to the showing regarding unintentional delay and a petition pursuant to 37 C.F.R. §1.137(b).

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[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).

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[3]

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[4]
The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority.

Unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and, by definition, are not intentional.[5]))

As to Allegations of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

It appears that the requirements under the rule have been satisfied.

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

[4] 35 U.S.C. §133 provides:

35 U.S.C. §133 Time for prosecuting application.

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

[5] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

CONCLUSION

Accordingly, the petition pursuant to 37 C.F.R. §1.137(b) is **granted**.

The instant application is released to the Technology Center/AU 3714 to await the Examiner's Answer in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the instant decision to ensure that the revival has been acknowledged by the TC/AU in response to this decision. It is noted that all inquiries with regard to status need be directed to the TC/AU where that change of status must be effected—that does not occur in the Office of Petitions.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however , that all practice before the Office is in writing (see: 37 C.F.R. §1.2[6]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

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

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

§1.2 Business to be transacted in writing.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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FOLEY & LARDNER, LLP
321 NORTH CLARK STREET
SUITE 2800
CHICAGO, IL 60654-5313

MAILED

OCT 2 1 2010

OFFICE OF PETITIONS

In re Patent No. 6,999,899
Issue Date: February 14, 2006
Application No. 10/771,168
Filed: February 2, 2004
Patentee(s): Kenneth C. Gross, et. al.

NOTICE

This is a Notice regarding your communication filed on September 8, 2010, which is being treated as a request under 37 CFR 1.28(c) for acceptance of a fee deficiency submission.

Petitioner states "The US agent of record Foley& Lardner LLP filed the necessary documents for change of entity status into LARGE and consequently asked to have our maintenance fee payment of January 28th, 2010 in the amount of USD 490.-topped-up." However, while Dennemeyer & Co. Luxembourg (Carolin Bohn) is attempting to make the fee deficiency payment of the 3 ½ year maintenance fee, the "NOTIFICATION OF LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS" filed on July 22, 2010, states "Fees paid presently and henceforth will be paid based on large entity status." Since the 3 ½ year maintenance fee was submitted on January 28, 2010, it is clear that the loss of small entity status does not apply to this fee. Therefore, the request is hereby **dismissed**.

Petitioner should note that if the 3 ½ year maintenance fee, submitted on January 28, 2010, was paid as a small entity in error, a request under 37 CFR 1.28(c) must be filed and signed by an attorney of record, an attorney or agent registered before the USPTO, the patentee or the assignee[1].

In view of the above, the request to accept the fee deficiency cannot be accepted at this time.

[1] 37 CFR 3.73(b) provides that: (1) when an assignee seeks to take action in a matter before the Office, the assignee must establish its ownership of the property to the satisfaction of the Commissioner; (2) ownership is established by submitting to the Office, in the Office file related to the matter in which action is sought to be taken, documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment submitted for recording) or by specifying (e.g., reel and frame number) where such evidence is recorded in the Office; (3) the submission establishing ownership must be signed by a party authorized to act on behalf of the assignee; and (4) documents submitted to establish ownership may be required to be recorded as a condition to permitting the assignee to take action in a matter pending before the Office

Since the correspondence 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 present request. Thereafter, all future communications from the Office will be directed solely to the address of record until otherwise instructed.

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.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

cc: Carolin Bohn
Dennemeyer & Co.
P.O. Box 1502
L-1015 Luxembourg

UNITED STATES PATENT AND TRADEMARK OFFICE

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FOLEY & LARDNER, LLP
321 NORTH CLARK STREET
SUITE 2800
CHICAGO, IL 60654-5313

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MAY 05 2011
OFFICE OF PETITIONS

In re Patent No. 6,999,899 :
Issue Date: February 14, 2006 :
Application No. 10/771,168 : NOTICE
Filed: February 2, 2004 :
Patentee(s): Kenneth C. Gross, et. al. :

This is a Notice regarding your renewed request for acceptance of a fee deficiency submission under 37 CFR 1.28, filed on November 24, 2010 and on February 3, 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**. Therefore, status as a small entity has been removed and any future fee(s) submitted must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,221	02/03/2004	Kenneth L. Miller	04-7102	2045

63710 7590 09/21/2010

INNOVATION DIVISION
CANTOR FITZGERALD, L.P.
110 EAST 59TH STREET (6TH FLOOR)
NEW YORK, NY 10022

EXAMINER	
LI, WEI	

ART UNIT	PAPER NUMBER
3714	

MAIL DATE	DELIVERY MODE
09/21/2010	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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INNOVATION DIVISION
CANTOR FITZGERALD, L.P.
110 EAST 59TH STREET (6TH FLOOR)
NEW YORK NY 10022

In re Application of:
MILLER, KENNETH L.
Serial No.: 10/771,221
Filed: Feb. 3, 2004
Docket: 04-7102
Title: SYSTEM AND METHOD FOR MANAGING SELECT FIVE HORSERACING BETS

DECISION ON PETITION FOR EXTENSION OF TIME

This is a decision on the petitions filed on July 12, 2010 and September 10, 2010 of two consecutive requests of the extension of time for two months to respond to the Examiner's Answer mailed on May 11, 2010. The petition is being considered pursuant to 37 CFR § 1.136(b). Each of the petition fees under 37 C.F.R. § 1.17(g) has been paid with the petitions.

The petitions are **granted**. The second two-month extension of time fee of $1,730, 00 for third and fourth month extension has been charged to the applicant's Deposit Account #50-3938 as requested in the petition.

Discussion and Analysis

An Examiner' Answer was mailed on May 11, 2010. The appellant had two months to file a Reply Brief. On July 12, 2010, a petition was filed requesting a two-month extension of time to file a Reply Brief and Request for an Oral Hearing. In the petition received July 12, 2010, petitioner requests a two-month extension of time because (a) one of the in-house patent attorneys for the appellant left the firm and no replacement has been hired yet and the remaining attorneys are still working out ways to reallocate the work; (b) an affiliate company of the appellant was sued recently in a civil action and other attorneys engaged in the civil action and

(c) the current attorney of record has a *pro bono* matter. Therefore, under the extenuating circumstances, petitioner requests that time to submit a Reply Brief and a Request for Oral Hearing be extended two months, to September 11, 2010.

In the second petition filed on September 10, 2010, petitioner requests another two-month extension of time. In the petition received September 10, 2010, petitioner requests a two-month extension of time because the appellant recently received a communication in a foreign counterpart application that requires careful consideration to determine the appellant's approach to this appeal. Therefore, petitioner requests that time to submit a Reply Brief and a Request for Oral Hearing be extended two further months, to November 11, 2010.

37 CFR 1.136 (b)[1] is available when a reply cannot be filed within the time period set for such reply and the provisions of paragraph 37 CFR § 1.136(a) are not available. In this situation the period for reply will be extended only for sufficient cause and for a reasonable time specified. In the petitions, the requests indicate that to date, the appellant has pursued the preparation of a Reply Brief diligently and now requires additional time to determine the appellant's approach to this appeal in view of a communication received in a foreign counterpart application.

Since the petitioner has set forth a factual accounting that is deemed to establish reasonably diligent behavior by the appellant for preparing a response within the statutory period. Accordingly, the period of time is extended to November 11, 2010. Petitioner should expect that future requests for extensions will not be granted absent strong and compelling reasons that establish the existence of an extraordinary situation necessitating the additional time.

Conclusion

The petitions for two-month extension of time in which to file a Reply Brief and request for Oral Hearing are **granted**. A reply Brief, if any, is now due November 11, 2010. It must be noted that filing a Reply Brief is not required to go forward with the appeal.

---

[1] *§ 1.136 Extensions of time.*
(a) (1) If an applicant is required to reply within a nonstatutory or shortened statutory time period, applicant may extend the time period for reply up to the earlier of the expiration of any maximum period set by statute or five months after the time period set for reply, if a petition for an extension of time and the fee set in § 1.17(a) are filed, unless: (i) Applicant is notified otherwise in an Office action; (ii) The reply is a reply brief submitted pursuant to § 41.41 of this title; (iii) The reply is a request for an oral hearing submitted pursuant to § 41.47(a) of this title; (iv) The reply is to a decision by the Board of Patent Appeals and Interferences pursuant to § 1.304 or to § 41.50 or § 41.52 of this title; or (v) The application is involved in a contested case (§ 41.101(a) of this title)……
(b) When a reply cannot be filed within the time period set for such reply and the provisions of paragraph (a) of this section are not available, the period for reply will be extended only for sufficient cause and for a reasonable time specified. Any request for an extension of time under this paragraph must be filed on or before the day on which such reply is due, but the mere filing of such a request will not affect any extension under this paragraph. In no situation can any extension carry the date on which reply is due beyond the maximum time period set by statute. See § 1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action; § 1.550(c) for extensions of time in ex parte reexamination proceedings; § 1.956 for extensions of time in inter partes reexamination proceedings; and §§ 41.4(a) and 41.121(a)(3) of this title for extensions of time in contested cases before the Board of Patent Appeals and Interferences. Any request under this section must be accompanied by the petition fee set forth in § 1.17(g).

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

PETITIONS GRANTED.

Donald T. Hajec, Director
Technology Center 3700

UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

HOFFMAN, WASSON & GITLER, P.C.
Suite 522
2461 South Clark Street
Arlington VA 22202

In re Patent No. 7,159,510	:	
Issue Date: January 9, 2007	:	
Application No. 10/771,686	:	ON PETITION
Filed: February 5, 2004	:	
Attorney Docket No. A-8681	:	

This is a decision on the petition under 37 CFR 1.378(c), filed August 22, 2011, to accept the unintentionally 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 above, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner.

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.

As to item (1) the statement of unintentional delay is presently not acceptable since the petition not signed by all of the inventors. 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.

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: Alan L. LaMaster
Rt. 1 Box 417-13
Highview, WV 26808

UNITED STATES PATENT AND TRADEMARK OFFICE

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Suite 522
2461 South Clark Street
Arlington VA 22202

MAILED
OCT 06 2011
OFFICE OF PETITIONS

In re Patent No. 7,159,510 :
Issue Date: January 9, 2007 :
Application No. 10/771,686 : CORRECTED DECISION
Filed: February 5, 2004 : ON PETITION
Attorney Docket No. A-8681 :

This is a corrected decision on the petition under 37 CFR 1.378(c), filed August 22, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on January 10, 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 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: Alan L. LaMaster
Rt. 1 Box 417-13
Highview, WV 26808

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 04-12-10

TO SPE OF : ART UNIT 2455

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/771724 Patent No.: 7627690

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 703-756-1541
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: approved, granting COC

/Saleh Najjar/ SPE AU 2455

SPE Art Unit

PTO/SB/44 (09-07)
Approved for use through 08/31/2010. OMB 0651-0033
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,627,690 B2

APPLICATION NO.: 10/771,724

ISSUE DATE : December 1, 2009

INVENTOR(S) : Naofumi KOBAYASHI

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 27, line 57: "a number of indentified clients~and" should be changed to --a number of indentified clients, and--.

Column 28, lines 39-40: "comprising: Sending unit to send each copy of multicast data" should be changed to --comprising sending unit to send each copy of the multicast data--.

Column 29, lines 35-36: "stored in ... the forward management information," should be changed to --stored in the forward management information,--.

Column 30, line 1: "layer, the multicast data by changing to convert the" should be changed to --layer, to convert the--; line 14, "the second aver of each copy of" should be changed to --the second layer of each copy of--; line 26, "the multicast data based on of the forward" should be changed to --the multicast data based on the forward--; and line 40, "forwarding each of the pieces of transmission copy the" should be changed to --forwarding each copy of the--.

APPROVED: /D.E./

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

Katten Muchin Rosenman LLP
575 Madison Avenue
New York, NY 10022-2585

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

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

Privacy Act Statement

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

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

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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. 7160575
Issue Date: January 9,2007
Application No. 10771752
Filed: February 4,2004
Attorney Docket No. UPR-3000

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

This is a decision on the electronic petition, filed January 12,2011 ,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 12,2011 . 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)
7,160,575	2007-01-09	10/771,752	2004-02-04	UPR-3000

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	Fee	Code	Small Entity	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

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.

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	/Roberto J Rios Cuevas/	Date (YYYY-MM-DD)	2011-01-12
Name	Roberto J Rios Cuevas	Registration Number	56145

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

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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 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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JOHN P. O'BANION
O'BANION & RITCHEY LLP
400 CAPITOL MALL, SUITE 1550
SACRAMENTO, CA 95814

MAILED

DEC 20 2010

OFFICE OF PETITIONS

In re Application of :
Eric Edwards, et al. :
Application No. 10/771,902 : DECISION GRANTING PETITION
Filed: February 4, 2004 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. SON5180.85A :

This is a decision on the petition under 37 CFR 1.313(c)(2), filed December 17, 2010, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on November 30, 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 2431 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

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

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FOLEY & LARDNER LLP
150 EAST GILMAN STREET
PO BOX 1497
MADISON WI 53701-1497

MAILED

AUG 23 2010

OFFICE OF PETITIONS

In re Application of
Reunamaki, et al.
Application No. 10/772,255
Filed: February 26, 2004
Attorney Docket Number: 088245-0193

ON REQUEST FOR
RECONSIDERATION OF
PATENT TERM ADJUSTMENT

This is a decision on the petition under 37 CFR 1.705(b), filed July 2, 2010. Applicants believe that they should be accorded an additional PTA of 354 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 solely as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

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

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

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

In view thereof, the correct determination of PTA at the time of the mailing of the Notice of Allowance is **eight hundred thirty-nine (839) days** (1092 days of PTO delay, reduced by 253 days of Applicant delay).

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

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

Telephone inquiries specific to this decision should be directed to Petitions Attorney Cliff Congo at (571) 272-3207.

Anthony Knight
Director
Office of Petitions

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

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NIXON PEABODY, LLP
401 9TH STREET, NW
SUITE 900
WASHINGTON DC 20004-2128

MAILED

DEC 02 2010

OFFICE OF PETITIONS

In re Application of	:	
Shunpei Yamazaki	:	
Application No. 10/772,267	:	DECISION GRANTING PETITION
Filed: February 6, 2004	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 740756-2708	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, November 30, 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 9, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 1716 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

---

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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www.uspto.gov

In re Patent No. 6882101
Issue Date: April 19,2005
Application No. 10772612
Filed: February 5,2004
Attorney Docket No. FOX004C

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

This is a decision on the electronic petition, filed April 12,2011 ,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 April 12,2011 .
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)
6,882,101	2005-04-19	10772612	2004-02-05	

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

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.

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	/Matthew T. Currie/	Date (YYYY-MM-DD)	2011-04-12
Name	Matthew T. Currie	Registration Number	58533

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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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.

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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.

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.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : August 15 2011

TO SPE OF : ART UNIT 2185

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/772642 patent no: 7426617

CofC mailroom date: 2-2-09

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: _____

Shah Sanjiv — **SPE**

2185 — **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

In re Patent No. 7031105
Issue Date: April 18,2006
Application No. 10772959
Filed: February 4,2004
Attorney Docket No. 139-012C

:
: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)
7031105	2006-04-18	10772959	2004-02-04	

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

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.

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.

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Alexandria, VA 22313-1450
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OFFICE OF PETITIONS

KRAMER & AMADO, P.C.
1725 Duke Street, Suite 240
Alexandria VA 22314

In re Patent No. 7,590,055 : DECISION ON REQUEST
Segel : FOR
Issue Date: September 15, 2009 : RECONSIDERATION OF
Application No. 10/773,226 : PATENT TERM ADJUSTMENT
Filed: February 9, 2004 : and
Atty Docket No. **ALC 3117** : NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on May 20, 2010, which requests reconsideration of the "Decision on Request for Recalculation of Patent Term Adjustment in View of *Wyeth*" mailed April 21, 2010, and recalculation of the patent term adjustment.

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 seventy-five (1,275) days is **GRANTED.**

It is noted that no fee was required to accompany the Request for Recalculation of Patent Term Adjustment in View of *Wyeth* filed March 15, 2010. It is also noted that the "Decision on Request for Recalculation of Patent Term Adjustment in View of *Wyeth*" mailed April 21, 2010, erroneously dismissed the Request for Recalculation of Patent Term Adjustment in View of Wyeth. Accordingly, no fee is being assessed for the instant request for reconsideration as the instant petition resulted in the first recalculation of the patent tem adjustment in view of *Wyeth* and it appears that patentee met the qualifications of the matter to be considered by the Request for Recalculation of Patent Term Adjustment in View of Wyeth, filed March 15, 2010.

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 one thousand, two hundred and seventy-five (1,275) 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 : 7,590,055 B2

DATED : Sep. 15, 2009

INVENTOR(S) : Segel

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 (843) days

Delete the phrase "by 843 days" and insert – by 1,275 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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KING & SPALDING
1185 AVENUE OF THE AMERICAS
NEW YORK NY 10036-4003

MAILED

OCT 12 2010

OFFICE OF PETITIONS

In re Patent of Ohta et al. :
Patent No. 7,342,014 :
Application No. 10/773,344 : ON APPLICATION FOR
Filed: February 9, 2004 : PATENT TERM ADJUSTMENT
Atty Docket No. 17620-105007US1 :
Title: DIAMINE DERIVATIVES :

This is in response to the "REQUEST FOR RECONSIDERATION OF DISMISSAL OF PETITION UNDER 37 C.F.R. § 1.183 AND OF DISMISSAL OF REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705(d)," filed on June 1, 2010. Patentees petition under 37 C.F.R. § 1.183 for suspension of the requirement under 37 C.F.R. § 1.705(d) that any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued. Further, patentees request that the patent term adjustment be corrected from three hundred fifty-seven (357) days to seven hundred fifty-three (753) days.

The petition pursuant to 37 C.F.R. § 1.183 is **DISMISSED.**

The petition pursuant to 37 C.F.R. § 1.705(d) is **DISMISSED AS UNTIMELY FILED.**

Any request for reconsideration, whether directed to the decision on petition under 37 CFR § 1.183 or to the decision on the request under 37 CFR 1.705(d), must be filed within two months of the mailing date of this decision. Extensions of time under 37 C.F.R. § 1.136 are NOT permitted. *See* 37 CFR § 1.181(f).

RELEVANT STATUTE AND RULES

35 U.S.C. § 154(b)(3)(B) sets forth, *in toto*:

> Under the procedures established under subparagraph (A), the Director shall-
> (i) make a determination of the period of any patent term adjustment under this subsection, and shall transmit a notice of that determination with the written notice of allowance of the application under section 151; and
> (ii) provide the applicant one opportunity to request reconsideration of any patent term adjustment determination made by the Director.

37 CFR § 1.183 sets forth, *in toto*:

> In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(f).

37 CFR § 1.705 sets forth, *in pertinent part*:

> 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.

OPINION

On March 11, 2008, the above-identified application matured into U.S. Patent No. 7,342,014 with a revised patent term adjustment of 357 days. No request for reconsideration of the patent term adjustment indicated in the patent was filed within two months of the date the patent issued.

A request for reconsideration of the patent term adjustment indicated in the patent under 37 CFR 1.705(d) and a petition under 37 CFR 1.183, both filed on February 2, 2009, were dismissed on March 30, 2010.

The present reconsideration petitions were filed on June 1, 2010, which was the first business day after the May 30, 2010 two month deadline to request reconsideration.

Having considered patentees' petition, it is concluded that in this instance waiver of the requirement that the application for patent term adjustment be filed within two months of the issuance date of the patent is not appropriate. Patentees have not shown that the circumstance of the failure to comply with the time period for filing an application for patent term adjustment set forth in 37 CFR 1.705(d), is an extraordinary situation for which justice requires waiver.

By the express provisions of 37 CFR 1.705(d), a request for reconsideration of patent term adjustment must be filed within two months of the date the patent issued. It is undisputed that no such request for reconsideration was filed by May 11, 2008, the date two months from the date this patent issued, March 11, 2008.

35 U.S.C. 154, requires the Office to provide the applicant one opportunity to request reconsideration of any patent term adjustment determination made by the Director, authorizes the Director to establish the procedures for requesting such reconsideration. Those procedures[1] include 37 CFR 1.705(d). 37

[1] 35 U.S.C. § 154(b)(3) provides that the USPTO shall: (1) prescribe regulations establishing procedures for the application for and determination of patent term adjustments under 35 U.S.C. § 154(b); (2) make a determination of any patent term adjustment under 35 U.S.C. § 154(b) and transmit a notice of that determination with the notice of allowance under 35 U.S.C. § 151; and (3) provide the applicant one opportunity to request reconsideration of any patent term adjustment determination. Pursuant to the mandate and authority in 35 U.S.C. § 154(b)(3), the USPTO promulgated 37 C.F.R. § 1.705, which provides that: (1) the notice of allowance will include notification of any patent term adjustment under 35 U.S.C. § 154(b)(37 C.F.R. § 1.705(a)); (2) any request for reconsideration of the patent term adjustment indicated in the notice of allowance (except as provided in 37 C.F.R. § 1.705(d)) must be by way of an application for patent term adjustment filed no later than the payment of the issue fee and accompanied by (inter alia) the fee set forth in 37 C.F.R. § 1.18(e)(37 C.F.R. § 1.705(b)); and (3) if the patent indicates or should have indicated a revised patent term adjustment, any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued.

CFR 1.705(d) provides an avenue before the Office for requesting reconsideration of the Office's determination of patent term adjustment indicated in the patent. Moreover, §1.705(d) states that "any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued and must comply with the requirements of paragraphs (b)(1) and (b)(2) of this section."

Patentees have not shown that any extraordinary situation prevented them from timely filing a petition under 37 CFR 1.705(d). Under these circumstances, justice does not require that patentes' failure to timely file an application for patent term adjustment be treated any differently than any other patentee. Waiver of the requirement is not warranted.

The facts of record do not support an extraordinary situation. There is nothing extraordinary about a registered practitioner who is faced with a deadline, and has limited time to submit a paper to the Office to preserve his rights. Moreover, there is nothing extraordinary about a practitioner who failed to act in concert with published regulations.

The Office concludes that this situation does not constitute an extraordinary situation such that justice requires the waiver of the Rule.

As there is no dispute that this application for PTA was filed more than two months after the patent issued and it has been concluded that waiver of the requirement is not warranted, it is appropriate to dismiss this application for patent term adjustment as being untimely filed. 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 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.

It is noted that the first petition under 37 CFR 1.705(d) was filed 329 days after the patent issued.

In view thereof, it is concluded that the initial determination of Patent Term Adjustment of three hundred fifty-seven (357) days will not be reconsidered.

The Office acknowledges previous submission of the $200.00 fee set forth in 37 CFR 1.18(e) and the $400.00 fee set forth in 37 CFR 1.17(f). No additional fees are required.

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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NEW YORK NY 10036-4003

MAILED
MAR 17 2011
OFFICE OF PETITIONS

In re Patent of Ohta et al.
Patent No. 7,342,014
Issue Date: March 11, 2008
Application No. 10/773,344
Filed: February 9, 2004
Docket No. 17620-105007
Title: DIAMINE DERIVATIVES

FINAL AGENCY DECISION

This is a decision on the REQUEST FOR RECONSIDERATION OF DISMISSAL OF REQUEST FOR RECONSIDERATION OF PETITION UNDER 37 C.F.R. 1.183 AND OF DISMISSAL OF REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(d), filed November 16, 2010, requesting 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, patentees request 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.

This is also a decision on the request 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 seven hundred fifty-three (753) days. Patentees request 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 petition under 37 CFR 1.183 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 request for reconsideration of patent term adjustment under 37 CFR 1.705(d) is **dismissed as untimely filed**.

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 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. § 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.

On March 11, 2008, the above-identified application matured into U.S. Patent No. 7,342,014 with a revised patent term adjustment of 357 days. No request for reconsideration of the patent term adjustment indicated in the patent was filed within two months of the date the patent issued. The first request for reconsideration of patent term adjustment and petition under 37 CFR 1.183 were filed on February 2, 2009. This request was filed over 10 months after the patent issued. As this request was filed more than 180 days after patent grant, it was properly dismissed. It is appropriate to deny a renewed request for waiver, under the same reasoning.

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. 7,342,014 is dismissed as untimely filed.

Prior receipt of the $400 fee required for consideration of the petition under 37 CFR 1.183 is acknowledged.

Prior receipt of the $200 fee for consideration of the request for reconsideration of patent term adjustment is acknowledged.

Telephone inquiries specific to this decision should be directed to Shirene Willis Brantley, Senior Petitions Attorney, at (571) 272-3230.

Anthony Knight
Director
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20101024

DATE : October 24, 2010

TO SPE OF : ART UNIT 2826

SUBJECT : Request for Certificate of Correction on Patent No.: 6946716

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:

/SUE PURVIS/
Supervisory Patent Examiner.Art Unit 2826

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ANSEL M. SCHWARTZ
SUITE 304
201 N. CRAIG STREET
PITTSBURGH PA 15213

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DEC 07 2011
OFFICE OF PETITIONS

In re Application of :
Mako et al. :
Application No. 10/773,516 : DECISION ON PETITION
Filed: February 5, 2004 :
Attorney Docket No. MAKO-12 CONT :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 27, 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 October 15, 2010, 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 December 16, 2010. *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 Request for Continued Examination (RCE) and fee of $465.00, and the submission required by 37 CFR 1.114; (2) the petition fee of $930.00; and (3) a proper statement of unintentional delay.

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

This matter is being referred to Technology Center AU 1745 for processing of the Request for Continued Examination under 37 CFR 1.114 and the Amendment filed with the instant petition.

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

In re Application of :
Yamanaka, et al. :
Application No. 10/773,610 : ON APPLICATION FOR
Filed: February 6, 2004 : PATENT TERM ADJUSTMENT
Atty Docket No. 17475US02 :

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 30, 2010. Applicants submit that the correct patent term adjustment to be indicated on the patent is one thousand seven hundred thirty-seven (1737) days, not seven hundred thirty-nine (739) 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

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

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In re Patent of Yamanaka et al.:
Patent No. 7,873,128 :
Issue Date: January 18, 2011 : DECISION ON REQUEST
Application No. 10/773,610 : FOR RECONSIDERATION OF
Filed: February 6, 2004 : PATENT TERM ADJUSTMENT
Docket No. 17475US02 :

This is a decision on the petition filed on March 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 thousand six hundred forty-one (1641) days.

The petition under 37 CFR 1.705(d) is **dismissed.**

Patentees dispute the Office's determination of the length of reduction associated with the filing of a Rule 312 amendment on September 30, 2010 and the Office's calculation of the three years to issue guarantee of 35 U.S.C. 154(b)(1)(B) and 37 CFR 1.702(b) (hereinafter, "B delay").

It is undisputed that applicants filed a Rule 312 amendment on September 30, 2010, after the mailing of a notice of allowance on July 9, 2010. Patentees argue the length of reduction should be 70 days, rather than the presently accorded 71 days. The Office does not concur.

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 notice of allowance was mailed on July 9, 2010. Pursuant to 37 CFR 1.704(c)(10), the Office properly entered a period of reduction of 71 days, counting the number of days in the period beginning on September 30, 2010, the date the Rule 312 amendment was filed, and ending on and including December 9, 2010, the date the Office mailed correspondence addressing the September 30, 2010 Rule 312 amendment. Accordingly, no change will be made to the 71 day reduction associated with the filing of a Rule 312 amendment on September 30, 2010.

In addition, the Office does not concur with patentees' assertion the period of B delay is 1040 days. The maximum period of B delay in this case is 1062 days. Unless a Request for Continued Examination ("RCE") is filed, the period of B Delay ends of the date the patent issues. In this case, a RCE was filed January 4, 2010. 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)."

37 CFR 1.703(b)(1) provides:

> (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:
>
> (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;

As stated above, the date on which a RCE was filed is not included in the B Delay period. The maximum B Delay in this case is 1062 days, which is the number of days beginning on February 7, 2007, the day after the date three years after the application's filing date, and ending on January 3, 2010, the day before the date the RCE was filed.

Patentees' determination of the B delay period fails to properly calculate the time excluded from B delay due to appellate review. 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 114 days, beginning on November 27, 2007, the date of filing of the notice of appeal and ending on March 19, 2008, the subsequent date of the mailing of a non-final Office action. The mailing of a Notice of Panel Decision from Pre-Appeal Brief Review is not the same as an Office action on the merits. The December 20, 2007 Notice withdrew the rejection and informed applicants that a new Office action would be mailed at some point in the future.

Considering the excluded period, the Office has determined that there are 26 days of overlap. Thus, B delay is 922 (1062 - 114 - 26) days.

In light of the above, the patent term adjustment remains 1590 days, which is the sum of 739 days of A delay and 922 days of B delay, reduced by 71 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, Patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the date of the final rule to file a

request for reconsideration. No extensions of time will be granted under § 1.136.

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

The Office acknowledges receipt 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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OFFICE OF PETITIONS

In re Application of	:	
THOMSEN	:	
Application No. 10/773,764	:	DECISION ON PETITION
Filed: February 6, 2004	:	
Attorney Docket No. FSP0042	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 31, 2008, to revive the above-identified application.

The petition is **GRANTED.**

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, October 2, 2007, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on January 3, 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 $770; 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 3771 for appropriate action by the Examiner in the normal course of business.

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

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QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO, CA 92121

Mail Date: 08/05/2010

Applicant	: Hai Qu	: DECISION ON REQUEST FOR
Patent Number	: 7657234	: RECALCULATION of PATENT
Issue Date	: 02/02/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/773,783	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/05/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **775** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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In re Application :
Akira Yamanaka et al. :
Application No. 10/773,804 : DECISION ON APPLICATION
Filed: February 6, 2004 : FOR PATENT TERM ADJUSTMENT
Attorney Docket No. **17474US02** :

This is a decision on the "APPLICATION FOR RECONSIDERATION OF THE DETERMINATION OF PATENT TERM ADJUSTMENT UNDER 35 U.S.C. 154(b) ACCOMPANYING THE NOTICE OF ALLOWANCE (37 CFR § 1.705)" filed August 9, 2011. Applicant requests that the determination of patent term adjustment be corrected from 1525 days to 1734 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 SEVEN HUNDRED THIRTY-FOUR (1734) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On May 13, 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 1525 days. On August 9, 2011, applicant timely submitted the instant application for patent term adjustment[1]. Applicant maintains that the first one of a first Office action on the merits, a Restriction Requirement, or a Notice of Allowance was mailed on March 6, 2007, fourteen months and 699 days after the filing of the application, thus, Examination delay pursuant to 37 CFR 1.702(a)(1) should be 699 days.

37 CFR 1.702(a)(1) provides that: 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:

Mail at least one of a notification under 35 U.S.C. 132 or a notice of

[1] PALM records indicate that the issue fee was also paid on August 9, 2011.

> 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;

Applicants' argument is persuasive. The record supports a conclusion that a non-Final Office Action mailed March 6, 2007 is the first Office action in the application.

In this instance, the Office action mailed March 6, 2007 was not mailed within fourteen months of the filing date. As the Office failed to take action within the time provided for in 37 CFR 1.702(a)(1), an adjustment to the Patent Term Adjustment should have been made in the amount of 699 days from April 6, 2005 to March 6, 2007. As such, the period of adjustment for Office delay under 37 CFR 1.702(a)(1) is 699 days. The period of adjustment for Office delay of 490 days will be removed and a period of 699 days will be entered.

Thus the patent term adjustment at the time the Notice of Allowance was mailed was 1734 days (699 "A delay" days + 1035 "C delay" days - 0 Applicant delay days), not 1525 days.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is ONE THOUSAND SEVEN HUNDRED THIRTY-FOUR **(1734)** days.

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

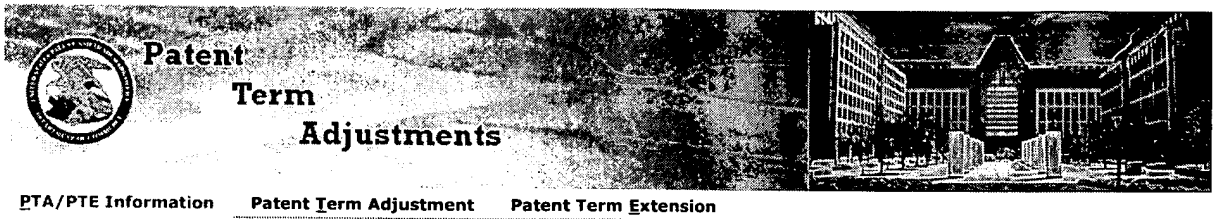
Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the 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 the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of Revised PALM Screen



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

Application Number*: 10773804 Search | Explanation of PTA Calculation | Explanation of PTE Calculation

PTA Calculations for Application: 10773804

Application Filing Date	02/06/2004	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	1525
A Delays	490	PTO Manual Adjustment	209
B Delays	0	Applicant Delay (APPL)	0
C Delays	1035	Total PTA (days)	1734

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
80	08/20/2011		P028	Adjustment of PTA Calculation by PTO	699	0	
79	08/20/2011		P028	Adjustment of PTA Calculation by PTO		490	0
69	05/13/2011		MN/=.	Mail Notice of Allowance			0
68	05/10/2011		OAR	Office Action Review			0
67	05/10/2011		OAR	Office Action Review			0
66	05/10/2011		IREV	Issue Revision Completed			0
65	05/10/2011		DVER	Document Verification			0
64	05/09/2011		N/=.	Notice of Allowance Data Verification Completed			0
63	05/09/2011		DOCK	Case Docketed to Examiner in GAU			0
62	05/06/2011		EX.R	Reasons for Allowance			0
61	05/06/2011		CNTA	Allowability Notice			0
58	04/01/2011		BD.A	Amendment/Argument after BPAI Decision			0
57	02/02/2011	04/04/2008	MAPDP	Mail BPAI Decision on Appeal - Affirmed in Part	1035		37
56	02/01/2011		APDP	BPAI Decision - Examiner Affirmed in Part			0
55	03/14/2009		AP_DK_M	Docketing Notice Mailed to Appellant			0
54	03/14/2009		APAS	Assignment of Appeal Number			0
53	02/13/2009		APWD	Appeal Awaiting BPAI Docketing			0
52	01/28/2009		MRBNE	Mail Reply Brief Noted by Examiner			0
51	01/22/2009		RBNE	Reply Brief Noted by Examiner			0
48	11/24/2008		FWDX	Date Forwarded to Examiner			0
47	11/10/2008		APRB	Reply Brief Filed			0
46	10/01/2008		PACC	Exam. Ans. Review Complete			0
45	09/17/2008		MAPEA	Mail Examiner's Answer			0
44	09/15/2008		APEA	Examiner's Answer to Appeal Brief			0
43	07/02/2008		APBR	Appeal Brief Review Complete			0
42	07/02/2008		FWDX	Date Forwarded to Examiner			0
41	06/27/2008		AP.B	Appeal Brief Filed			0
40	05/27/2008		MAPCP	Mail Appeals conf. Proceed to BPAI			0
39	05/23/2008		APCP	Pre-Appeals Conference Decision - Proceed to BPAI			0
38	04/04/2008		AP.C	Request for Pre-Appeal Conference Filed			0
37	04/04/2008		N/AP	Notice of Appeal Filed			0
36	03/21/2008		MCTAV	Mail Advisory Action (PTOL - 303)			0
35	03/17/2008		CTAV	Advisory Action (PTOL-303)			0
34	03/10/2008		FWDX	Date Forwarded to Examiner			0
33	03/07/2008		A.NE	Amendment after Final Rejection			0
32	01/07/2008		MCTFR	Mail Final Rejection (PTOL - 326)			0
31	01/04/2008		CTFR	Final Rejection			0
29	11/05/2007		FWDX	Date Forwarded to Examiner			0
28	10/22/2007		A...	Response after Non-Final Action			0
27	08/02/2007		MCTNF	Mail Non-Final Rejection			0
26	08/01/2007		CTNF	Non-Final Rejection			0
24	05/24/2007		FWDX	Date Forwarded to Examiner			0
23	05/21/2007		A...	Response after Non-Final Action			0
22	03/06/2007	11/01/2005	MCTNF	Mail Non-Final Rejection	490		19
21	03/02/2007		CTNF	Non-Final Rejection			0
20	02/27/2007		DOCK	Case Docketed to Examiner in GAU			0
18	07/28/2006		DOCK	Case Docketed to Examiner in GAU			0
17	07/11/2006		C.AD	Correspondence Address Change			0
16	07/11/2006		PA..	Change in Power of Attorney (May Include Associate POA)			0
19	07/01/2005		RLIM	Response to Notice of Lost Image			0
15	04/14/2005		MNLIM	Mail Notice of lost Image document			0
14	04/14/2005		NLIM	Notice of lost Image document			0
13	03/01/2005		TSSCOMP	IFW TSS Processing by Tech Center Complete			0

12	03/01/2005	DOCK	Case Docketed to Examiner in GAU	0
11	07/29/2004	WROIPE	Application Return from OIPE	0
10	07/29/2004	ROIPE	Application Return TO OIPE	0
9	07/29/2004	OIPE	Application Dispatched from OIPE	0
8	07/29/2004	COMP	Application Is Now Complete	0
7	07/07/2004	ADDFLFEE	Additional Application Filing Fees	0
6	07/07/2004	OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	0
5	05/10/2004	INCD	Notice Mailed--Application Incomplete--Filing Date Assigned	0
4	03/17/2004	L194	Cleared by OIPE CSR	0
3	03/17/2004	CLSS	CASE CLASSIFIED BY OIPE	0
2	02/20/2004	SCAN	IFW Scan & PACR Auto Security Review	0
1	02/06/2004	IEXX	Initial Exam Team nn	0
0.5	02/06/2004	EFILE	Filing date	0

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PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
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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)
7108094	2006-09-19	10773884	2004-02-06	

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

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.

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	/JEROME DANIELS/	Date (YYYY-MM-DD)	2012-01-20
Name	JEROME DANIELS		

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. 7108094
Issue Date: September 19,2006
Application No. 10773884
Filed: February 6,2004
Attorney Docket No. 338P-DANIELS

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

This is a decision on the electronic petition, filed January 20,2012 ,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 20,2012 .
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.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 10/05/10

TO SPE OF : ART UNIT 2875

SUBJECT : Request for Certificate of Correction for Appl. No.: 10773897 Patent No.: 7766517

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

[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: _____

Formatted: Indent: Left: 1.22"

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

/Sandra L. O'Shea/

SPE Art Unit 2875

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.

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

MAILED
DEC 30 2011
OFFICE OF PETITIONS

In re Application of :
Wells et al. :
Application No. 10/773,962 :
Patent No.: 7,012,378 : DECISION ON PETITION
Filed: February 6, 2004 : PURSUANT TO
Issued: March 14, 2006 : 37 C.F.R. § 1.28(c)
Attorney Docket No. :
29610/CDT935 :
Title: PROGRAMMABLE CURRENT :
SOURCE AND METHODS OF USE :

This is a notice regarding your request for acceptance of a fee deficiency submission pursuant to 37 C.F.R. § 1.28, received on December 14, 2011. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 C.F.R. § 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 C.F.R. § 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.

Petitioner has identified the particular type of fee that was erroneously paid as a small entity, when the small entity fee was actually paid, the small entity fee that was actually paid, the deficiency owed amount, and the total deficiency payment owed.

The deficiency payment in the amount of $640 has been received.

Your fee deficiency submission pursuant to 37 C.F.R. § 1.28(c) is hereby accepted. The petition is **GRANTED** accordingly.

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

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[1]

Paul Shanoski
Senior Attorney
Office of Petitions

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 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

Michael R. Kutas
Attorney, PLLC
2088 Flanders Road
Charlotte MI 48813

MAILED

FEB 03 2012

OFFICE OF PETITIONS

In re Patent No. 7,152,838 :
Issue Date: December 26, 2006 :
Application No. 10/774,036 : ON PETITION
Filed: February 6, 2004 :
For: RECREATIONAL VEHICLE AWNING :
HOOK HANGER :

This is a decision on the petition under 37 CFR 1.378(b), filed December 8, 2011, to accept the unavoidably 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 2-month time limit can be granted under 37 CFR 1.136(a) or (b). Any such petition for reconsideration must be accompanied by the petition fee of $400 as set forth in 37 CFR 1.17(f). The petition for reconsideration should include an exhaustive attempt to provide the lacking item(s) noted below, since, after a decision on the petition for reconsideration, the Director will undertake no further reconsideration or review of the matter. This includes statements by all persons with direct knowledge of the cause of the delay, setting forth the facts, as they know them. If a request for reconsideration is filed, it must establish that the entire delay in the submission of the maintenance fee was unavoidable.

The patent issued December 26, 2006. The 3.5 year (first) maintenance fee could have been paid from December 26, 2009 through June 25, 2010 or with a surcharge during the period from June 26, 2010 through December 26, 2010. Accordingly, the patent expired on December 27, 2010, for failure to timely submit the 3.5 year maintenance fee.

A petition to accept the delayed payment of a maintenance fee under 35 USC 41(c) and 37 CFR 1.378(b) must be accompanied by (1) an adequate showing that the delay was unavoidable, since reasonable care was taken to insure that the maintenance fee would be paid timely, (2) payment of the appropriate maintenance fee, unless previously submitted, and (3) payment of the surcharge set forth in 37 CFR 1.20(i)(1). This petition lacks item (1) above.

A petition under 37 CFR 1.378(b) for the acceptance of an unavoidably delayed payment of maintenance fee is considered under the same standard as that for reviving an application unavoidably abandoned under 37 CFR 1.137(a) because 35 U.S.C. § 41(c)(1) uses the identical language, *i.e.*, "unavoidable" delay. [1] Decisions reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable.[2] In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account."[3] Finally, a petition to revive an application as unavoidably abandoned cannot be granted where a petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay.[4]

The general standard applied by the Office requires petitioner to establish that petitioner treated the patent the same as a reasonable and prudent person would treat his or her most important business.[5] However, "the question of whether an applicant's delay in prosecuting an application was unavoidable [will] be decided on a case by case basis, taking all of the facts and circumstances into account".[6] Nonawareness of the content of, or misunderstanding of PTO statutes, PTO rules, the MPEP or Official Gazette notices, do not constitute unavoidable delay.[7] The statue requires a "showing" by petitioner. Therefore, petitioner has the burden of proof.

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. [8]

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[1] Ray v. Lehman, 55 F.3d 606, 608-09, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995)(quoting In re Patent No. 4,409,763, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1988)).

[2] Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887) (the term "unavoidable" "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful man in relation to their most important business"); In re Mattullath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913).

[3] Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). (citing Potter v. Dann, 201 U.S.P.Q. (BNA) 574 (D.D.C. 1978) for the proposition that counsel's nonawareness of PTO rules does not constitute unavoidable delay)); Vincent v. Mossinghoff, 1985 U.S. Dist. Lexis 23119, 13 230 U.S.P.Q. (BNA) 621 (D.D.C. 1985) (Plaintiffs through their counsel's actions or their own must be held responsible for having noted the MPEP section and Official Gazette notices expressly stating that the certified mailing procedures outlined in 37 CFR 1.8(a) do not apply to continuation applications).

[4] Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (N.D. Ind. 1987).

[5] The Commissioner is responsible for determining the standard for unavoidable delay and for applying that standard 35 U.S.C. 41(c)(1) states, "The Commissioner may accept the payment of any maintenance fee...at any time...if the delay is shown to the *satisfaction of the Commissioner* to have been unavoidable (emphasis added).

[6] Smith v. Mossinghoff, 671 F.2d at 533.

[7] Id. at 538.

[8] 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 U.S.P.Q. 666, 167-68 (D.D.C. 1963), aff'd, 143 U.S.P.Q. 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913).

PETITIONER'S ARGUMENT

- In November 2011, Attorney Kutas discovered the closed file in storage for the instant patent. Upon checking the status of the patent it was discovered that the patent was expired.

- Attorney Kutas states that he contacted Patentee James Taulbee. Patentee Taulbee stated that he did not intend for the patent to expire and asked for assistance in reinstating the patent. Thereafter the instant petition was filed.

- Attorney Kutas states that representation of patentee was complete upon the issuance of the patent and patentee resumed supervision of the patent. Attorney Kutas closed patent practice (with one exception).

- The petition also indicates that patentee Taulbee did not receive Notice of the maintenance fee due.

APPLICATION OF THE UNAVOIDABLE STANDARD

Petitioner's arguments have been considered but are not persuasive. In general a grantable petition under 37 CFR 1.378 (b) must show 1) petitioner knew of the need to make the maintenance fee payment, 2) implemented a reliable docketing system to track the relevant dates 3) treated the payment of the maintenance fee (and later the filing of a petition to reinstate) as his most important business 4) was prevented from making the payment and 5) must show the entire delay in making the payment and submitting a grantable petition was unavoidable.

In essence, petitioner must show that he was aware of the need to pay the maintenance fee, and to that end was tracking it, or had engaged someone to track it before the expiration, but when the fee came due, was "unavoidably" prevented from making the maintenance fee payment due. In determining whether a delay in paying a maintenance fee was unavoidable, one looks to whether the party responsible for payment of the maintenance fee exercised the due care of a reasonably prudent person. Ray, 55 F3d at 608-609, 34 USPQ2D at 1787. It is incumbent upon the patent owner to implement steps to schedule and pay the fee, or obligate another to do so. See California Medical Products v. Technol. Med. Prod., 921 F.Supp 1219, 1259 (D. Del. 1995). That is, 37 CFR 1.378(b)(3) requires a showing of the steps in place to pay the maintenance fee, and the record currently lacks a showing that any steps were emplaced by petitioner or anyone else. In the absence of a showing that petitioner or anyone else was engaged in tracking the maintenance fee due dates, and that party had in fact been tracking the due dates with a reliable tracking system, such as would be used by prudent and careful men in relation to their most important business, petitioner cannot reasonably show that the delay was unavoidable delay. In re Katrapat, 6 USPQ2d 1863, 1867-1868 (Comm'r Pat. 1988); California, supra.

When determining whether a delay in paying a maintenance fee is unavoidable, the Office looks at whether the party responsible for payment of the maintenance fee exercised the due care of a reasonably prudent person.[9] The petition does not demonstrate that anyone maintained a tracking system. Petitioner has failed to provide any evidence that either Attorney Kutas or patentee Taulbee were tracking the maintenance fee due dates.

It is solely the responsibility of the patentee to ensure that the maintenance fee is paid timely to prevent expiration of the patent. Failure to monitor the status of a patent does not reflect the due care and diligence employed by a prudent and careful person with respect to their most important business and as such cannot demonstrate that the delay was unavoidable delay. The record lacks any showing that patentee Taulbee took any action to prevent the expiration of the patent.

Petitioner indicates that a maintenance fee reminder was not received by patentee. A review of the record shows the correspondence address is and has been that of Attorney Kutas since March 25, 2006. Under the statutes and the regulations, the Office has no duty to notify patentees when their maintenance fees are due. It is the responsibility of the patentee to ensure that the maintenance fees are paid to prevent expiration of the patent. The Office will, however, provide some notices as reminders that maintenance fees are due, but the notices, errors in the notices or in their delivery, or the lack or tardiness of notices will in no way relieve a patentee from the responsibility to make timely payment of each maintenance fee to prevent the patent from expiring by operation of law. The notices provided by the Office are courtesies in nature and intended to aid patentees. The Office's provision of notices in no way shifts the burden of monitoring the time for paying maintenance fees on patents from the patentee to the Office. A reasonably prudent person would have ensured that the Office had an appropriate address where he could receive any possible communications mailed.

In the absence of a showing that any steps had been taken, then 37 CFR 1.378(b) precludes acceptance of the payment. In other words, if no steps were taken by Mr. Taulbe to track the fee payment, then the subsequent delay is immaterial. The showing must be that when the system indicated the fee fell due, petitioner was "unavoidably" prevented from taking any earlier action with respect to this patent.

Accordingly, the facts presented do not allow for a finding of unavoidable delay.

When filing documentation in support of applications or petitions, please take steps to protect all personal information. "Personal information" includes social security, credit card and banking account numbers. This type of personal data is never required by the USPTO to support a petition or application. To protect your privacy, we suggest that you delete such information from any documentation you send the office.

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

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[9] See Kim v. Quigg, 718 F. Supp 1280,1284 12 USPQ2d 1604, 1607(E.D. Va 1989).

address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Petitioner's current options

I. Petitioner may file a request for reconsideration.

Any request for reconsideration of this decision must be filed within **TWO MONTHS** of the mailing date of this decision. Any such petition for reconsideration must be accompanied by the $400 petition fee set forth in §1.17(h). After decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director. Accordingly, on request for reconsideration, it is extremely important the petitioner supply **any** and **all** relevant information and documentation in order to meet his burden of showing unavoidable delay. This includes statements by all persons with direct knowledge of the cause of the delay, setting forth the facts as they know them. If a request for reconsideration is filed, it must establish that the entire delay in the submission of the maintenance fee was unavoidable.

II. Petitioner may request a refund of the maintenance fee and surcharge which accompanied the petition.

Petitioner may a request a refund of the maintenance fee and surcharge by writing to the Office of Finance, Commissioner for Patents, P.O. Box 1450,Alexandria, VA 22313. A copy of this decision should accompany petitioner's request.

III. Petitioner may wish to file a petition under 37 CFR 1.378(c).

Petitioner may wish to consider filing a petition to reinstate the patent based on unintentional expiration under 37 CFR 1.378(c). The surcharge of for the unintentional petition under 37 CFR 1.378 (c) is $1,640. If petitioner has previously submitted the surcharge for unavoidable delay. The unavoidable surcharge ($700) can be applied to the unintentional surcharge ($1640). In general, a petition under 37 CFR 1.378 (c) needs to state that expiration of the patent was unintentional.

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.

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

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

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

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

MAILED

DEC 15 2010

OFFICE OF PETITIONS

In re Patent No. 7,744,555	:	DECISION ON REQUEST FOR
DIMAURO et al.	:	RECONSIDERATION OF
Issue Date: June 29, 2010	:	PATENT TERM ADJUSTMENT
Application No. 10/774,105	:	AND
Filed: February 6, 2004	:	NOTICE OF INTENT TO ISSUE
Attorney Docket No. DEP5229USNP	:	CERTIFICATE OF CORRECTION

This is a decision on the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705(d) AFTER PATENT ISSUANCE, filed August 29, 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 four hundred 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 seventy-six (476) days** is **GRANTED**.

The Office will charge the $200.00 fee set forth in 37 CFR 1.18(e) to the Deposit Account as authorized. 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 **four hundred seventy-six (476) 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 : 7,744,555 B2

DATED : Jun. 29, 2010 **DRAFT**

INVENTOR(S) : DIMAURO 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 874 days.

Delete the phrase "by 874 days" and insert – by 476 days--

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

Robert Moll
1173 St. Charles Court
Los Altos, CA 94024

Mail Date: 08/04/2010

Applicant	: Glen C. Shepherd	: DECISION ON REQUEST FOR
Patent Number	: 7645940	: RECALCULATION of PATENT
Issue Date	: 01/12/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/774,115	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/06/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1010** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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AUG 27 2010

OFFICE OF PETITIONS

DIGIMARC CORPORATION
9405 SW GEMINI DRIVE
BEAVERTON OR 97008

In re Patent No. 7,702,125	:	DECISION ON REQUEST
Levy, et al.	:	FOR
Issue Date: April 20, 2010	:	RECONSIDERATION OF
Application No. 10/774,312	:	PATENT TERM ADJUSTMENT
Filed: February 5, 2004	:	and
Atty. Docket No.P0930	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on May 12, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand, eight hundred and thirty-six (1,836) 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, six hundred and seventeen(1,617) 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 183 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 March 14, 2008, and ended April 20, 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 August 4, 2008, and April 22, 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 402 days, beginning on the date on which the notices of appeal to the Board of Patent Appeals and Interferences were filed, August 4, 2008, and ending on January 22, 2009—date the non-final Office Action was mailed—and December 7, 2009—the date the Notice of Allowance was mailed, respectively. Thus, the B delay is 768 days (1170 - 402). Accordingly, the patent term adjustment is 1,617 days (854 days of A delay +768 days of B delay - 0 days of overlap - 5 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 six hundred and seventeen **(1617)** 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 : 7,702,125 B2

DATED : Apr. 20, 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 (1619) days

Delete the phrase "by 1619 days" and insert – by 1617 days--

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OFFICE OF PETITIONS

DIGIMARC CORPORATION
9405 SW GEMINI DRIVE
BEAVERTON OR 97008

In re Patent No. 7,702,125 : DECISION ON REQUEST
Levy, et al. : FOR
Issue Date: April 20, 2010 : RECONSIDERATION OF
Application No. 10/774,312 : PATENT TERM ADJUSTMENT
Filed: February 5, 2004 :
Atty. Docket No. **P0930** :

This is a decision on the petition filed on September 27, 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 May 12, 2010. The original petition was treated as a petition under 37 CFR 1.705(d), and a decision was mailed on August 27, 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, six hundred and seventeen (1,617) 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 402 days which were consumed by Appellate review.

It follows that the decision to extend or adjust the patent term adjustment by one thousand, six hundred and seventeen (1,617) 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, six hundred and seventeen (1,617) 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 : 7,702,125 B2

DATED : Apr. 20, 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 (1619) days

Delete the phrase "by 1619 days" and insert – by 1617 days--

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ALEXANDRIA VA 22314

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OFFICE OF PETITIONS

In re Patent No. 7,025,320
Issue Date: April 11, 2006
Application No. 10/774,396
Filed: February 10, 2004
Attorney Docket No. 71071-0017

ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed June 30, 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 11, 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.

Petitioner has appointed a representative to conduct all business before the U.S. Patent and Trademark Office (Office). The Office will not engage in dual correspondence with petitioner and petitioner's representative. Accordingly, petitioner must conduct all future correspondence with this Office through the representative of record. If petitioner no longer wishes to be represented by the representative of record, then a revocation of the power of attorney or patent agent should be submitted. A correspondence address must be included on the correspondence instructing the Office where all future communications are to be mailed. *See* 37 CFR 1.33(a). Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

The patent file is being forwarded to Files Repository.

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

cc: RENNY BARNES
8146 CRESTRIDGE ROAD
FAIRFAX, STATION, VA 22039

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE
BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte BENJAMIN A. LAGRANGE and TIMOTHY B. LLOYD

Application 10/774,399
Technology Center 3700

DECISION ON PETITION

This is a decision on the "Petition Requesting Withdrawal of Erroneous Abandonment or In the Alternative to Revive an Unintentionally Abandoned Application," filed February 9, 2009 ("Petition"). The Petition seeks:

> Withdrawal of what is believed to be an erroneous abandonment [or] if it is determined that the Examiner's dismissal of the appeal and abandonment of this case was proper then ... revival of this unintentionally abandoned application.

Petition, pp. 1-2.

See 75 Fed. Reg. 15,690 (Mar. 30, 2010) for authority of the Chief Administrative Patent Judge.

FINDINGS

1. On March 8, 2008, Appellants filed an Appeal Brief.

2. On May 5, 2008, the Examiner issued a Notification of Non-Compliant Appeal Brief.

3. On June 5, 2008, Appellants filed a Replacement Appeal Brief.

4. On August 12, 2008, the Examiner issued a Second Notification of Non-Compliant Appeal Brief, noting that the summary of claimed subject matter was not in compliance with 37 C.F.R. § 41.37(c)(1)(v). Specifically, the Examiner held the Brief non-compliant because "[T]he reference numerals provided in parentheses need to appear immediately adjacent to the claim limitations that they refer to . . . ."

5. 37 C.F.R. § 41.37(c)(1)(v) provides:

> *Summary of claimed subject matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters.

6. On September 11, 2008, Appellants filed a Second Replacement Appeal Brief.

7. On December 9, 2008, the Examiner issued a Communication Re: Appeal dismissing the appeal and noting that the "corrected Appeal Brief filed September 11, 2008 did not overcome all of the reasons for noncompliance of which the Appellant was notified." The Communication also noted that the application had been abandoned.

8. On December 18, 2008, the SPE issued an Examiner-Initiated Interview Summary setting forth the substance of a telephonic interview between the SPE and Appellants' Attorney on December 16, 2008. In the interview, the SPE confirmed the correctness of the Examiner's actions.

9. On February 9, 2009, Appellants filed the present Petition and a Third Replacement Appeal Brief. The Brief was unsigned.

10. 37 C.F.R. § 1.4(d) requires that all papers submitted to the USPTO must be signed in handwriting or with an S-signature.

11. Review of the Third Replacement Appeal Brief reveals that except for the missing signature, the Brief is in compliance with applicable rules.

12. In the Petition, Appellants argue that the holding of abandonment should be withdrawn because the Second Replacement Appeal Brief was in compliance with 37 C.F.R. § 41.37(c)(1)(v) in respect to placement in the claims of citations to the specification and drawings. Petition, pp. 2-5.

13. As described above in Findings 4 and 8, the Examiner and SPE interpreted Rule 41.37(c)(1)(v) to require that such citations must immediately follow the recitation of each claim element.

14. In response to this interpretation, Appellants argue that prior to the Interview with the SPE –

> Nowhere is there a requirement that the reference characters must be repeated throughout a claim limitation so as to be adjacent to every conceivably possible claim element, as now required by the Examiner.

Petition, p. 4.

15. Alternatively, Appellants seek withdrawal of the holding of abandonment and an extension of time to respond to the Second Notification of Non-Compliant Appeal Brief because the Examiner's comment in such Notification concerning the required citations in the claims was ambiguous. Petition, p. 5.

16. The Second Notification of Non-Compliant Appeal Brief states that extensions of time for filing a response are available under 37 C.F.R. § 1.136, which, pursuant to § 1.136(a), includes extensions of time of up to five months from the original due date.

17. The original due date for filing a response to the Second Notification of Non-Compliant Appeal Brief was September 12, 2008. Thus, if the maximum extension of time available under Rule 1.136(a) of five months is added to this original due date, the due date for filing a replacement brief was February 12, 2009.

18. Also, alternatively, Appellants seek revival of the application on grounds that it was abandoned unintentionally. Petition, p. 6.

DISCUSSION

As described above, the Examiner and SPE have interpreted Rule 41.37(c)(1)(v) to require that for each claim element included in the Summary of Claimed Subject Matter, citations to the specification and drawings, where the element is described and illustrated, must immediately follow recitation of the element. This is a reasonable interpretation of the Rule, resulting in the greatest clarity of description of the claimed subject matter.

However, as expressed in the Second Notification of Non-Compliant Appeal Brief – "[T]he reference numerals provided in parentheses need to appear immediately adjacent to the claim limitations that they refer to . . . ." Finding 4 – the Rule is silent as to a requirement that it applies to **all** of the elements of each claim as set forth in the Summary of Claimed Subject Matter as opposed to selected claim features. Finding 14. Thus, as expressed in the Second Notification of Non-Compliant Appeal Brief, ambiguity exists as to the extent of applicability of the Rule.

As indicated above, Finding 9, the Third Replacement Appeal Brief, filed February 9, 2009, was filed within five months from the original due date for a response to the Second Notification of Non-Compliant Appeal

Brief. Further, except for a missing signature, the Third Replacement Appeal Brief is in compliance with applicable rules. Finding 11.

DECISION

In view of the foregoing, the Petition is GRANTED to the extent that the holding of abandonment is withdrawn and Appellants are granted a five month extension of time to file a response to the Second Notification of Non-Compliant Appeal Brief, or until February 12, 2009. Thus, the Third Replacement Appeal Brief, filed on February 9, 2009, was timely filed. The fee for such extension will be charged to the Account of Appellants' Attorney as authorized in the Petition, p. 5.

As indicated above, the Third Replacement Appeal Brief was unsigned. Appellants are given a period of one month from the mailing date hereof to submit a properly signed signature page for this Brief.

Michael R. Fleming
Chief Administrative Patent Judge

Chris Comuntzis
Nixon & Vanderhye P.C.
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808

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OFFICE OF PETITIONS

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MADISON, WI 53701-1497

In re Application of Vesterinen et al. :
Application No. 10/774,576 : On Application For
Filing Date: February 10, 2004 : Patent Term Adjustment
Attorney Docket No. 088245-0388 :

This is in response to the petition under 37 CFR 1.705(b) filed April 8, 2011.

Applicants submit the correct patent term adjustment to be indicated on the patent is two thousand two hundred ninety-eight (2,298) days, not one thousand seventy-three (1,073) 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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FLH/National Semiconductor Corporation
c/o Frommer Lawrence & Haug LLP
745 Fifth Ave.
NEW YORK NY 10151

Paper No.

MAILED

DEC 13 2010

OFFICE OF PETITIONS

In re Application of :
Perry Scott Lorenz : DECISION ON
Application No. 10/774,799 : PETITION
Filed: February 9, 2004 :
Attorney Docket No. 1361015-2059/P05790 :

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) filed September 28, 2010.

The petition is **GRANTED**.

The above-identified application was abandoned for failure to timely file a proper reply to the final Office action mailed March 26, 2010. This Office action set a shortened statutory period for reply of three (3) months from the mail date of the action. No reply having been received and no extension of time obtained, the application became abandoned effective June 27, 2010. The filing of the instant petition precedes the mailing of a courtesy Notice of Abandonment.

On petition, petitioner submitted a Request for Continued Examination (RCE) and submission under §1.114 (in the form of an amendment)(and RCE fee); paid the petition fee; and made 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 $1,110 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 2816 has been advised of this decision. The application is, thereby, forwarded to the examiner for consideration of the RCE and submission submitted on September 28, 2010.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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Paper No.

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

MAILED

SEP 30 2010

OFFICE OF PETITIONS

In re Application of :
Kari Alitalo :
Application No. 10/774,802 : ON APPLICATION FOR
Filed: February 9, 2004 : PATENT TERM ADJUSTMENT
Atty Docket No. 28967/34891.1 :

This is in response to the Corrected Application for Patent Term Adjustment Under 37 C.F.R. §1.705(b) filed January 28, 2010 (and February 1, 2010). Applicants submit that the correct patent term adjustment to be indicated on the patent is either one thousand seven hundred sixty-nine (1,769) days or one thousand six hundred seventy-five (1, 675) days. Applicants request this correction in part on the basis that the Office will take in excess of three years to issue this patent.

Applicants also maintain that the "A" delay pursuant to 37 CFR 1.702(a)(1), associated with the filing of a first Office action, should be calculated as 590 days, not 496 days.

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

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not

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

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

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

To the extent that applicant otherwise requests correction of the patent term adjustment at the time of mailing of the notice

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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.

of allowance, the application for patent term adjustment is **DISMISSED**.

Applicants maintain that the Office delay pursuant to 37 CFR 1.702(a)(1) is 590 days, not 496 days. Applicants contend that as the restriction requirement mailed August 18, 2006 was withdrawn on petition by applicant its mailing should not be used to calculate this delay. Rather, applicants state that the calculation should be based on the Office action of November 20, 2006, mailed 14 months and 590 days after the filing date of this application.

Applicants states that the above-identified application is not subject to a terminal disclaimer.

Applicants' argument has been considered, but not found persuasive. A notification under 35 U.S.C. 132 was mailed on August 18, 2006. On October 17, 2006, applicants filed a response to the restriction requirement. In response thereto, on November 20, 2006, the Office mailed a further Office action. On March 23, 2007 applicants filed a petition for withdrawal of the restriction requirement along with a response to the November 20, 2006 Office action. By decision mailed May 23, 2007, the petition was granted and the application was returned to the examiner for consideration of the response filed March 23, 2007 and action consistent with the decision, which rejoined certain claims. The decision did not expressly withdraw or vacate the Office action of August 18, 2006. The mailing of the decision on petition granting certain relief does not negate the fact that the Office took action in this application within the meaning of § 1.702(a)(1) on August 18, 2006. Accordingly, changing of the period of adjustment to 590 days for Office delay based on the mailing of the second Office action is not warranted.

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

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

The application is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent will include any additional patent term adjustment accrued for Office delay in issuing the patent after payment of the issue fee and all outstanding requirements having been met.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,843	02/09/2004	Tony Peled	24024-505 CON	9770

30623 7590 10/28/2010

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

EXAMINER	
LEAVITT, MARIA GOMEZ	
ART UNIT	PAPER NUMBER
1633	
MAIL DATE	DELIVERY MODE
10/28/2010	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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OCT 2 8 2010

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

In re Application of:	:
Peled et al.	:
Serial No.: 10/774,843	: PETITION DECISION
Filed: February 9, 2004	:
Attorney Docket No.: **24024-505 CON**	:

This is in response to the petition filed December September 7, 2010 under 37 CFR § 1.181, requesting reconsideration of the Advisory Action of August 17, 2010 wherein it was set forth the that claim amendments and Declaration would not be entered.

BACKGROUND

The examiner mailed a non-final Office action on September 21, 2009 setting a three month statutory limit for reply in response to an RCE. Claims 401, 411, 414, 416, 419, 422-424, 437, 438, 464, 465, 469-471 and 478-480 were pending and were rejected. Claims 401, 411, 414, 416, 419, 422-424, 437, 438, 464, 465, 469-471 and 478-480 remained rejected under 35 USC 103 (a) as being unpatentable over Brown over Block et al. Claims 437 and 438 remained rejected under 35 USC 103 (a) as being unpatentable over Brown over Block et al. as applied to claims 401, 411, 414, 416, 419, 422-424, 437, 438, 464, 465, 469-471 and 478-480 above, and further in view of Banasik et al. Claims 411, 465 and 478-480 were newly rejected under 35 USC 101 because the claimed invention if drawn to non-statutory subject matter. Claims 401, 414, 416, 419, 422-424, 437, 438, 464, 465, 469-471 were newly rejected under 35 USC 112, first paragraph, as failing to comply with the written description requirement.

On January 21, 2010, applicants submitted amendments and remarks addressing the rejections set forth in the Office action of September 21, 2009.

On February 22, 2010, applicants submitted supplemental amendment and a Declaration under 37 CFR 1.132.

On April 30, 2010, the examiner mailed a final Office action setting a three month statutory limit for reply. In this action, Claims 401, 411, 414, 416, 419, 422-424, 464, 465, 469-471 and 478-480 were pending and were rejected. Claims 401, 411, 414, 416, 419, 422-424, 464, 465, 469-

471 and 478-480 remain rejected under 35 USC 103 (a) as being unpatentable over Brown over Block et al.

On July 30, 201, applicants submitted an amendment after final and a Declaration under 37 CFR 1.132.

On August 17, 2010, the examiner mailed an Advisory Action denying entry of the amendment after final and the Declaration under 37 CFR 1.132.

In response thereto, applicants filed a petition on September 7, 2010 under 37 CFR § 1.181, requesting reconsideration of the Advisory Action of August 17, 2010 wherein it was set forth the that amendments and Declaration would not be entered.

DISCUSSION

The petition and the file history have been carefully considered.

In the petition filed on September 7, 2010, applicants argue "The decision not to enter and consider the claim amendments proposed in the Response is based on the Examiner's assertion that the additional limitations in the independent claims were not previously examined and required a new search *(See,* Advisory Action at point 3 on page 2 and cont. of point 3 on page 3). Applicants submit that this assertion is incorrect. Rather, Applicants submit that the subject matter of the amendments made in independent claims 401 and 411 encompass the subject matter of dependent claims 464 and 465; and as such, these amendments were previously examined by the Office and do not require a new search *(See,* Response at pages 2-4)."

Applicants also argue "The decision not to enter and consider the Declaration of Dr. Tony Peled under 37 C.F.R. § 1.132 filed with the Response is based on the Examiner's assertion that the after-final Declaration is not directed to a new rejection first made in the Final Office Action but rather to the 35 U.S.C. § 103 rejection previously of record. *(See,* Advisory Action at point 11 on page 2 and cont. of point 11 on page 3). Applicants submit that this assertion is incorrect. Rather, 37 C.F.R. § 1.116(e) provides that an affidavit or other evidence submitted after a final rejection may be admitted upon a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not presented earlier. Applicants submit that such good and sufficient reasons are present here. Specifically, Applicants submit that the July 2010 Declaration of Dr. Peled was specifically directed to the Examiner' s dismissal of a February 2010 Declaration of Dr. Peled and the Examiner's assertion, for the first time, in the Final Office Action that the evidence presented in that February 2010 Declaration was not statistically significant *(See,* Final Office Action at page 8). That is, the data/evidence provided in the July 2010 Declaration was not generally directed to the 35 U.S.C. § 103 rejection previously of record as asserted by the Examiner; but rather, evidence submitted to directly rebut the Examiner's statements first made in the Final Office Action *(See,* Response at page 7). As such, Applicants respectfully submit that the July 2010 could not have been presented earlier and is necessary to support the evidence provided in the February 2010 Declaration."

Applicants' arguments have been carefully considered but they are not persuasive. The refusal to enter the amendment after final was an appropriate action taken by the examiner. Specifically, the limitation of 'up to three weeks' is still recited in claims 464 and 465, and to reject the limitation of the claims only requires adding nicotinamide for less than three weeks. Also, 'up to' may or may not include the three week time point. The current amendment requires culturing three weeks or '**after** a three week culture period' (claim 411) (beyond three weeks not 'up to' anymore), and claim 401 requires 'three weeks' which is only one part of the scope that needed to searched. Thus, the amendment introduces new issues, one being a new search since it is a new range requirement. As regards the Declaration, when comparing the two declarations, the data presented is not the simple addition of error bars to show significance in the results. There is a different experimental design to show trends over a period of time, and arguments are presented that are more consistent with the new amendment to the claims about more prolonged exposure times.

Accordingly, in view of the evidence, it is not seen that the action taken in the Advisory Action of September 7, 2010 is in error.

DECISION

The petition is **DENIED.**

Any new or renewed petition must be filed within TWO MONTHS of the mail date of this decision.

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.

JStone

Jackie Stone
Director, Technology Center 1600

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)
7100662	2006-09-05	10774975	2004-02-09	02-5031

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

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.

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	/Bryan L. Loeffler/	Date (YYYY-MM-DD)	2011-06-13
Name	Bryan L. Loeffler	Registration Number	61810

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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In re Patent No. 7100662
Issue Date: September 5,2006
Application No. 10774975
Filed: February 9,2004
Attorney Docket No. 02-5031

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

This is a decision on the electronic petition, filed June 13,2011 ,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 13,2011 .
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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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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MAILED

JAN 13 2011

OFFICE OF PETITIONS

TAROLLI, SUNDHEIM, COVELL & TUMMINO LLP
1300 EAST NINTH STREET, SUITE 1700
CLEVELAND OH 44114

In re Patent No. 7,185,759 :
Ronald Rich :
Application No. 10/775,009 : NOTICE
Filed: February 9, 2004 :
Attorney Docket No. 16-595 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 on October 7, 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) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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

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MAR 24 2011

OFFICE OF PETITIONS

In re Application :
Janik :
Application No. 10/775,285 : PATENT TERM ADJUSTMENT
Filing or 371(c) Date: February 9, 2004 :
Dkt. No.: 088245-8261 :

This is in response to the application for patent term adjustment under 37 CFR 1.705(b), filed February 24, 2011.

Applicant submits that the correct patent term adjustment to be indicated on the patent is 816 days, not 572 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction on the basis that the Office will take in excess of three years to issue this patent.

Insofar 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 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.

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].

Receipt is hereby acknowledged of the required patent term adjustment application fee under 37 CFR 1.705(b) of $200.00. See, 37 CFR 1.18(e). As the fee is required, the request for refund is dismissed.

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

The application file is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

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

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
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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Maryam Imam and LSI Corporation
95 South Market Street
Suite 570
San Jose CA 95113

In re Application of: NEMAZIE et al.	)	
Application No. ~~10/755,523~~ **10/775,523**	)	Petition under 37 CFR 1.324
Attorney Docket No. SILICONSTOR-03US	)	
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

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.
10/775,523	02/09/2004	Sam Nemazie	SILICONSTOR-03US	1041

77541 7590 08/30/2010

Maryam Imam and LSI Corporation
95 South Market Street
Suite 570
San Jose, CA 95113

EXAMINER
LEE, CHUN KUAN

ART UNIT	PAPER NUMBER
2181	

NOTIFICATION DATE	DELIVERY MODE
08/30/2010	ELECTRONIC

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

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

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

mimam@mi-law.com
vmoitoso@ipxlaw.com
mshea@ipxlaw.com

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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. 10/775,523	)	Petition under 37 CFR 1.324
Attorney Docket No. SILICONSTOR-03US	)	
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

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ABELMAN FRAYNE & SCHWAB
666 THIRD AVENUE
NEW YORK, NY 10017-5621

MAILED

SEP 2 0 2010

OFFICE OF PETITIONS

In re Patent No. 7,164,942 :
Issue Date: January 16, 2007 :
Application No. 10/775,725 : NOTICE
Filed: February 9, 2004 :
Attorney Docket No. 206,444

This is in response to the paper filed July 19, 2010 under 37 CFR 1.28(c) seeking status as a large entity.

The request is **DISMISSED.**

The request received July 19, 2010 was not signed by an appropriate person.

37 CFR 1.33(b) states:

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

Inquiries related to this communication should be directed to Irvin Dingle at (571) 272-3210.

Irvin Dingle
Petitions Examiner
Office of Petitions

cc: Dennemeyer & Co LTD
Regent House Heaton Lane
Stockport Cheshire
England SK4 1BB

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ABELMAN FRAYNE & SCHWAB
666 THIRD AVENUE
NEW YORK, NY 10017-5621

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OFFICE OF PETITIONS

In re Patent No. 7,164,942 :
Issue Date: January 16, 2007 :
Application No. 10/775,725 : NOTICE
Filed: February 9, 2004 :
Attorney Docket No. 206,444

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
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P.O. Box 1450
Alexandria, VA 22313-1450
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December 6, 2010

Patent No. :7801813
Inventor(s) :10/775751
Issued :Sept. 21, 2010
Title :SELECTIVE ESCROW USING ELECTRONIC FUNDS TRANSFER

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.

Applicants' proposed request to change data in Col. 9, line 40 of claim 1 is not warranted. The changes as presented in the Letters Patent is the result of a decision made by the examiner during the time of allowance and is therefore considered in accordance with the records of the Patent and Trademark Office.

In view of the forgoing applicants' request in this matter is hereby denied.

Any inquiry concerning this communication should be directed to Ms. A. Green at (703) 756-1541.

Mary Diggs, Supervisor
Decisions & Certificates
of Correction Branch
(703) 756-1580 or (703) 756-1541

Katten Muchin Rosenman LLP
575 Madison Ave.
New York, New York 10022

/arg

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 02-26-11

TO SPE OF : ART UNIT 3691

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/775751 Patent No.: 7801813

CofC mailroom date: 02-14-11

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.

Comments: _____

_____

_____

_____

3691

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
MAR 16 2012
OFFICE OF PETITIONS

DOCKET CLERK
Kelly-Krause
PO BOX 12608
DALLAS TX 75225

In re Application of :
Yach et al. :
Application No. 10/775,817 :
Filed: February 10, 2004 :
Attorney Docket No. 1578.115 :
(11428-4-US-PAT) :
Title: APPARATUS, AND ASSOCIATED :
METHOD, FOR LOCKING AND IDENTIFYING :
A CHANGE LIST USED PURSUANT TO :
DATABASE SYNCHRONIZATION OPERATIONS :
IN A RADIO COMMUNICATION SYSTEM :

DECISION ON PETITION
PURSUANT TO
37 C.F.R. § 1.182

This is in response to the petition pursuant to 37 C.F.R. § 1.182, filed on August 24, 2011, requesting the withdrawal of a preveniently filed terminal disclaimer.

The petition pursuant to 37 C.F.R. § 1.182 requesting the withdrawal of a terminal disclaimer is **GRANTED**.

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R § 1.113 in a timely manner to the final Office action mailed July 20, 2007, which set a shortened statutory period for reply of three months. An after-final amendment was received on October 19, 2007 and an advisory action was mailed on November 14, 2007. No extensions of time under the provisions of 37 C.F.R § 1.136(a) were obtained, and no further responses were received. Accordingly, the above-identified application became abandoned on October 20, 2007. A notice of abandonment was mailed on March 28, 2008.

On May 1, 2008, Petitioner submitted a petition pursuant to 37 C.F.R. § 1.137(b) to revive this application, along with the petition fee, a Request for Continued Examination, the proper statement of unintentional delay, and both a terminal disclaimer pursuant to 37 C.F.R. § 1.137(b)(4) and the associated fee. The

petition pursuant to 37 C.F.R. § 1.137(b) was granted via the mailing of a decision on February 27, 2009, which indicated the aforementioned terminal disclaimer is unnecessary, and Office records show the fee associated therewith was refunded to Deposit Account No. 50-4515 on February 27, 2009.

With this petition, Petitioner has submitted the petition fee and a request that aforementioned terminal disclaimer be withdrawn.

The terminal disclaimer filed on May 1, 2008 is hereby **WITHDRAWN.**

The Technology Center will be notified of this decision. The Technology Center's support staff will notify the Examiner of this decision, so that the present application can receive further processing in due course.

Telephone inquiries *regarding this decision* should be directed to the undersigned at (571) 272-3225.[1] All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

It is noted the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the address of record. If Petitioner desires to receive future correspondence regarding this application, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to Petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence related to this application unless Change of Correspondence Address, Patent Form (PTO/SB/122) is submitted for the above-identified application. For Petitioner's convenience, a blank

---

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.

Change of Correspondence Address, Patent Form (PTO/SB/122), may be found at http://www.uspto.gov/web/forms/sb0122.pdf.

Paul Shanoski
Senior Attorney
Office of Petitions

cc: KELLY & KRAUSE, L.P.
6600 LBJ FREEWAY, SUITE 275
DALLAS, TX 75240

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11/23//10

TO SPE OF : ART UNIT 1796 (1700)

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/775,848 Patent No.: 7,683,107

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Ernest C. White, LPE
Randolph Sq. Ste 9D62A
703-756-1590

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.

_____

_____

_____

SPE _____ ART UNIT 1765

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110813

DATE : August 13, 2011

TO SPE OF : ART UNIT 1621

SUBJECT : Request for Certificate of Correction on Patent No.: 7304161

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:

/DANIEL M SULLIVAN/
Supervisory Patent Examiner.Art Unit 1621

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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MCHALE & SLAVIN, P.A.
2855 PGA BLVD
PALM BEACH GARDENS FL 33410

MAILED

JAN 11 2011

OFFICE OF PETITIONS

In re Application of :
Robert L. Doubler et al :
Application No. 10/776,008 : DECISION ON PETITION
Filed: February 9, 2004 :
Attorney Docket No. 2131.027 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 4, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the nonfinal Office action mailed March 30, 2007, is accepted as having been unintentionally delayed.

This application has been abandoned for an extended period of time. The U.S. Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting the statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." *See* Changes to Patent Practice and Procedure, 62 Fed. Reg., at 53160 and 53178; 1203 Off. Gaz. Pat. Office, at 88 and 103 (responses to comments 64 and 109) (applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the U.S. Patent and Trademark Office).

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

This application is being referred to Technology Center Art Unit 3733 for appropriate action by the Examiner in the normal course of business.

/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
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ADVANCED MICRO DEVICES, INC.
C/O VEDDER PRICE P.C.
222 N.LASALLE STREET
CHICAGO IL 60601

MAILED

MAR 21 2011

OFFICE OF PETITIONS

In re Application of :
Tuomi :
Application No. 10/776,032 : NOTICE
Filed: February 10, 2004 :
Attorney Docket No. 00100.06.0088 :

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) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20101216

DATE : December 16, 2010

TO SPE OF : ART UNIT 2469

SUBJECT : Request for Certificate of Correction on Patent No.: 7,376,739

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:

/Ian N. Moore/
Supervisory Patent Examiner, Art Unit 2469

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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PHARMACIA & UPJOHN
7000 Portage Road
KZO-300-104
KALAMAZOO MI 49001

MAILED
MAR 01 2012
OFFICE OF PETITIONS

In re Patent No. 7,452,913	:	DECISION ON REQUEST
Sun, et al.	:	FOR
Issue Date: November 18, 2008	:	RECONSIDERATION OF
Application No. 10/776,337	:	PATENT TERM ADJUSTMENT
Filed: February 12, 2004	:	and
Atty Docket No. PC28117A	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on January 15, 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 and fifty-one (1,051) 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 and fifty-one (1,051) 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, 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 receipt of the $200.00 fee required by 37 CFR 1.18(e). No additional fees are 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, one hundred and fifty-one (1,051) 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 : 7,452,913 B2

DATED : Nov. 18, 2008

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 (517) days

Delete the phrase "by 517 days" and insert – by 1051 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

Date Mailed : January 4, 2012

Patent No. :7761929
Inventor :Mascia
Patent Issued :Jul. 27, 2010
Title :PROTECTIVE PAD ASSEMBLY

Re: Request for Certificate of Correction

The Certificates of Correction Branch received your request to modify the drawings from what appears in the Letters Patent Grant.

Respectively, inspection of the application file reveals the drawings are considered in accordance with the records of this office.

In view of the foregoing, applicants request in this matter is hereby denied.

Any inquiries concerning this communication should be directed to Ms. A. Green at (571) 272-9005.

Mary Diggs, Supervisor
Decisions & Certificates
of Correction Branch
(703) 308-9390 or (571) 272-9005

Cesari and McKenna, LLP
88 Black Falcon Avenue
Boston MA 02210

/arg

UNITED STATES PATENT AND TRADEMARK OFFICE

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

DAVID W. HIGHET, VP & CHIEF IP COUNSEL
BECTON, DICKINSON AND COMPANY
(MORGAN, LEWIS & BOCKIUS, LLP)
1 BECTON DRIVE, MC 110
FRANKLIN LAKES NJ 07417-1880

MAILED

NOV 10 2010

OFFICE OF PETITIONS

In re Application :
Helen Vivian Hsieh et al. :
Application No. 10/776,643 : DECISION ON APPLICATION
Filed: February 12, 2004 : FOR PATENT TERM ADJUSTMENT
Attorney Docket No. P-5430-P1 :

This is in response to the PETITION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705 filed February 16, 2010. Applicant requests that the determination of patent term adjustment be corrected from 353 to 1433 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 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]

To the extent that applicant otherwise requests correction of the patent term adjustment at the time of the mailing of the Notice of Allowance, the application for patent term adjustment is **DISMISSED**.

Applicants argue that the period of 290 days Applicant delay is incorrect based on the following: the reduction of 44 days of applicant delay should instead be 75 days for the period of delay from July 10, 2004 to September 23, 2004 for the response filed to the Notice to File Missing Parts mailed May 10, 2004. Also, the reduction of 246 days should instead be 29 days for the period from February 4, 2007 to March 4, 2007 for the response filed to the Restriction Requirement mailed January 4, 2007.

Applicant's arguments have been considered, but not found to be persuasive.

Rule 1.704(b) sets forth, in pertinent part:

> an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period

[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.

> from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

Based upon 37 CFR 1.704(b), applicant delay in the amount of 44 days is correct for the response to the Notice to File Missing Parts filed September 23, 2004.

However, pursuant to 37 CFR § 1.704(c), circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

> (7) Submission of a reply having an omission (§1.135(c)), in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed;

It is undisputed that a reply was filed on March 5, 2007 to the January 4, 2007 Office Action, however, that reply had an omission and that omission was not vacated, thus a reply was still required. The omission was corrected on November 6, 2007, 88 days after the mailing of the Notice on May 10, 2007. Therefore a period of 88 days delay should have been accorded.

In view thereof, the correct determination of patent term adjustment for at the time of the mailing of the notice of allowance should be five hundred eleven (643 days attributable to examination delay minus 44 + 88 days 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 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
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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OCT 06 2010

OFFICE OF PETITIONS

KENYON & KENYON LLP
ONE BROADWAY
NEW YORK NY 10004

In re Patent No. 7,132,143 :
Issued: November 7, 2006 :
Application No. 10/776,863 : ON PETITION
Filed: February 11, 2004 :
Attorney Docket No. 12981/45102 :

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.

It is not apparent whether the person signing the instant petition was ever given a power of attorney or authorization of agent regarding this patent. In accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts. While, a courtesy copy of this decision is being mailed to the address given on the petition, 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
Petitions Examiner
Office of Petitions

cc: Kendal M. Sheets
CPA Global
225 Reinekers Lane, Suite 400
Alexandria, VA 22314

UNITED STATES PATENT AND TRADEMARK OFFICE

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DECHERT LLP
P.O. BOX 390460
MOUNTAIN VIEW CA 94039-0460

MAILED
SEP 14 2010
OFFICE OF PETITIONS

In re Application of	:	
Hansen et al.	:	DECISION ON APPLICATION
Patent Number: 7,713,738	:	FOR PATENT TERM ADJUSTMENT
Issue Date: 05/11/2010	:	and
Application No. 10/776934	:	NOTICE OF INTENT TO ISSUE
Filing or 371(c) Date: 02/10/2004	:	CERTIFICATE OF CORRECTION
Attorney Docket Number:	:	
366929-018US (396515)	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT INCLUDING REQUEST FOR RECONSIDERATION UNDER 37 C.F.R. § 1.705(d)," filed July 9, 2010, including a Statement Under 37 CFR 1.705(b)(2). Patentee submits that the correct patent term adjustment to be indicated on the patent is a minimum of 864 days.

The Application for Patent Term Adjustment Including Request for Reconsideration of Patent Term Adjustment ("PTA") under 37 CFR 1.705(b), is hereby **DISMISSED**.

On April 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 (PTA) to date is zero (0) days.

On June 29, 2009, applicants timely submitted a request for review of patent term adjustment[1]. The application for patent term adjustment as it relates to the Office's miscalculation of a four (4) month delay incurred by the Office in its non-final Office action, mailed April 17, 2007, pursuant to 37 CFR 1.702(a)(2), was dismissed in a Decision mailed March 24, 2010. The Decision dismissing the petition noted that the application file revealed that the non-final Office action, mailed April 17, 2007, addressed claims amended by applicants with the filing of the March 15, 2007 amendment and as such, the Office action was timely.

Patentee's file the present petition again assert that an entitlement to a period of adjustment of 322 days of Office delay in connection with a four (4) month delay incurred by the Office in its mailing of a non-final Office action, mailed April 17, 2007. Patentees provide that "[t]he only

[1] Office records show that the Issue Fee payment was received in the Office on June 29, 2009.

amendments made to the claims in Patentee's March 15, 2007 response was to add several sequence identifiers in order to comply with the sequence rules." Further to this, Patentees assert that the Office failed to calculate overlap in connection with the mailing of a non-final Office action, mailed April 17, 2007, "[a]s the period of 4 Month Delay ended on April 17, 2007, and the 3 Year Delay began February 11, 2007, Applicants submit that these periods overlap by 66 days.

Patentee's also disagree with the Office's calculation of Office adjustment of 194 days in connection with the failure to issue a patent not later than four months after the date on which the issue fee was paid pursuant to 37 CFR 1.702(a)(4). However, Patentee's agree that this period overlaps with the period of adjustment pursuant to 37 CFR 1.703(f).

Patentee's arguments have been carefully considered. A review of the application file history confirms that the non-final Office action mailed April 17, 2007, addressed claims amended by applicants with the filing of the March 15, 2007 amendment. As such, the non-final Office action was timely pursuant to 37 CFR 1.702(a)(2)[2].

Further to this, as the non-final Office action mailed April 17, 2007, was timely, there is no Office adjustment or overlap of 66 days with the period of adjustment pursuant to 37 CFR 1.703(f).

A review of the application file history also reveals that the Office included a 194-day adjustment of the patent term pursuant to 37 CFR 1.702(a)(4) in connection with the failure to issue a patent not later than four months after the date on which the issue fee was paid.

A further review of the application file history reveals that the Office errantly neglected to assess a reduction pursuant to 37 CFR 1.704(c)(8) in connection with the filing of an Information Disclosure Statement ("IDS") on March 23, 2009, after filing a reply to the final Office action on March 6, 2009. The reduction of 17 days, beginning on the day after the date the initial reply was filed, March 6, 2009, and ending on the date that the supplemental reply or other such paper was filed, March 23, 2009, is appropriate.

---

[2] The response filed January 20, 2006, was not fully responsive to the Restriction Requirement, mailed July 20, 2005. Applicants were so notified in a Notice of Non-Compliant Amendment, mailed April 20, 2006. Applicants filed a "Second Response to Restriction Requirement," on June 27, 2006, which was also non-compliant. The Office mailed a Notice to Comply With Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures ("Notice"), on September 19, 2006. Applicants reply to the Notice, filed March 15, 2007, amended claims 153, 160-165 and 167-168, in compliance with the Notice mailed September 19, 2006. The Office action mailed April 17, 2007, addressed, inter alia, claims 153, 160-165 and 167-168, which were amended in the March 15, 2007 amendment.

Moreover, applicants agree with the Office's calculation of delays pursuant to 37 CFR 1.704(c)(7), in connection with the filing of the responses on June 27, 2006; of 158 days and 86 days in connection with the filing of the amendments on June 27, 2006 and March 15, 2007 respectively. Application for PTA at p.4. 37 CFR 1.704(c)(7) reduces the period of reduction for the submission of a reply having an omission, which ends on the date that the reply or other paper correcting the omission was filed.

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) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **seven hundred seventy-seven (777) days** (Office adjustments of 1481 days (1186 days + 295 days) reduced by applicant delays of 510 days (92 days + 158 days + 86 days + 87 days + 50 days + 17 days + 20 days) reduced by overlap (194 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 : 7,713,738 B2

DATED : May 11, 2010

INVENTOR(S) : Hansen 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 794 days.

Delete the phrase "by 794 days" and insert – by 777 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED
JUL 06 2011
OFFICE OF PETITIONS

In re Patent No. 7,909,848	:	DECISION ON REQUEST FOR
Issued: March 22, 2011	:	RECONSIDERATION OF PATENT
Application No. 10/777,019	:	TERM ADJUSTMENT AND
Filed: February 11, 2004	:	NOTICE OF INTENT TO ISSUE
Attorney Docket No. 101896-234 (DEP5100CIP)	:	CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d) AFTER PATENT ISSUANCE" filed May 20, 2011, and on the "COMMUNICATION REGARDING PATENT TERM ADJUSTMENT", filed December 14, 2010, which are being treated as a petition under 37 CFR 1.705(d). Patentees request that the revised patent term adjustment for the above-identified patent be set at one thousand two hundred sixty-two (1262) days.

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

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **one thousand one hundred forty-six (1146) days**.

On March 22, 2011, Application No. 10/777,019 matured into Patent No. 7,909,848. Patentees timely filed the present request for reconsideration within two (2) months of the date the patent issued. See 37 CFR 1.705(d).

First, patentees dispute the reduction of 99 days associated with the filing of a "miscellaneous incoming letter" received in the Office on December 14, 2010. Patentees asserts that the paper filed on December 14, 2010, was a "Patent Term Adjustment disclosure letter" advising the USPTO that patentees were accorded 57 days of patent term for which they were not entitled. Patentees argue that this disclosure letter is not a basis for patent term reduction, and thus, the 99 days of applicant delay pursuant to 37 CFR 1.704(c)(10) is not warranted.

The Office concurs with patentees' assertion. A review of the application record confirms that no paper aside from the "COMMUNICATION REGARDING PATENT TERM ADJUSTMENT" was filed after the mailing of the notice of allowance. A request for reconsideration of the patent term adjustment indicated in the notice of allowance pursuant to 37 CFR 1.705(b) is not a paper for which its filing is considered a "failure to engage in reasonable efforts" within the meaning of 37 CFR 1.704(c)(10). Thus, it is concluded that the reduction of 99 days is not warranted and will be removed.

Second, patentees assert that the Office should have assessed a period of reduction for applicant delay pursuant to 37 CFR 1.704(c)(7) for submitting a reply having an omission. Patentees indicate that the period of adjustment should be reduced by 83 days, beginning on the day after the date the reply having the omission was filed, July 27, 2007, and ending on the date the reply correcting the omission was filed, October 17, 2007. The Office agrees with patentees' assertion. Accordingly, a period of reduction of 83 days will be entered.

Third, patentees argue:

> A final office Action was mailed February 8, 2008, and an Amendment and Response to the final Office Action was filed on March 13, 2008. In the Advisory Action mailed April 4, 2008, the amendment after final was *not* entered. A Notice of Appeal was filed April 18, 2008, and after a pre-appeal conference, the Examiner withdrew the final Office Action. A new, non-final Office Action was mailed on August 11, 2008. Since the final Office Action mailed February 8, 2008 was withdrawn, the USPTO should have mailed an Office Action no later than February 17, 2008,

> four months after the response filed on October 17, 2007. The Office Action was not mailed until August 11, 2008, 176 days late. The PTA was increased to account for a USPTO delay of 29 days, thus the PTA should be increased by an additional 147 days, for a total of 176 days to account for this delay by the USPTO.

Petition, 12/14/10, p. 2.

Initially, the Office notes that the final Office action mailed February 8, 2008, was "withdrawn", not "vacated." However, in essence, patentees argue that the final Office action of February 8, 2008, was "vacated", and as such the Office action of February 8, 2008, should be treated as not having been issued for purposes of determining whether the issuance of the patent was delayed due to the failure of the USPTO to respond to applicants' reply of October 17, 2007, within four months after the date on which the reply was filed. Patentees' arguments have been considered but are not persuasive.

The vacatur of an Office action sets aside or withdraws any rejection, objection or requirement in an Office action, as well as the requirement that the applicant timely reply to the Office action to avoid abandonment under 35 U.S.C. § 133. The vacatur of an Office action signifies that the Office action has been set aside, voided, or withdrawn as of the date of the vacating Office action or notice. The vacatur of an Office action, however, does **not** signify that the vacated Office action is void *ab initio* and is to be treated as if the USPTO had never issued the Office action. The patent examination process provided for in 35 U.S.C. §§ 131 and 132 contemplates that Office actions containing rejections, objections or requirements will be issued, and that the applicant will respond to these Office action, "with or without amendment." (35 U.S.C. § 132(a)). The mere fact that an examiner or other USPTO employee upon further reflection determines that an Office action, or that a rejection, objection or requirement in an Office action, is not correct and must be removed does not warrant treating the Office action as void *ab initio* and as if the USPTO had never issued the Office action.

The USPTO appreciates that there may be situations in which it is appropriate to treat an Office action or notice issued in an application as void *ab initio* and as if the USPTO had never

issued the Office action. However, these would be extremely rare situations, such as the issuance of an Office action or notice by an employee who does not have the authority to issue that type of Office action or notice, the issuance of an Office action or notice in the wrong application, or the issuance of an Office action or notice containing language not appropriate for inclusion in an official document. In essence, the situations in which it is appropriate to treat an Office action or notice issued in an application as void *ab initio* and as if the USPTO had never issued the Office action are the situations in which it is appropriate to expunge an Office action or notice from the USPTO's record of the application. That is simply **not** the case in this situation.

Pursuant to 35 U.S.C. § 154(b)(1)(A)(ii), patentees are entitled to day-to-day adjustment if the USPTO delays the issuance of a patent by failing to respond to a reply by the applicant within four months from the filing of the reply. The record of the above-identified patent indisputably indicates that the USPTO entered an Office action under 35 U.S.C. § 132, specifically a final Office action, on February 8, 2008, within four months of the filing of a reply on October 17, 2007. The fact that the Office later withdrew the final Office action of February 8, 2008, does not negate the fact that the Office responded within the meaning of 35 U.S.C. § 154(b)(1)(A)(ii) and 37 CFR 1.702(a)(2) on February 8, 2008, to the reply filed on October 17, 2007. Unless expunged from the record (which is not warranted in this situation), for purposes of calculating patent term adjustment, the Office action entered by the examiner on February 8, 2008, was properly used to determine whether the USPTO delayed the issuance of the above-identified patent by failing to respond to the reply of October 17, 2007, within four months from the filing of the reply under of 35 U.S.C. § 154(b)(1)(A)(ii) and 37 CFR 1.702(a)(2). *See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term*, 65 *Fed. Reg.* 54366 (Sept. 18, 2000) (final rule). Accordingly, no period of adjustment will be entered.

Fourth, patentees assert that the Office should have assessed a period of reduction of 121 days for applicant delay pursuant to 37 CFR 1.704(c)(8) for filing an Information Disclosure Statement on February 17, 2010 after the filing of a Request for Continued Examination on October 19, 2009. The Office concurs. The record does not support a conclusion that the examiner

expressly requested the IDS. Further, a review of the IDS, filed February 17, 2010, reveals that applicants did not include a proper statement under 37 CFR 1.704(d). Accordingly, a period of reduction of 121 days will be entered.

In view thereof, the patent term adjustment indicated in the patent is **one thousand one hundred forty-six (1146) days.**

The Office will charge the $200.00 fee set forth in 37 CFR 1.18(e) as authorized.

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **1146 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

Enclosures: Copy of DRAFT Certificate of Correction and Copy of PALM screen

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,909,848 B2

DATED : Mar. 22, 2011

INVENTOR(S) : Patel 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 (1251) days.

Delete the phrase "by 1251 days" and insert – by 1146 days--

Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 10/777,019

Filing or 371(c) Date:	02-11-2004	Overlapping Days Between {A and B} or {A and C}:	32
Issue Date of Patent:	03-22-2011	Non-Overlapping USPTO Delays:	1525
A Delays:	693	PTO Manual Adjustments:	-105
B Delays:	864	Applicant Delays:	274
C Delays:	0	Total PTA Adjustments:	1146

Patent Term Adjustment History **Explanation Of Calculations**

Number	Date	Contents Description	PTO (Days)	APPL (Days)	Start
136	06-29-2011	Adjustment of PTA Calculation by PTO		121	0
135	06-29-2011	Adjustment of PTA Calculation by PTO		83	0
134	06-29-2011	Adjustment of PTA Calculation by PTO	99		0
128.5	10-18-2009	PTA 36 Months	864		0.5
128	03-22-2011	Patent Issue Date Used in PTA Calculation			0
127	02-21-2011	Export to Final Data Capture			0
126	02-18-2011	Dispatch to FDC			0
125	02-18-2011	Dispatch to FDC			0
124	12-14-2010	Miscellaneous Incoming Letter		99	0
122	12-20-2010	Application Is Considered Ready for Issue			0
121	12-15-2010	Issue Fee Payment Verified			0
120	12-15-2010	Issue Fee Payment Received			0
119	10-29-2010	Finished Initial Data Capture			0
118	10-22-2010	Email Notification			0
117	10-22-2010	Mail Examiner Interview Summary (PTOL - 413)			0
115	09-17-2010	Export to Initial Data Capture			0
112	09-16-2010	Mail Notice of Allowance			0
111	09-13-2010	Issue Revision Completed			0

110	08-16-2010	Information Disclosure Statement considered			0
109	08-30-2010	Document Verification			0
108	08-30-2010	Notice of Allowance Data Verification Completed			0
107	08-30-2010	Case Docketed to Examiner in GAU			0
106	08-16-2010	Electronic Information Disclosure Statement		80	100
105	08-16-2010	Information Disclosure Statement (IDS) Filed			0
104	08-16-2010	Allowability Notice			0
103	06-12-2010	Paralegal TD Accepted			0
102	05-28-2010	Terminal Disclaimer Filed			0
101	06-03-2010	Date Forwarded to Examiner			0
100	05-28-2010	Response after Non-Final Action			0
99	02-17-2010	Reference capture on IDS			0
98	02-17-2010	Information Disclosure Statement (IDS) Filed			0
97	03-04-2010	Electronic Review			0
96	03-04-2010	Email Notification			0
95	03-04-2010	Mail Non-Final Rejection	13		85
94	03-01-2010	Non-Final Rejection			0
91	02-17-2010	Information Disclosure Statement considered			0
90	02-17-2010	Information Disclosure Statement (IDS) Filed			0
89	08-03-2009	Electronic Information Disclosure Statement		94	70
88	10-22-2009	Date Forwarded to Examiner			0
87	10-19-2009	Amendment Submitted/Entered with Filing of CPA/RCE			0
86	10-22-2009	Date Forwarded to Examiner			0
85	10-19-2009	Request for Continued Examination (RCE)			0
84	10-22-2009	Disposal for a RCE / CPA / R129			0

83	10-19-2009	Workflow - Request for RCE - Begin			0
82	10-09-2009	Email Notification			0
81	10-09-2009	Mail Examiner Interview Summary (PTOL - 413)			0
80	10-05-2009	Examiner Interview Summary Record (PTOL - 413)			0
79	09-04-2009	Electronic Review			0
78	09-04-2009	Email Notification			0
77	09-04-2009	Mail Final Rejection (PTOL - 326)	3		70
76	08-31-2009	Final Rejection			0
75	08-03-2009	Information Disclosure Statement considered			0
74	07-31-2009	Information Disclosure Statement considered			0
73	08-03-2009	Information Disclosure Statement (IDS) Filed			0
72	07-31-2009	Information Disclosure Statement (IDS) Filed			0
71	06-16-2009	Date Forwarded to Examiner			0
70	05-01-2009	Response after Non-Final Action			0
69	05-04-2009	Email Notification			0
68	05-04-2009	Mail Examiner Interview Summary (PTOL - 413)			0
67	04-28-2009	Examiner Interview Summary Record (PTOL - 413)			0
65	02-20-2009	Electronic Review			0
64	02-20-2009	Email Notification			0
63	02-20-2009	Mail Non-Final Rejection			0
62	02-17-2009	Non-Final Rejection			0
61	11-12-2008	New or Additional Drawing Filed			0
60	12-03-2008	Date Forwarded to Examiner			0
59	11-12-2008	Response after Non-Final Action		1	56
58	08-11-	Electronic Review			0

	2008			
57	08-11-2008	Email Notification		0
56	08-11-2008	Mail Non-Final Rejection	29	46
55	08-04-2008	Non-Final Rejection		0
54	05-21-2008	Date Forwarded to Examiner		0
53	05-21-2008	Mail Appeals conf. Reopen Prosec.		0
52	05-20-2008	Pre-Appeals Conference Decision - Reopen Prosecution		0
51	04-18-2008	Request for Pre-Appeal Conference Filed		0
50	04-18-2008	Notice of Appeal Filed		0
49	04-04-2008	Email Notification		0
48	04-04-2008	Mail Advisory Action (PTOL - 303)		0
47	03-31-2008	Advisory Action (PTOL-303)		0
46	03-13-2008	Amendment after Final Rejection		0
45	03-18-2008	Date Forwarded to Examiner		0
44	03-13-2008	Amendment after Final Rejection		0
43	02-12-2008	Electronic Review		0
42	02-09-2008	Email Notification		0
41	02-08-2008	Mail Final Rejection (PTOL - 326)		0
40	02-04-2008	Final Rejection		0
39	10-08-2004	Information Disclosure Statement considered		0
38	10-08-2004	Information Disclosure Statement (IDS) Filed		0
37	10-20-2007	Email Notification		0
36	10-19-2007	PG-Pub Issue Notification		0
35	10-18-2007	Date Forwarded to Examiner		0
34	10-17-2007	Response after Non-Final Action		0

33	10-17-2007	Electronic Review		0
32	10-16-2007	Email Notification		0
31	10-15-2007	Mail Miscellaneous Communication to Applicant		0
30	10-10-2007	Miscellaneous Action with SSP		0
29	07-30-2007	Date Forwarded to Examiner		0
28	07-26-2007	Response after Non-Final Action		0
27	05-07-2007	Mail Non-Final Rejection		0
26	04-30-2007	Non-Final Rejection		0
25	02-21-2007	Date Forwarded to Examiner		0
24	02-15-2007	Response to Election / Restriction Filed		0
23	01-19-2007	Mail Restriction Requirement	648	0.5
22	01-08-2007	Restriction/Election Requirement		0
21	10-12-2005	Case Docketed to Examiner in GAU		0
19	09-17-2004	Reference capture on IDS		0
18.7	09-17-2004	Information Disclosure Statement (IDS) Filed		0
18	09-17-2004	Information Disclosure Statement (IDS) Filed		0
17	05-07-2004	Reference capture on IDS		0
16.7	05-07-2004	Information Disclosure Statement (IDS) Filed		0
16	05-07-2004	Information Disclosure Statement (IDS) Filed		0
15	10-08-2004	Reference capture on IDS		0
14.7	10-08-2004	Information Disclosure Statement (IDS) Filed		0
14	10-08-2004	Information Disclosure Statement (IDS) Filed		0
13	02-18-2005	IFW TSS Processing by Tech Center Complete		0
12	02-18-2005	Case Docketed to Examiner in GAU		0
11	08-05-2004	Application Return from OIPE		0

10	08-05-2004	Application Return TO OIPE	0
9	08-05-2004	Application Dispatched from OIPE	0
8	08-06-2004	Application Is Now Complete	0
7	07-08-2004	Payment of additional filing fee/Preexam	0
6	07-08-2004	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	0
5	05-10-2004	Notice Mailed--Application Incomplete--Filing Date Assigned	0
4	03-19-2004	Cleared by OIPE CSR	0
3	03-19-2004	CASE CLASSIFIED BY OIPE	0
2	03-06-2004	IFW Scan & PACR Auto Security Review	0
1	02-11-2004	Initial Exam Team nn	0
0.5	02-11-2004	Filing date	0

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1940 DUKE STREET
ALEXANDRIA VA 22314

MAILED

FEB 03 2011

OFFICE OF PETITIONS

In re Patent No. 7,848,558	:	
Issued: December 7, 2010	:	
Application No. 10/777,041	:	ON PETITION
Filed: February 13, 2004	:	
Attorney Docket No. 248939US20	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed December 21, 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.

It is not apparent whether the person signing the instant petition was ever given a power of attorney or authorization of agent regarding this patent. In accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts.

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
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Alexandria, VA 22313-1450
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Nixon Peabody, LLP
401 Ninth Street, NW
Suite 900
Washington, DC 20004

MAILED

NOV 05 2010

OFFICE OF PETITIONS

In re Application of :
Bijan Tadayon et al. :
Application No. 10/777,044 : DECISION ON PETITION
Filed: February 13, 2004 : TO WITHDRAW
Attorney Docket No. 111325-234900 : 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 10, 2010.

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 Jeffrey L. Costellia and all attorneys/agents of record has been revoked by the assignee of the patent application on September 16, 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 Kimberly Inabinet at 571-272-4618.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Reed Smith, LLP
P.O. Box 488
Pittsburgh, PA 15230

UNITED STATES PATENT AND TRADEMARK OFFICE

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SANTA ANA, CA 92705

MAILED

JAN 21 2011

OFFICE OF PETITIONS

In re Patent No. 7,057,510 :
Issue Date: June 6, 2006 :
Application No. 10/777,272 : ON PETITION
Filed: February 11, 2004 :
Patentee(s) Anthony C. Maniaci :

This is a decision on the petition under 37 CFR 1.378(c), filed October 12, 2010 and supplemented on December 8, 2010, 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.

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

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

Irvin Dingle
Petitions Examiner
Office of Petitions

cc: F. Eugene Logan
202 Fashion Lane, Suite 201
Tustin, CA 92780

UNITED STATES PATENT AND TRADEMARK OFFICE

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ROBERT A. KENT
P.O. BOX 1431
DUNCAN OK 73536

MAILED

AUG 3 1 2010

OFFICE OF PETITIONS

In re Application of :
Nguyen et al. :
Application No. 10/777,412 : ON PETITION
Filed: February 12, 2004 :
Attorney Docket No. 2002-IP-006415U1P1D2 :

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed July 27, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Appeal Brief, (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 1796 for further processing.

Liana Walsh
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)
7293417	2007-11-13	10777506	2004-02-11	

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

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.

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	/j m gilbreth/	Date (YYYY-MM-DD)	2011-12-31
Name	j m gilbreth	Registration Number	33388

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. 7293417
Issue Date: November 13,2007
Application No. 10777506
Filed: February 11,2004
Attorney Docket No. 27620/02

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

This is a decision on the electronic petition, filed December 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 December 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
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MAILED
JUN 20 2011
OFFICE OF PETITIONS

DANIEL B. SCHEIN, PH.D., ESQ., INC.
P. O. BOX 68128
Virginia Beach VA 23471

In re Patent No. 7,261,105 :
Issue Date: August 28, 2007 :
Application No. 10/777,772 : NOTICE
Filed: February 12, 2004 :
Attorney Docket No. 10437-69 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed May 2, 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 petition is **GRANTED**.

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

This file is being forwarded to Files Repository.

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

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MERCK
C/O DNAX
LEGAL DEPARTMENT
901 CALIFORNIA AVENUE
PALO ALTO, CA 94304

MAILED
SEP 09 2010
OFFICE OF PETITIONS

In re Patent of Timans et al. :
Patent No. 7,579,440 :
Issue Date: August 25, 2009 :
Application No. 10/777,790 :
Filing Date: February 11, 2004 :
Attorney Docket No. DX01040K3B :

DECISION ON REQUEST FOR CERTIFICATE OF CORRECTION

This letter is in response to the "REQUEST FOR CERTIFICATE OF CORRECTION PURSUANT TO 35 U.S.C. §254" filed May 14, 2010, requesting correction of the patent term adjustment indicated in the patent. Patentees request the patent term adjustment read "834 days" instead of "858 days."

The request is **DISMISSED**.

Patentee is given **THIRTY (30) DAYS** to respond to this decision. Extensions of time will NOT be granted under 37 C.F.R. § 1.136(a).

The patent issued on August 25, 2009. The patent indicated the patent term adjustment was 579 days. A "Request for Recalculation of Patent Term Adjustment in View of *Wyeth*" was filed February 5, 2010. On April 20, 2010, the Office mailed a decision responding to the February 5, 2010 request. The decision stated a certificate of correction would be issued indicating the patent term adjustment is 858 days. The instant request for reconsideration was filed May 14, 2010.

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

[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).

> 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 if one of the previously identified exceptions do not 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 or less than the adjustment that the applicant believes to be appropriate.[3]

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 834 days is dismissed.

The Certificates of Correction Branch will be informed of the instant decision and will issue a certificate of correction listing a patent term adjustment of **858** days pursuant to the decision mailed April 20, 2010.

---

[2] Id. at 42079-42080.

[3] Id. at 42080.

Telephone inquiries specific to this decision 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

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

ADVANCED MICRO DEVICES, INC.
C/O VEDDER PRICE P.C.
222 N.LASALLE STREET
CHICAGO, IL 60601

Mail Date: 10/07/2010

Applicant	: Larry D. Seiler	: DECISION ON REQUEST FOR
Patent Number	: 7656417	: RECALCULATION of PATENT
Issue Date	: 02/02/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/777,842	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/12/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **469** 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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FENWICK & WEST LLP
SILICON VALLEY CENTER
801 CALIFORNIA STREET
MOUNTAIN VIEW CA 94041

MAILED

FEB 14 2011

OFFICE OF PETITIONS

In re Patent No. 7,225,275	:	
Issued: May 29, 2007	:	
Application No. 10/777,912	:	ON PETITION
Filed: February 11, 2004	:	
Attorney Docket No. 19675-08643	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed December 22, 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.

It is not apparent whether the person signing the instant petition was ever given a power of attorney or authorization of agent regarding this patent. In accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts.

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

JAMES R. THEIN
2231 CRYSTAL DRIVE
SUITE 105
ARLINGTON VA 22202

MAILED
MAR 27 2012
OFFICE OF PETITIONS

In re Patent No. 7,311,483 :
Issue Date: December 25, 2007 :
Application No. 10/778,045 : ON PETITION
Filed: February 17, 2004 :
Title: EDGE PROTECTOR FOR CARGO :

This is a decision on the petition under 37 CFR 1.378(c), filed February 13, 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 25, 2011 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.

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

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

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

cc: PHILIP L. BATEMAN
P.O. BOX 1105
DECATUR, IL 62525

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	:	
Christopher W. Wesley et al.	:	
Application No. 10/778,374	:	DECISION ON PETITION
Filed: February 13, 2004	:	TO WITHDRAW
Attorney Docket No. CLAR 106-1	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 16, 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 there was no forwarding correspondence address. The forwarding address should be that of 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 current 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
www.uspto.gov

Decision Date : December 1, 2011

In re Application of :

Christopher Wesley

Application No : 10778374

Filed : 13-Feb-2004

Attorney Docket No : 4001-0019

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	10778374
Filing Date	13-Feb-2004
First Named Inventor	Christopher Wesley
Art Unit	2445
Examiner Name	KENNETH COULTER
Attorney Docket Number	4001-0019
Title	Techniques for modifying the behavior of documents delivered over a computer network

◉ 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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

MT.

Paper No.: _____

DATE : April 5, 2011

TO SPE OF : ART UNIT 2441
SUBJECT : Request for Certificate of Correction for Appl. No. 10/778516 patent No.:7673021
C of C mailroom date:--03-31-11

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

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

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

Magdalene Talley

Certificates of Correction Branch

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.

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

Comments: _____

/Wing F. Chan/ 2441

SPE **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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

DINSMORE & SHOHL, LLP
FIFTH THIRD CENTER
ONE SOUTH MAIN STREET
SUITE 1300
DAYTON, OH 45402

Mail Date: 06/20/2011

Applicant	: Stephan Sattler	: DECISION ON REQUEST FOR
Patent Number	: 7666357	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/778,586	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/13/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1195** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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STATTLER-SUH PC / NETLOGIC
60 SOUTH MARKET STREET
SUITE 480
SAN JOSE CA 95113

MAILED

NOV 22 2010

OFFICE OF PETITIONS

In re Application of :
Marc J. Loinaz, et al. :
Application No. 10/778,635 :
Filed: February 13, 2004 :
Attorney Docket No. AELU.P0008 :

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 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) 272-2991.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MORRISON & FOERSTER LLP
755 PAGE MILL RD
PALO ALTO CA 94304-1018

MAILED

SEP 27 2010

OFFICE OF PETITIONS

In re Application of :
Ryan et al. :
Application Number: 10/778,640 :
Filing Date: 02/13/2004 :
Attorney Docket Number: :
544022000100 :

ON APPLICATION FOR
PATENT TERM ADJUSTMENT

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705, filed on June 8, 2010, which is treated as a petition under 37 CFR 1.705(b). Applicants request that the determination of patent term adjustment be increased by 401 days from 699 days to 1100 days. Applicants request this correction, in part, on the basis that the Office will take in excess of three years to issue this patent.

The request is **GRANTED TO THE EXTENT INDICATED**.

To the extent 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.

To the extent that the instant application for patent term adjustment requests reconsideration of the PTA at the time of the mailing of the Notice of Allowance, the request is **GRANTED to the extent indicated**

The Office has updated the PALM and PAIR screens to reflect that the revised Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is 589 days. A copy of the updated PAIR screen, showing the revised determination, is enclosed.

On March 8, 2010, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. Applicant was advised that the patent term adjustment to date was 699 days (839 days of PTO delay and 140 days of applicant delay).

The instant application for patent term adjustment was timely filed.[2]

Applicants aver that an additional period of reduction of 39 days for applicant delay should be entered for the filing of a supplemental reply on September 21, 2009.

Upon review, applicants are correct, to a point.

37 CFR 1.704(c)(8) states that circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping: Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed.

On August 13, 2009, a reply to a non-final Office action was filed. On September 21, 2009, 39 days after the day after the date the reply was filed, a supplemental reply consisting of an

[2] PALM Records indicate that the issue fee was paid on June 8, 2010.

Information Disclosure Statement (IDS) was filed. The IDS did not include the statement set forth at 37 CFR 1.704(d). Accordingly, entry of a period of reduction of 39 days for applicant delay is warranted.

It is further noted that on November 12, 2008, a supplemental reply was filed, 71 days after the day after the date an amendment was filed, September 2, 2008. Applicant states that this supplemental reply was expressly requested by the examiner. However, there is nothing in the record to indicate that this supplemental reply was, in fact, expressly requested by the examiner. Accordingly, entry of an additional period of reduction of 71 days under 37 CFR 1.704(c)(8) for applicant delay is warranted.

In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance is 589 days (839 days of Office delay less 250 (140 + 71 + 39) days of applicant delay).

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

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

The application is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.

Anthony Knight
Director
Office of Petitions

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

Application Number*: 10778640 Search Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application: 10778640

Application Filing Date	02/13/2004	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	839
A Delays	839	PTO Manual Adjustment	-110
B Delays	0	Applicant Delay (APPL)	140
C Delays	0	Total PTA (days)	589

* - 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	09/25/2010		PO28	Adjustment of PTA Calculation by PTO		110	0
94	03/08/2010		MN/=.	Mail Notice of Allowance			0
93	03/03/2010		N/=.	Notice of Allowance Data Verification Completed			0
92	02/26/2010		CNTA	Notice of Allowability			0
89	01/23/2010		FWDX	Date Forwarded to Examiner			0
88	01/21/2010		A.NE	Amendment after Final Rejection			0
87	01/12/2010		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
86	01/07/2010		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
85	11/23/2009		MCTFR	Mail Final Rejection (PTOL - 326)			0
84	11/20/2009		CTFR	Final Rejection			0
83	09/21/2009		IDSC	Information Disclosure Statement considered			0
81	09/21/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
78	09/14/2009		FWDX	Date Forwarded to Examiner			0
82	08/13/2009	08/13/2009	M844	Information Disclosure Statement (IDS) Filed			77
80	08/13/2009		IDSC	Information Disclosure Statement considered			0
79	08/13/2009		AF/D	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received			0
77	08/13/2009	05/13/2009	A...	Response after Non-Final Action		92	70
76	08/13/2009		XT/G	Request for Extension of Time - Granted			0
75	08/13/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
74	05/20/2009		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
73	05/14/2009		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
70	02/13/2009	01/02/2009	MCTNF	Mail Non-Final Rejection	42		56
69	02/12/2009		CTNF	Non-Final Rejection			0
68	11/19/2008		FWDX	Date Forwarded to Examiner			0
67	11/12/2008		SA..	Supplemental Response			0
59	09/06/2008		FWDX	Date Forwarded to Examiner			0
57	09/06/2008		FWDX	Date Forwarded to Examiner			0
55	09/06/2006		ABN9	Disposal for a RCE / CPA / R129			0
64	09/02/2008		IDSC	Information Disclosure Statement considered			0
61	09/02/2008		AF/D	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received			0
60	09/02/2008		M844	Information Disclosure Statement (IDS) Filed			0
58	09/02/2008		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
56	09/02/2008		RCEX	Request for Continued Examination (RCE)			0
54	09/02/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
53	09/02/2008		BRCE	Workflow - Request for RCE - Begin			0
52	08/22/2008		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
51	08/20/2008		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
50	06/06/2008		MCTFR	Mail Final Rejection (PTOL - 326)			0
49	06/06/2008		CTFR	Final Rejection			0
42	04/01/2008		FWDX	Date Forwarded to Examiner			0
47	02/07/2008	02/07/2008	M844	Information Disclosure Statement (IDS) Filed			41
46	02/07/2008		IDSC	Information Disclosure Statement considered			0
41	02/07/2008	12/21/2007	A...	Response after Non-Final Action		48	35
40	02/07/2008		XT/G	Request for Extension of Time - Granted			0
39	02/07/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
38	01/23/2008		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
37	01/09/2008		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
36	01/08/2008		DOCK	Case Docketed to Examiner in GAU			0
35	09/21/2007		MCTNF	Mail Non-Final Rejection			0
34	09/17/2007		CTNF	Non-Final Rejection			0
30	08/09/2007		FWDX	Date Forwarded to Examiner			0
33	07/30/2007		IDSC	Information Disclosure Statement considered			0
32	07/30/2007		RCAP	Reference capture on IDS			0
31	07/30/2007	07/30/2007	M844	Information Disclosure Statement (IDS) Filed			29
29	07/30/2007		ELC.	Response to Election / Restriction Filed			0
28	07/30/2007		XT/G	Request for Extension of Time - Granted			0
27	07/30/2007		WIDS	Information Disclosure Statement (IDS) Filed			0
26	06/19/2007	04/13/2005	MCTRS	Mail Restriction Requirement	797		-1
25	06/16/2007		CTRS	Requirement for Restriction / Election			0
22	09/14/2006		DOCK	Case Docketed to Examiner in GAU			0
21	05/02/2006		DOCK	Case Docketed to Examiner in GAU			0
20	01/19/2005		DOCK	Case Docketed to Examiner in GAU			0
24	09/27/2004		IDSC	Information Disclosure Statement considered			0
19	09/27/2004		RCAP	Reference capture on IDS			0
18.7	09/27/2004		M844	Information Disclosure Statement (IDS) Filed			0
18	09/27/2004		WIDS	Information Disclosure Statement (IDS) Filed			0
17	09/23/2004		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
14	08/10/2004		WRDIPE	Application Return from OIPE			0
13	08/10/2004		COMP	Application Is Now Complete			0
12	08/10/2004		RDIPE	Application Return TO OIPE			0
11	08/10/2004		WRDIPE	Application Return from OIPE			0
10	08/10/2004		RDIPE	Application Return TO OIPE			0
9	08/09/2004		OIPE	Application Dispatched from OIPE			0
8	08/09/2004		COMP	Application Is Now Complete			0
7	07/14/2004		ADDFLFEE	Additional Application Filing Fees			0
6	07/14/2004		OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic			0
5	05/12/2004		INCD	Notice Mailed--Application Incomplete--Filing Date Assigned			0
23	04/23/2004		IDSC	Information Disclosure Statement considered			0
16	04/23/2004		RCAP	Reference capture on IDS			0
15.7	04/23/2004		M844	Information Disclosure Statement (IDS) Filed			0
15	04/23/2004		WIDS	Information Disclosure Statement (IDS) Filed			0
4	03/22/2004		L194	Cleared by OIPE CSR			0
3	03/22/2004		CLSS	CASE CLASSIFIED BY OIPE			0
2	03/03/2004		SCAN	IFW Scan & PACR Auto Security Review			0
1	02/13/2004		IEXX	Initial Exam Team nn			0

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OFFICE OF PETITIONS

MORRISON & FOERSTER LLP
755 PAGE MILL RD
PALO ALTO CA 94304-1018

In re Patent No. 7,824,709	: DECISION ON REQUEST
Ryan et al.	: FOR
Issue Date: 11/02/2010	: RECONSIDERATION OF
Application No. 10/778,640	: PATENT TERM ADJUSTMENT
Filing or 371(c) Date: 02/13/2004	: and
Atty Docket No.	: NOTICE OF INTENT TO ISSUE
544022000100	: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on December 15, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand one hundred twenty-five (1125) 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 twenty-five (1125) days is **GRANTED**.

Patentee asserts that no additional petition fee is due. As the request for reconsideration of the period of reduction of 20 days of applicant delay for the filing of an amendment or other paper after the mailing of a notice of allowance, pursuant to 37 CFR 1.704(c)(10), for the supplemental IDS filed on May 28, 2010, was not raised in the initial application under 37 CFR 1.705(b), the fee under § 1.18(e) is due with this petition. 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 one hundred twenty-five (1125)** days.

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

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,824,709 B2

DATED : **Nov. 2, 2010** **DRAFT**

INVENTOR(S) : Ryan 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 1034 days.

Delete the phrase "by 1034 days" and insert – by 1125 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

KRIEG DEVAULT LLP
ONE INDIANA SQUARE
SUITE 2800
INDIANAPOLIS IN 46204-2079

In re Application of :
MITAL et al. :
Application No. 10/778,651 : DECISION ON PETITION
Filed: 02/12/2004 :
Attorney Docket No. FLTW-22 :

This is a decision on the renewed petition under 37 CFR 1.183, filed June 18, 2010, seeking waiver of the requirement that a supplemental declaration be executed by the named inventors pursuant to 37 CFR 1.67(a).

On renewed petition, petitioners established that inventor Huang cannot be located to sign the supplemental declaration. Furthermore, petitioners submitted a supplemental declaration signed by all of the available inventors on behalf of non-signing inventor Huang.

In view of the efforts recounted in the petition to obtain the signature of inventor Huang, it is agreed that justice would be served by waiving the requirement for his signature on the supplemental declaration. The supplemental declaration has been accepted on petition. Accordingly, the renewed petition under 37 CFR 1.183 is **granted.**

An extension of time for response within the second month is necessary for the petition to be considered timely filed. Accordingly, the Office will charge a $490.00 extension fee to the Deposit Account as authorized.

The application is being forwarded to the Technology Center Art Unit 3748.

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : November 2, 2010

TO SPE OF : ART UNIT 2454 - SPE

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/778,749 Patent No.: 7,370,102 B1

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

Antonio Johnson

Should the Related U.S. Application Data be inserted as requested by applicant?
See COCIN dated 2-10-2010

_____
Certificates of Correction Branch
(571)272-0483

Thank You For Your Assistance

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

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

Comments: _____

_____

_____

_____ SPE Art Unit 2454

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

SPE Art Unit

PTO/SB/44 (09-07)
Approved for use through 08/31/2010. OMB 0651-0033
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,370,102

APPLICATION NO.: 10/778,749

ISSUE DATE : May 6, 2008

INVENTOR(S) : Jie Chu 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:

Insert the following at Page 1, below "(22) Filed: Feb. 13, 2004"

-Related U.S. Application Data

(63) Continuation of Application No. 09/213,304, filed on December 15, 1998, now Pat. No. U.S. 6,718,376.-

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

PATENT CAPITAL GROUP
6119 McCommas Blvd.
Dallas, Tx 75214

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.

UNITED STATES PATENT AND TRADEMARK OFFICE

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ZILKA-KOTAB, PC
P.O. BOX 721120
SAN JOSE, CA 95172-1120

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APR 01 2011

OFFICE OF PETITIONS

In re Application of
Williams et al.
Application No. 10/778,779
Filed: February 13, 2004
Attorney Docket No. NAI1P552/04.047.01

DECISION ON PETITION
TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 25, 2011.

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

A review of the file record indicates that on March 10, 2011 the power of attorney to Zilka-Kotab, PC 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
Petitions Examiner
Office of Petitions

cc: Patent Capital Group
6119 McCommas Blvd
Dallas TX 75214

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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ADVANCED MICRO DEVICES, INC.
C/O VEDDER PRICE P.C.
222 N.LASALLE STREET
CHICAGO, IL 60601

Mail Date: 10/07/2010

Applicant	: Konstantine Iourcha	: DECISION ON REQUEST FOR
Patent Number	: 7643679	: RECALCULATION of PATENT
Issue Date	: 01/05/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/778,902	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/13/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1004** 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

K&L Gates LLP
P.O. Box 1135
CHICAGO IL 60690

In re Patent No. 7,740,534
Issued: June 22, 2010
Application No. 10/778,984
Filed: February 13, 2004
Dkt. No.: 3718582-00106

: DECISION ON APPLICATION FOR
: PATENT TERM ADJUSTMENT and
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION
:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)," filed August 20, 2010. Patentee asserts 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 834 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 834 days is **GRANTED**.

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 834 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 : 7,740,534

DATED : June 22, 2010 **DRAFT**

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 861 days

Delete the phrase "by 861 days" and insert – by 834 days--

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Paper No.

Foley & Lardner LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON WI 53701-1497

MAILED
FEB 02 2012
OFFICE OF PETITIONS

In re Application of :
Gonzalez-Cadavid et al. :
Application No. 10/779,069 : ON APPLICATION FOR
Filed: February 13, 2004 : PATENT TERM ADJUSTMENT
Atty Docket No. 6212P003 :

This is in response to the RECONSIDERATION OF PATENT TERM EXTENSION filed January 23, 2012. Applicant submits that the correct patent term adjustment to be indicated on the patent is five hundred ninety-five (595) days. Applicant requests this correction solely on the basis that the Office will take in excess of three years to issue this patent.

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

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

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

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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MAY 10 2011

OFFICE OF PETITIONS

Leason Ellis LLP
81 Main Street
Suite 503
White Plains NY 10601

In re Application of :
Atanas Russinov Djananov et al. :
Application No. 10/779,173 : DECISION ON PETITION
Filed: February 13, 2004 :
Attorney Docket No. 2974/2248-US4 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 17, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The 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 June 2, 2010, three (3) months 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 41.37(b). As no claim was allowed, the application became abandoned on August 3, 2010. See MPEP 1215.04. A Notice of Abandonment was mailed January 31, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of RCE (Request for Continued Examination), with the required fee of $405, (2) the petition fee of $810, and (3) a proper statement of unintentional delay. Accordingly the RCE is accepted as being unintentionally delayed.

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.

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

This application is being referred to the Technology Center AU 1618 for appropriate action in the normal course of business for processing of the RCE received March 17, 2011.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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In re Patent No. 7275934
Issue Date: October 2,2007
Application No. 10779188
Filed: February 14,2004
Attorney Docket No. 210.0002 (Smyth)

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

This is a decision on the electronic petition, filed April 4,2012 ,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 April 4,2012 .
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)
7275934	2007-10-02	10779188	2004-02-14	210.0002

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

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.

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	/ Daniel Kim /	Date (YYYY-MM-DD)	2012-04-04
Name	Daniel Kim	Registration Number	32250

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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Saul Epstein
14558 Deervale Place
Sherman Oaks CA 91403

MAILED
JUN 10 2011
OFFICE OF PETITIONS

In re Application of :
Stephen Kurtin :
Application No. 10/779,198 : NOTICE
Patent No. 6,893,124 :
Filed: February 13, 2004 :
Attorney Docket No.

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed May 24, 2011.

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-2783.

/Tredelle D. Jackson/
Paralegal Specialist
Office of Petitions

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FEB 23 2011

OFFICE OF PETITIONS

GARY BARRON
1221 WHITTER
PASADENA, TX 77505

In re Patent of Barron :
Patent No. 7,044,368 :
Issue Date: May 16, 2006 : Letter
Application No. 10/779,308 :
Filing Date: February 17, 2004 :
For: Multi-Functional Data Card :

Request for Information

This letter responds to the petition filed September 27, 2010.

The surcharge required when submitting a petition under 37 CFR 1.378(c) is $1,640. Petitioner also submitted $2,130 on September 27, 2010. The payment appears to include $490 for the required maintenance fee and $1,640 for the surcharge. In view of the $2,130 payment, Petitioner appears to be seeking relief under 37 CFR 1.378(c). However, the petition form filed by Petitioner is titled, with emphasis added, "Petition to Accepted *Unavoidably* Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(*b*)."

The Office requests Petitioner clearly indicate the type of petition Petitioner wants considered. In other words, should the Office treat the petition as a petition under 37 CFR 1.378(b) or as a petition under 37 CFR 1.378(c)?

Petitioner should submit the requested information within **TWO MONTHS** of the mailing date of this letter. Extensions of time may not be obtained. No additional fee is due for a response to the instant request for information. The response to this Requirement for Information should include a cover letter titled "Response to Request for Information." The failure to file a reply to the instant Request for Information will be interpreted as a desire to no longer pursue reinstatement of the patent and the Office will give no further consideration to the matter.

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.

[1] General Information concerning EFS Web can be found at http://www.uspto.gov/patents/process/file/efs/index.jsp.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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KELLEY DRYE & WARREN LLP
400 ATLANTIC STREET, 13TH FLOOR
STAMFORD CT 06901

MAILED

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OFFICE OF PETITIONS

In re Patent No. 7,693,763 :
Issued: April 6, 2010 :
Application No. 10/779,486 : ON PETITION
Filed: February 13, 2004 :
Attorney Docket No: CEG-101 (US) :

This is a decision regarding your request for acceptance of a fee deficiency submission and loss of small entity status filed October 1, 2010 under 37 CFR 1.28.

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

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

Your fee deficiency submission under 37 CFR 1.28 is hereby accepted and 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
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED
DEC 13 2010
OFFICE OF PETITIONS

In re Application of :
Seals et al. :
Application No. 10/779,606 :
Filed: February 18, 2004 :
Attorney Dkt. No. 088245-2594 :
For: TECHNIQUE FOR OUTPUT POWER DITHERING FOR IMPROVED TRANSMITTER PERFORMANCE :

ON APPLICATION FOR PATENT TERM ADJUSTMENT

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(b)" filed November 11, 2010. Applicants request that the determination of patent term adjustment be corrected from six hundred two (602) days to one thousand ten (1,010) 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. The fee set forth in 37 CFR 1.18(e) is required and will not be refunded.

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

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

after issuance pursuant to 37 CFR 1.705(d) and **must** include payment of the required fee under 37 CFR 1.18(e).

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

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

Anthony Knight
Director
Office of Petitions

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

MAILED

FEB 14 2011

OFFICE OF PETITIONS

In re Patent No. 7,603,567
Issue Date: October 13, 2009
Application No. 10/779,633
Filed: February 18, 2004
Attorney Docket No. 04329.3243

: DECISION ON REQUEST
: FOR RECONSIDERATION OF
: PATENT TERM ADJUSTMENT
: AND
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the "APPLICATIONS FOR PATENT TERM ADJUSTMENT-POST GRANT", filed December 14, 2009, requesting that the patent term adjustment determination for the above-identified patent be changed from 812 days to 1160 days. Applicant requests this correction in part on the basis that the Office will take in excess of three years to issue this patent and in light of the court decision in Wyeth v. Dudas, No. 07-1492 (D.D.C. September 30, 2008).[1] The request is being treated under 37 CFR 1.705(d).

The petition is **GRANTED** to the extent indicated herein.

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 one thousand eighty-two **(1082)** days.

It is undisputed that the period of examination delay, "A" delay", pursuant to 37 CFR 1.702(a)(1) is 900 days. However, as the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on February 18, 2007 and ends on June 29, 2008, the day before the RCE was filed, and the B delay considering the 229 days of overlap is 268 (not 269) days. See 35 U.S.C. 154(b)(1)(B)(i).

Additionally, while the Office initially determined a patent term adjustment which

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[1]Reconsidered in light of the Court of Appeals for the Federal Circuit's decision in *Wyeth v. Kappos*, 2009-1120 (Fed. Cir. 1-7-2010).

included 2 days of applicant delay, pursuant to 37 C.F.R. § 1.704(c)(10), a period of reduction totaling 86 days was entered for applicant filing papers after the mailing of the notice of allowance. Patentees argue that because the Examiner failed to acknowledge applicant's claim for priority during prosecution, a copy of the first page of the certified copy of the foreign priority document along with a copy of the postcard filed with the certified copy of the foreign priority document stamped by the U.S. Patent and Trademark Office to indicate receipt of the priority document, was re-filed on July 20, 2009. Accordingly, Patentee argues that the July 20, 2009 submission of the certified copy of the foreign priority document should not be deemed a failure to engage in reasonable efforts to conclude processing or examination of an application under 37 CFR § 1.704(c)(10) and disputes the reduction of 86 days of applicant delay.

The reduction of 86 days has been found to be incorrect. A review of the application file, as stated by Patentee, supports a conclusion that the certified copy of the foreign priority document had been previously filed. Thus there is no delay pursuant to 37 CFR 1.704(c)(10) and the 86 day reduction will be removed.

As such, the patent term adjustment is 1082 (900 "A delay days" + 497 "B delay days" - 229 days overlap - 2 Applicant delay days) days, not 1160 days.

The Office acknowledges the authorization to charge the $200.00 fee set forth in 37 CFR 1.18(e) to deposit account no. 06-0916.

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 eighty-two (1082) days**.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,603,567 B2

DATED : October 13, 2009

INVENTOR(S) : Hirofumi Kanai

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 (812) days

Delete the phrase "by 812 days" and insert – by 1082 days--

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JAN 24 2011

OFFICE OF PETITIONS

In re Application of :
Brig Barnum ELLIOTT :
Application No. 10/780,008 : ON PETITION
Filed: February 14, 2004 :
Attorney Docket No. 03-4034 :

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.

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 29, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). A three (3) month extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is July 30, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of 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 2618 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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HOLLAND & HART, LLP
P.O BOX 8749
DENVER, CO 80201

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JAN 26 2011

OFFICE OF PETITIONS

In re Application of :
Fischer et al. :
Application No. 10/780,122 : DECISION GRANTING PETITION
Filed: February 17, 2004 : UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. 73626.0005 (830001.US2) :

This is a decision on the petition under 37 CFR 1.78(a)(6), filed November 5, 2010, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional application set forth in the concurrently filed Application Data Sheet (ADS).

The petition is **GRANTED**.

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

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

The intermediate nonprovisional Application No. 09/861,198, was filed on May 18, 2001, within twelve months of the filing date of the prior-filed provisional application, Application No. 60/205,050, which was filed on May 18, 2000, for which priority is claimed. A reference to the prior-filed provisional application has been included in the ADS.

The instant nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after expiration of the period specified in 37 CFR 1.78(a)(5)(ii). Also, the reference to the prior-filed provisional application was submitted during the pendency of the nonprovisional application for which the benefit is sought. *See* 35 U.S.C. §119(e). Accordingly, having found that the instant petition satisfies the conditions of 37 CFR 1.78(a)(6) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. §119(e), the petition to accept an unintentionally delayed claim of benefit to prior-filed provisional Application No. 60/205,050 is granted.

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

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

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

The application is being referred to Technology Center AU 1745 for appropriate action on the ADS submitted November 5, 2010, including consideration by the examiner of the claim under 35 U.S.C. §119(e) for the benefit of priority to prior-filed provisional Application No. 60/205,050.

/Liana Walsh/
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
10/780,122	02/17/2004	1745	859	73626.0005 (830001.US2)	42	5

CONFIRMATION NO. 6476

CORRECTED FILING RECEIPT

26582
HOLLAND & HART, LLP
P.O BOX 8749
DENVER, CO 80201

Date Mailed: 01/26/2011

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)

Christopher E. Fischer, Boulder, CO;
Mark Domenico, Parker, CO;

Power of Attorney: The patent practitioners associated with Customer Number 26582

Domestic Priority data as claimed by applicant

This application is a DIV of 09/861,198 05/18/2001 PAT 6,691,865
which claims benefit of 60/205,050 05/18/2000

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: 05/07/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/780,122**

Projected Publication Date: Not Applicable

Non-Publication Request: No

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

Title

DECORATIVE TIRE COVER AND TRANSFER PATTERN AND METHOD FOR USE THEREWITH

Preliminary Class

156

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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HARRISION, AR 72601

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JUL 01 2011
OFFICE OF PETITIONS

In re Patent No. 6,962,124 :
Issue Date: November 8, 2005 :
Application No. 10/780,388 : DECISION ON PETITION
Filed: February 17, 2004 : UNDER 37 CFR 1.378(b)
Attorney Docket No. LIL358.0001 :

This is a decision in response to a communication filed June 6, 2011, transmitting a copy of a petition under 37 CFR 1.378(b), filed August 20, 2010, to accept an unavoidably delayed payment of a maintenance fee for the above-identified patent. The original petition cannot be located; however, U. S. Patent and Trademark Office (USPTO) finance records confirm receipt of $1,190 on August 20, 2010. Accordingly, it is conceded that a petition was filed on August 20, 2010, including a $490 maintenance fee and $700 surcharge, and subsequently lost in the USPTO.

The present communication is not signed by a registered patent attorney or agent of record. However, in accordance with 37 CFR 1.34, the signature of Robert E. Massa 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. Massa 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 address noted on the petition; however, all future correspondence regarding this patent will be directed solely to the above-noted correspondence address of record.

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 2-month time limit can be granted under 37 CFR 1.136(a) or (b). **Any such petition for reconsideration must be accompanied by the petition fee of $400 as set forth in 37 CFR 1.17(f).** The petition for reconsideration should include an exhaustive attempt to provide the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.

The patent issued November 8, 2005. The first maintenance fee could have been paid from November 8, 2008, through Mary 8, 2009, or with a surcharge during the period from May 9, 2006 through November 8, 2009. Accordingly, the patent expired at midnight November 8, 2009, for failure to timely submit the first maintenance fee.

A petition to accept the delayed payment of a maintenance fee under 35 U.S.C. § 41(c) and 37 CFR 1.378(b) must be accompanied by (1) an adequate showing that the delay was unavoidable, since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent, (2) payment of the appropriate maintenance fee, unless previously submitted, and (3) payment of the surcharge set forth in 37 CFR 1.20(i)(1).

The petition lacks item (1) above.

The Director may accept late payment of the maintenance fee if the delay is shown to the satisfaction of the Director to have been "unavoidable". 35 U.S.C. § 41(c)(1).

Petitioner states that the delay in payment of the maintenance fees was unavoidable because "Legal Representation failed to notify company, Lilipad Marine, of Maintenance Fee Notices or Reminders."

Unfortunately, applicant is bound by the consequences of the actions or inactions of his duly authorized and voluntarily chosen representative. Link v. Wabash, 370 U.S. 626, 633-34 (1962); Houston v. Ladner, 973 F.2d 1564, 1567, 23 USPQ2d 1910, 1913 (Fed. Cir. 1992); see also Haines v. Quigg, 673 F. Supp. 314, 317, 5 USPQ2d 1130, 1132 (D.N. Ind. 1987).

The showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.378(b)(3). Petitioner should note that a delay resulting from the lack of knowledge of the need to pay maintenance fees does not excuse the delay. *See* Patent No. 4,409,763, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1988), *aff'd*, Rydeen v. Quigg, 748 F. Supp. 900, 16 USPQ2d 1876 (D.D.C. 1990), *aff'd*, 937 F.2d 623 (Fed. Cir. 1991)(table), *cert. denied*, 502 U.S. 1075 (1992).

Acceptance of late payment of a maintenance fee is considered under the same standard as that for reviving an abandoned application under 35 U.S.C. § 133 because 35 U.S.C. § 41(c)(1) uses the identical language, i.e. "unavoidable delay". Ray v. Lehman, 55 F.3d 606, 608-09, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995)(quoting In re Patent No. 4,409,763, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1988)). Decisions on reviving abandoned applications have adopted the "reasonably prudent person" standard in determining if the delay in responding to an Office action was unavoidable. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887)(the term "unavoidable" "is applicable to ordinary human affairs, and requires no more or greater care or diligence

than is generally used and observed by prudent and careful men in relation to their most important business"); In re Mattullath, 38 App. D.C. 497, 514-515 (D.C. Cir. 1912); and Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141. In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition to revive an application as unavoidably abandoned cannot be granted where a petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay. Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

In essence, petitioner must show that patentee was aware of the need to pay the maintenance fee, and to that end was tracking it, or had engaged someone to track it before the expiration, but when the fee came due, was "unavoidably" prevented from making the maintenance fee payment until the petition was filed.

In determining whether a delay in paying a maintenance fee was unavoidable, one looks to whether the party responsible for payment of the maintenance fee exercised the due care of a reasonably prudent person. Ray, 55 F3d at 608-609, 34 USPQ2D at 1787. It is incumbent upon the patent owner to implement steps to schedule and pay the fee, or obligate another to do so. See California Medical Products v. Technol. Med. Prod., 921 F.Supp 1219, 1259 (D. Del. 1995). That is, 37 CFR 1.378(b)(3) requires a showing of the steps in place to pay the maintenance fee, and the record currently lacks a showing that any steps were in place by petitioner or anyone else.

The record fails to disclose that the patentee took reasonable steps to ensure timely payment of the maintenance fee. In fact, the record indicates that no steps were taken by patentee to ensure timely payment of the maintenance fee. Since no steps were taken by patentee, 37 CFR 1.378(b) precludes acceptance of the delayed payment of the maintenance fee. In the absence of a showing that petitioner or anyone else was engaged in tracking the maintenance fee due dates, and that party had in fact been tracking the due dates with a reliable tracking system, such as would be used by prudent and careful men in relation to their most important business, petitioner cannot reasonably show that the delay was unavoidable delay. In re Katrapat, 6 USPQ2d 1863, 1867-1868 (Comm'r Pat. 1988); California, supra.

35 U.S.C. § 41(c)(1) does not require an affirmative finding that the delay was avoidable, but only an explanation as to why the petitioner has failed to carry his or her burden to establish that the delay was unavoidable. See Commissariat A. L'Energie Atomique v. Watson, 274 F.2d 594, 597, 124 USPQ 126, 128 (D.C. Cir. 1960)(35 U.S.C. § 133 does not require the Director to affirmatively find that the delay was avoidable, but only to explain why the applicant's petition was unavailing). Petitioner is reminded that it is the patentee's burden under the statutes and regulations to make a showing to the satisfaction of the Director that the delay in payment of a maintenance fee is unavoidable. See Rydeen v. Quigg, 748 F. Supp. 900, 16 USPQ2d 1876 (D.D.C. 1990), aff'd 937 F.2d 623 (Fed. Cir. 1991)(table), *cert. denied*, 502 U.S. 1075 (1992); Ray v. Lehman, supra.

As 35 USC § 41(b) requires the payment of fees at specified intervals to maintain a patent in force, rather than some response to a specific action by the Office under 35 USC § 133, a reasonably prudent person in the exercise of due care and diligence would have taken steps to ensure the timely payment of such maintenance fees. Ray, 55 F.3d at 609, 34 USPQ2d at 1788. That is, an adequate showing that the delay in payment of the maintenance fee at issue was "unavoidable" within the meaning of 35 U.S.C. § 41(c) and 37 CFR 1.378(b)(3) requires a showing of the steps taken by the responsible party to ensure the timely payment of the first maintenance fee for this patent. Id.

As the patentee at the time of expiration, it was incumbent on petitioner to have this patent docketed for payment of the maintenance fee in a reliable system as would be employed by a prudent and careful person with respect to his most important business, or to have engaged another for that purpose. See California Medical Products v. Technol Med. Prod., 921 F.Supp. 1219, 1259 (D.Del. 1995). Even where, as here, another has been relied upon to pay the maintenance fees, such asserted reliance *per se* does not provide a petitioner with a showing of unavoidable delay within the meaning of 37 CFR § 1.378(b) and 35 USC § 41(c). Id. Rather, such reliance merely shifts the focus of the inquiry from the petitioner to whether the obligated party acted reasonably and prudently. Id. Nevertheless, a petitioner is bound by any errors that may have been committed by the obligated party. Id.

First, petitioner has not shown, with supporting documentation, that his agent had taken any steps to enter the instant patent into a tracking system, much less that the system, if any, by his agent was such as would be employed by a prudent and careful person with respect to his most important business. That is, there is as of yet no adequate showing that any steps had been taken with respect to scheduling and paying the maintenance fee by petitioner's father. It is pointed out that 37 CFR 1.,378(b) is a validly promulgated regulation, which requires a showing of the steps in place by to pay the fee. Here, there is no corroborative documentation to show that this patent had been docketed in a system or that shows the diligent efforts by petitioner's agent. In the absence of a showing that any steps had been taken, then 37 CFR 1.378(b) precludes acceptance of the payment. In other words, if no steps were taken by petitioner's agent, then any other circumstance would be immaterial to the delay.

Second, petitioner has not shown that petitioner was "unavoidably" prevented from acting in this matter from November 8, 2008, until the petition was filed June 6, 2011. There is no "sliding scale" based upon the priority given to maintaining this patent in force, or more diligently seeking reinstatement, *vis-a-vis* other matters; the issue is solely whether the maintenance, or reinstatement, of the patent at issue was actually conducted with the care or diligence that is generally used and observed by prudent and careful persons in relation to their most important business.

Petitioner should note that if this petition is not renewed or if renewed and not granted, then the maintenance fee and post expiration surcharge are refundable. See 37 CFR

1.378(e) and such may be obtain by written request. Any request for refund must include a copy of this decision and be mailed to Mail Stop 16, Director of the U.S. Patent and Trademark Office, P. O. Box 1450, Alexandria, VA 22313-1450 or faxed to the Customer Service Help Desk at (571) 273-6500.

Petitioner may wish to pursue reinstatement of the patent under the unintentional provisions of 37 CFR 1.378(c). Petitioner is advised, however, that any petition under 37 CFR 1.378(c) must be filed on or before November 8, 2011 to be considered timely. Further, 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).

Petitioner is reminded that the mere suggestion to file a petition under the unintentional provisions of 37 CFR 1.378(c) does not necessarily mean the petition will be granted, since all the requirements under 37 CFR 1.37(b) must be satisfied.

Lastly, patentee is reminded that in accordance with 37 CFR 1.378(d), any petition under 37 CFR 1.378 must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee (all the joint inventors, unless the signing inventor has been given a power of attorney to act on behalf of the other inventors) or an assignee of the entire interest who has complied with the provisions of 37 CFR 3.73(b)[1], or other party in interest. It is noted that the original petition was improperly signed by one of the three joint inventors.

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

[1]37 CFR 3.73(b) provides that: (1) when an assignee seeks to take action in a matter before the Office, the assignee must establish its ownership of the property to the satisfaction of the Commissioner; (2) ownership is established by submitting to the Office, in the Office file related to the matter in which action is sought to be taken, documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment submitted for recording) or by specifying (e.g., reel and frame number) where such evidence is recorded in the Office; (3) the submission establishing ownership must be signed by a party authorized to act on behalf of the assignee; and (4) documents submitted to establish ownership may be required to be recorded as a condition to permitting the assignee to take action in a matter pending before the Office.

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

By internet: EFS-Web[2]

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

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: MARK CHILDRESS
32558 E. 241 ST. SOUTH
PORTER, OK 74454

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

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OFFICE OF PETITIONS

PHILIP S JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK NJ 08933-7003

In re Application of	:	
Rao, et al.	:	
Application No. 10/780,399	:	ON REQUEST FOR
Filed: February 17, 2004	:	RECONSIDERATION OF
Attorney Docket Number: VDX5060USPCT2	:	PATENT TERM ADJUSTMENT

This is a decision on the petition under 37 CFR 1.705(b), filed July 6, 2010. Applicants believe that they should be accorded an additional PTA of 851 days. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

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

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

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

Rather than file a request for reconsideration of patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a

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

However, a review of the file reveals that Applicants should have been assessed additional delay due to the abandonment of the application pursuant to 37 CFR 1.704(c)(3). The application became abandoned for failure to timely reply to a June 15, 2007 Office action on September 16, 2007. Applicants filed a petition to revive on December 2, 2008, which was granted in a decision mailed on December 11, 2008. Accordingly, pursuant to 37 CFR 1.704(c)(3), 453 days of Applicant delay should have been assessed.

In addition, a review of the file also reveals that Applicants should have been assessed delay pursuant to 37 CFR 1.704(c)(10). The Office mailed a Notice of Allowance on May 4, 2010. In reply, Applicants filed an RCE on August 3, 2010. The Office mailed a subsequent Notice of Allowance on August 18, 2010. Accordingly, pursuant to 37 CFR 1.704(c)(10), 16 days of Applicant delay should have been assessed.

In view thereof, the correct determination of PTA prior to issuance is **zero (0) days** (537 days of PTO delay, reduced by 611 (74+453+63+2+16) days of Applicant delay).

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

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

Telephone inquiries specific to this decision should be directed to Petitions Attorney Cliff Congo at (571) 272-3207.

Anthony Knight
Director
Office of Petitions

Enc: copy of PAIR screen

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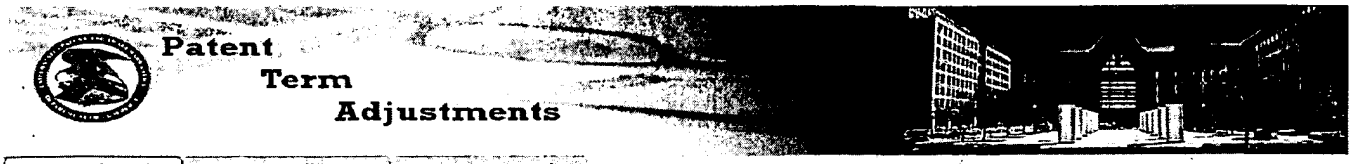
[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office 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.



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

Application Number*: 10780399 Search Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application: 10780399

Application Filing Date	02/17/2004	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	537
A Delays	537	PTO Manual Adjustment	-472
B Delays	0	Applicant Delay (APPL)	139
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
90	09/25/2010		P028	Adjustment of PTA Calculation by PTO		472	0
84	08/18/2010		MN/=.	Mail Notice of Allowance			0
83	08/13/2010		IREV	Issue Revision Completed			0
82	08/13/2010		DVER	Document Verification			0
81	08/13/2010		N/=.	Notice of Allowance Data Verification Completed			0
80	08/13/2010		EX.A	Examiner's Amendment Communication			0
79	08/13/2010		CNTA	Notice of Allowability			0
73	08/06/2010		ABN9	Disposal for a RCE / CPA / R129			0
74	08/03/2010		RCEX	Request for Continued Examination (RCE)			0
72	08/03/2010		RCAP	Reference capture on IDS			0
71	08/03/2010		M844	Information Disclosure Statement (IDS) Filed			0
70	08/03/2010		BRCE	Workflow - Request for RCE - Begin			0
69	07/06/2010		FIDC	Finished Initial Data Capture			0
68	07/06/2010		PET2	Petition Entered			0
67	05/05/2010		EIDC	Export to Initial Data Capture			0
66	05/04/2010		ELC_RVW	Electronic Review			0
65	05/04/2010		EML_NTR	Email Notification			0
64	05/04/2010		EML_NTF	Email Notification			0
63	05/04/2010		MEX.A	Mail Examiner's Amendment			0
62	05/04/2010		MN/=.	Mail Notice of Allowance			0
61	04/30/2010		IREV	Issue Revision Completed			0
60	04/30/2010		DVER	Document Verification			0
59	04/30/2010		N/=.	Notice of Allowance Data Verification Completed			0
58	04/30/2010		DOCK	Case Docketed to Examiner in GAU			0
57	04/12/2010		EX.A	Examiner's Amendment Communication			0
56	04/12/2010		CNTA	Notice of Allowability			0
55	04/07/2010		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
51	02/06/2010		FWDX	Date Forwarded to Examiner			0
50	01/10/2010		A...	Response after Non-Final Action			0
49	10/13/2009		MCTNF	Mail Non-Final Rejection			0
48	10/13/2009		CTNF	Non-Final Rejection			0
47	08/07/2009		FWDX	Date Forwarded to Examiner			0
45	08/07/2009		FWDX	Date Forwarded to Examiner			0
43	08/07/2009		ABN9	Disposal for a RCE / CPA / R129			0
46	08/03/2009		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
44	08/03/2009	08/01/2009	RCEX	Request for Continued Examination (RCE)		2	41
42	08/03/2009		BRCE	Workflow - Request for RCE - Begin			0
41	05/01/2009		MCTFR	Mail Final Rejection (PTOL - 326)			0
40	04/30/2009		CTFR	Final Rejection			0
39	02/27/2009		FWDX	Date Forwarded to Examiner			0
37	02/12/2009		PA..	Change in Power of Attorney (May Include Associate POA)			0
36	02/09/2009		C.AD	Correspondence Address Change			0
38	02/03/2009	12/02/2008	A...	Response after Non-Final Action		63	33
35	01/08/2009		MINA	Mail Notice of Informal or Non-Responsive Amendment			0
32	01/08/2009		MNRAB	Mail Notice of Rescinded Abandonment			0
34	01/07/2009		FWDX	Date Forwarded to Examiner			0
31	01/07/2009		NRAB	Notice of Rescinded Abandonment in TCs			0
30	12/11/2008		MPREV	Mail-Petition to Revive Application - Granted			0
29	12/11/2008		PREV	Petition to Revive Application - Granted			0
33.1	12/02/2008		A.I.	Informal or Non-Responsive Amendment after Examiner Action			0
33	12/02/2008		A...	Response after Non-Final Action			0
28	12/02/2008		PET.	Petition Entered			0
27	12/26/2007		MABN2	Mail Abandonment for Failure to Respond to Office Action			0
26	12/20/2007		ABN2	Aband. for Failure to Respond to O. A.			0
25	06/15/2007		MCTNF	Mail Non-Final Rejection			0
24	06/11/2007		CTNF	Non-Final Rejection			0
23	04/03/2007		FWDX	Date Forwarded to Examiner			0
22	03/21/2007	01/06/2007	ELC.	Response to Election / Restriction Filed		74	20
21	03/21/2007		XT/G	Request for Extension of Time - Granted			0
20	10/06/2006	04/17/2005	MCTRS	Mail Restriction Requirement	537		-1
19	10/02/2006		CTRS	Requirement for Restriction / Election			0
18	06/15/2004		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
17	06/15/2004		DOCK	Case Docketed to Examiner in GAU			0
16	06/04/2004		TI1050	Transfer Inquiry to GAU			0
12	05/11/2004		COMP	Application Is Now Complete			0
15	05/10/2004		WROIPE	Application Return from OIPE			0
14	05/10/2004		ROIPE	Application Return TO OIPE			0
13	05/10/2004		WROIPE	Application Return from OIPE			0
11	05/10/2004		ROIPE	Application Return TO OIPE			0
9	05/10/2004		COMP	Application Is Now Complete			0
6	05/10/2004		COMP	Application Is Now Complete			0
10	05/08/2004		WROIPE	Application Return from OIPE			0
8	05/08/2004		ROIPE	Application Return TO OIPE			0
7	05/08/2004		OIPE	Application Dispatched from OIPE			0
5	03/31/2004		L128	Cleared by L&R (LARS)			0
4	03/23/2004		L198	Referred to Level 2 (LARS) by OIPE CSR			0
3	03/23/2004		CLSS	CASE CLASSIFIED BY OIPE			0
2	03/05/2004		SCAN	IFW Scan & PACR Auto Security Review			0
1	02/17/2004		IEXX	Initial Exam Team nn			0

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STRAUB & POKOTYLO
788 SHRESBURY AVENUE
TINTON FALLS, NJ 07724

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MAR 14 2011

OFFICE OF PETITIONS

In re Application of :
Sumio KAWAI, et *al.* :
Application No. 10/780,440 : DECISION ON PETITION
Filed: February 17, 2004 : UNDER 37 CFR 1.181
Attorney Docket No. **OOCL-152 (6MHA-03S0555P1)** :

This is a decision on the petition, filed August 12, 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 reply to the final Office action mailed December 1, 2009, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on July 8, 2010.

Petitioner asserts that the Office action dated December 1, 2009 was not received.

A review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner;

2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and

3. a copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in the practitioner's statement.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition satisfies the above-stated requirements. Accordingly, the application was not abandoned in fact.

In view of the above, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

This application is being referred to the Technology Center technical support staff of Art Unit 2622 for re-mailing the Office action of December 1, 2009. The period for reply will run from the mailing date of the Office action.

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

Thurman K. Page
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

WORKMAN NYDEGGER/MICROSOFT
1000 EAGLE GATE TOWER
60 EAST SOUTH TEMPLE
SALT LAKE CITY UT 84111

In re Application of :
Grossman, et al. :
Application No. 10/780,496 : ON PETITION
Filed: February 17, 2004 :
Attorney Docket No. 13768.495 :

This is in response to petition to revive an unintentionally abandoned application under 37 CFR 1.137(b), filed September 10, 2010.

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

The above-identified application became abandoned for failure to timely file a proper response to the final Office action, mailed February 7, 2008, which set a shortened statutory period for reply of three months. Applicant filed an Amendment on August 7, 2008, made timely by obtaining a three month extension of time. However, by Advisory Action mailed August 18, 2008, Applicants were advised that the Amendment would not be entered because it failed to place the application in condition for allowance. As such, the application became abandoned on August 8, 2008. The Office mailed a Notice of Abandonment on October 20, 2008.

With the instant petition, petitioner paid the petition fee, made the proper statement of unintentional delay, and submitted the required reply in the form of an RCE (together with the fee).

The application is being forwarded to Group Art Unit 2162 for consideration of the RCE, filed September 10, 2010.

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

Cliff Congo
Petitions Attorney
Office of Petitions

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SOUTHERN BREEZE
FABRICATORS, INC.
558 BAGGS FERRY ROAD
CAMILLA GA 31730

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NOV 30 2010
OFFICE OF PETITIONS

In re Patent No. RE 39,442 :
Issue Date: 26 December. 2006 (4 June, 2002) :
Application No. 10/780,551 : DECISION ON PETITION
Filed: 17 February, 2002 :
Attorney Docket No. 19753-16595 :

This is a decision on the petition filed on 9 June, 2010, supplemented on 11 June, 2010, and 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 instant matter is a reissue, and calculations as to maintenance fee due date(s) are counted from the date of issue of the original patent.*

BACKGROUND

Patent No. RE 39,442 is a reissue of Patent No. 6,397,764 (the '764 patent) issued on 4 June, 2002. The second maintenance fee could have been paid during the period from 4 June, 2009, through midnight 4 December, 2009, or, with a surcharge, during the period from 5 December, 2009, through midnight 4 June, 2010. Accordingly, the patent expired after midnight 4 June, 2010, for failure to pay timely the second maintenance fee.

The instant petition was filed on 9 June, 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.

Patent No. 6,882,878
Application No. 10/736,189

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.

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CHESTERFIELD, MO 63006-4442

MAILED

MAR 24 2011

OFFICE OF PETITIONS

In re Application of :
Syed Rizvi :
Application No. 10/780,661 : ON PETITION
Filed: February 19, 2004 :
Attorney Docket No. 976 :

This is a decision on the petition under 37 CFR 1.137(b), filed February 1, 2011, to revive the above-identified application.

The application became abandoned for failure to file a proper reply to the final Office action mailed on December 2, 2009. A Notice of Abandonment was mailed December 17, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) along with the $405 fee and the submission under 37 CFR 1.114; (2) the petition fee of $810; and (3) a proper statement of unintentional delay. Therefore, the petition is **GRANTED**.

This application file is being referred to Technology Center Art Unit 1611 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

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

Andrea Smith
Petitions Examiner
Office of Petitions

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

MAILED
JAN 25 2011
OFFICE OF PETITIONS

In re Patent No. 7,824,915 :
Issue Date: November 2, 2010 :
Application No. 10/780,743 : ON PETITION
Filed: February 19, 2004 :
Attorney Docket No. KAS-199 :

This is a decision on the petition filed December 20, 2010, which is being treated as a petition under 37 CFR 3.81(b) to correct the name of the assignee on the front page of the above-identified patent by way of a certificate of correction.

The petition is **DISMISSED**.

Petitioner requests issuance of a certificate of correction in the name of "Hitachi High-Technologies 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 [emphasis added]. *See also* MPEP 1481.01.

U.S. Patent and Trademark Office assignment records disclose that an assignment from HITACHI, LTD to Hitachi High-Technologies Corporation was recorded on November 3, 2010, **after the date of issuance of this patent**. Accordingly, since the assignment was not submitted for recordation until after issuance of this patent, issuance of a certificate of correction would not be proper. The patent properly issued in the name of the assignee as recorded in the Office on the date of issuance of the patent.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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ALEXANDRIA VA 22314

MAILED
APR 13 2011
OFFICE OF PETITIONS

In re Patent No. 7,824,915 :
Issue Date: November 2, 2010 :
Application No. 10/780,743 : ON PETITION
Filed: February 19, 2004 :
Attorney Docket No. KAS-199 :

This is a decision on the RENEWED PETITION UNDER 37 CFR 3.81(b) and REQUEST TO CORRECT ASSIGNEE UNDER 37 CFR 3.81(b) filed March 25, 2011, which is being treated as a petition under 37 CFR 3.81(b) to correct the name of the assignee on the front page of the above-identified patent by way of a certificate of correction.

The renewed petition is **DISMISSED**.

Petitioner continues to request issuance of a certificate of correction in the name of "Hitachi High-Technologies Corporation, Tokyo, (JP)."

As previously stated, 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 [emphasis added]. *See also* MPEP 1481.01.

Petitioner's arguments have been considered, but not found persuasive. The conclusion remains that the patent properly issued in the name of the assignee as recorded in the Office on the date of issuance of the patent.

Petitioner argues that the assignment from HITACHI, LTD to Hitachi High-Technologies Corporation recorded on November 3, 2010 was merely a corrective assignment and that the actual assignment occurred, **before the date of issuance of this patent** on April 12, 2004. Petitioner states that the original assignment included an inadvertent error that named the assignee as HITACHI, LTD and that the corrective assignment filed after the date of issuance of this patent corrected that error to name the assignee as Hitachi High-Technologies Corporation.

The conclusion remains that whether erroneous or not the name of the assignee in the records of the Office on the date of the issuance of the patent remained Hitachi, Ltd. Further, in completion of the PTOL-85(b), applicant continued to identify the assignee as Hitachi, Ltd. Accordingly, since the corrective assignment was not submitted for recordation until after issuance of this patent, issuance of a certificate of correction is not proper. The patent properly issued in the name of the assignee of record on the date of issuance of the patent.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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MICHAEL A. NELSON
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14150 S.W. KARL BRAUN DRIVE
P.O. BOX 500 (50-LAW)
BEAVERTON OR 97077-0001

MAILED
JUN 21 2011
OFFICE OF PETITIONS

In re Application of	:	
Kevin M. Ferguson	:	
Application No. 10/780,816	:	DECISION ON PETITION
Filed: February 18, 2004	:	
Attorney Docket No. 7636 US 1	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 4, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Notice of Drawing Inconsistency with Specification, mailed May 1, 2007, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extension of time period may be granted under either 37 CFR 1.136(a) or 9b). Accordingly, the application became abandoned on June 2, 2007. The Notice of Abandonment was mailed July 3, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment to the specification, (2) the petition fee of $1620, 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.

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

This application is being referred to the Office of Data Management for appropriate action on the reply the received.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

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Anderson Gorecki & Manaras LLP
33 NAGOG PARK
ACTON MA 01720

MAILED
MAR 14 2012
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In re Patent No. 7,149,519 :
Issue Date: December 12, 2006 :
Application No. 10/780,844 : NOTICE
Filed: February 18, 2004 :
Attorney Docket No. **CDW-001** :

This is a notice regarding your request filed February 28, 2012, for acceptance of a fee deficiency submission under 37 CFR 1.28.

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

Your fee deficiency submission under 37 CFR 1.28 is hereby **NOT ACCEPTED**.

A request for acceptance of a fee deficiency submission under 37 CFR 1.28 petitioners is required to provide an itemization of the deficiency payment. Petitioner's attention is directed to 37 CFR 1.28(c)(2) (ii) which states:

> (2) *Payment of deficiency owed.* The deficiency owed, resulting from the previous erroneous payment of small entity fees, must be paid.
>
> (ii) *Itemization of the deficiency payment.* An itemization of the total deficiency payment is required. The itemization must include the following information:
>
> (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. This will permit the Office to differentiate, for example, between two one-month extension of time fees erroneously paid as a small entity but on different dates;

(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.

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

/JoAnne Burke/
JoAnne Burke
Petitions Examiner
Office of Petitions

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Paper No.

MAILED

SEP 23 2010

OFFICE OF PETITIONS

PATENT DEPARTMENT (51851)
KILPATRICK STOCKTON LLP
1001 WEST FOURTH STREET
WINSTON-SALEM NC 27101

In re Application of :
Rosenberg et al. :
Application No. 10/780852 : ON APPLICATION FOR
Filed: 02/19/2004 : PATENT TERM ADJUSTMENT
Atty Docket No. :
IMMR-0013D (034701-007) :

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT DETERMINATION," filed on June 8, 2010. Applicant asserts that the correct patent term adjustment is 1145 days rather than 640 days as indicated in the Determination of Patent Term Adjustment Under 35 U.S.C. § 154(b) mailed with the notice of allowance. Applicant asserts entitlement to the additional patent term adjustment solely on the basis that the patent will issue more than 3 years after the filing date.

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).

---

[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.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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GREENBERG TRAURIG (LV)
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas NV 89169

MAILED
MAR 15 2011
OFFICE OF PETITIONS

In re Application of	:	
Jared Freeman Soloman	:	
Application No. 10/780924	:	ON PETITION
Filing or 371(c) Date: 02/17/2004	:	
Attorney Docket Number: 102271.000001	:	

This is a decision on the petition to revive the above-identified application under the unintentional provisions of 37 CFR 1.137(b), filed November 29, 2010.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of March 19, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is June 20, 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, and the submission required by 37 CFR 1.114; (2) the petition fee; and (3) a proper statement of unintentional delay.

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

This application is being referred to Technology Center AU 3715 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.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

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MAR 27 2012
OFFICE OF PETITIONS

ANDERSON, GORECKI & MANARAS, LLP
33 NAGOG PARK
ACTON, MA 01720

In re Patent No. 7,155,169 :
Issue Date: December 26, 2006 :
Application No. 10/781,013 : NOTICE
Filed: February 18, 2004 :
Attorney Docket No. 160-051 :

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

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-1642.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

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JAN 04 2011

OFFICE OF PETITIONS

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

In re Patent of Artavanis-Tsakonas et al.	:	DECISION ON REQUEST
Patent No. 7,727,732	:	FOR RECONSIDERATION OF
Issue Date: June 1, 2010	:	PATENT TERM ADJUSTMENT
Application No. 10/781,059	:	AND NOTICE OF INTENT TO
Filing Date: February 17, 2004	:	ISSUE CERTIFICATE OF
Attorney Docket No. 7326-132	:	CORRECTION

This is a decision on the petition filed July 30, 2010, which is being treated as a petition under 37 C.F.R. § 1.705(d) requesting the patent term adjustment on the patent be corrected to indicate the term of the patent is extended or adjusted by one thousand three hundred twenty-seven (1327) days.

The petition is **dismissed**.

Although the petition is dismissed, the Office has determined the patent term adjustment determination set forth on the patent is incorrect and the Office will *sua sponte* issue a certificate of correction setting forth a patent term adjustment of one thousand thirty-eight days. Pursuant to 37 C.F.R. § 1.322, the Office will not issue a certificate of correction without first providing an 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 file any paper objecting to the issuance of the certificate of correction.**

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.

Delay Under 37 C.F.R. § 1.702(b) ("B Delay")

Patentees assert the period of B Delay is 1,200 days, which is the number of days beginning on February 18, 2007, the day after the date three years after the filing date, and ending on June 1, 2010, the date the patent issued.

Pursuant to 37 C.F.R. § 1.702(b)(4), the period of B Delay does not include "[a]ny time consumed by review by the Board of Patent Appeals and Interferences or a Federal court." Specifically, as stated in 37 C.F.R. § 1.703(b)(4), the period of B Delay does not include,

> The number of days, if any, in the period beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31 of this title and ending on the date of the last decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145, or on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first, if the appeal did not result in a decision by the Board of Patent Appeals and Interferences.

A Notice of Appeal was filed September 25, 2008. The Office subsequently issued a Notice of Allowance on July 10, 2009. The number of days beginning September 25, 2008, and ending July 10, 2009, is 289 days.

The period of B Delay is 911 days after the 289-day period of time consumed by appellate review is excluded from the 1,200-day period beginning on February 18, 2007, and ending on June 1, 2010.

Delay Under 37 C.F.R. § 1.702(a) ("A Delay")

Patentees assert, and the Office agrees, the period of A Delay includes 558 days of delay under 37 C.F.R. § 1.702(a)(1) and 112 days of under 37 C.F.R. § 1.702(a)(4).

Patentees' also assert the period of A Delay should include 165 days of delay under 37 C.F.R. § 1.702(a)(2). Specifically, Patentees' assert the period of A Delay should include the 165-day period beginning January 26, 2008, the day after the date four months after Patentees filed a Notice of Appeal, and ending on July 10, 2009, the date the Office issued a Notice of Allowance.

Pursuant to 37 C.F.R. § 1.705(d), issues raised in a petition under 37 C.F.R. § 1.705(d) which could have been raised under 37 C.F.R. § 1.705(b) will be dismissed as untimely. Patentees' argument that Office delay includes 165 days of delay under 37 C.F.R. § 1.702(a)(2) could have been raised under 37 C.F.R. § 1.705(b). Therefore, the argument is untimely and the merits of the argument will not be addressed.

Overlap Between A Delay and B Delay

Patentees assert 112 days of delay under 37 C.F.R. § 1.702(a)(4) and 165 days of delay under 37 C.F.R. § 1.702(a)(2) overlap with the period of B Delay. However, the period of A Delay does not include 165 days of delay under 37 C.F.R. § 1.702(a)(2). Therefore, the period of A Delay and B Delay overlap by 112 days.

Delay Under 37 C.F.R. § 1.704 ("Applicant Delay")

The period of Applicant Delay is 431 days and is not in dispute.

Conclusion

The Office will issue a certificate of correction setting forth a patent term adjustment of 1,038 days, which is the sum of 670 (558 + 112) days of A Delay and 911 days of B Delay reduced by 112 days of overlap between the periods of A Delay and B Delay and reduced by 431 days of Applicant Delay.

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

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the patent is extended or adjusted by **one thousand thirty-eight (1038)** 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.	:	7,727,732 B2
APPLICATION NO.	:	10/781,059
DATED	:	June 1, 2010 **DRAFT**
INVENTOR(S)	:	Spyridon Artavanis-Tsakonas 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 Title page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 1069 days.

Delete the phrase "by 1069 days" and insert -- by 1038 days--

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JUL 18 2011

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

In re Patent of Artavanis-Tsakonas et al.	:	DECISION ON REQUEST
Patent No. 7,727,732	:	FOR RECONSIDERATION OF
Issue Date: June 1, 2010	:	PATENT TERM ADJUSTMENT
Application No. 10/781,059	:	AND NOTICE OF INTENT TO
Filing Date: February 17, 2004	:	ISSUE CERTIFICATE OF
Attorney Docket No. 7326-132	:	CORRECTION

This is a decision on the petition filed February 4, 2011, which is being treated as a renewed 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 three hundred twenty-seven (1,327) 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 three hundred twenty-seven (1,327) days is **GRANTED to the extent indicated herein.**

The instant petition raises the following two issues:

1. Should the period of delay under 37 C.F.R. § 1.703(a) ("A Delay") include a 165-day period of delay under 37 C.F.R. § 1.703(a)(3)?
2. Was the exclusion of a 289-day period from the period of delay under 37 C.F.R. § 1.703(b) ("B Delay") proper?

Issue 1

A final Office action was mailed March 27, 2008.

A Notice of Appeal and a Pre-Appeal Brief Request for Review were filed September 25, 2008.

The Office mailed a Notice of Panel Decision from Pre-Appeal Brief Review on November 3, 2008. The notice stated the application was allowable and stated a Notice of Allowance would be mailed.

The Office mailed a Notice of Allowance on July 10, 2009.

Patentees assert the period of A Delay should include a 165-day period based on the prior facts.

The Office has reviewed the record and agrees the period of A Delay should include a period of delay under 37 C.F.R. § 1.703(a)(3) of 165 days, which is the number of days beginning January 26, 2008, the day after the date four months after the filing of the Notice of Appeal, and ending July 10, 2009, the date the Office issued the Notice of Allowance.

Issue 2

The Office excluded 289 days from the period of B Delay based on a conclusion 289 days were consumed by appellate review.

Patentees argue 0 days were consumed by appellate review.

Patentees' arguments have 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 case, the period consumed by appellate review is 289 days, which is the number of days beginning September 25, 2008, the date the Notice of Appeal was filed, and ending July 10, 2009, the date the Office mailed the Notice of Allowance. Therefore, the Office properly excluded 289 days from the period of B 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 Fed. Reg. 18990 (April 6, 2011). To the extent that the final rule on *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review* revises the interpretation of appellate review applied in this decision, Patentees are given one (1) month or thirty (30) days, whichever is longer, from the date of the final rule to file a request for reconsideration. No extensions of time will be granted under 37 C.F.R. § 1.136.

Nothing in 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.

Conclusion

The Office issued a decision dismissing a prior petition on January 4, 2011. The decision asserted the correct patent term adjustment is 1,038 days.

In view of the prior discussion, the correct patent term adjustment is 1,203 days.

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 three (1,203)** 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.	:	7,727,732 B2
APPLICATION NO.	:	10/781,059
DATED	:	June 1, 2010
INVENTOR(S)	:	Spyridon Artavanis-Tsakonas 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,

The first or sole Notice should read --

Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 862 days.

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MAILED
MAR 27 2012
OFFICE OF PETITIONS

ANDERSON, GORECKI & MANARAS, LLP
33 NAGOG PARK
ACTON, MA 01720

In re Patent No. 7,167,708 :
Issue Date: January 23, 2007 :
Application No. 10/781,192 : NOTICE
Filed: February 18, 2004 :
Attorney Docket No. 160-017 :

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

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-1642.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

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ANDERSON, GORECKI & MANARAS, LLP
33 NAGOG PARK
ACTON, MA 01720

MAILED
MAR 27 2012
OFFICE OF PETITIONS

In re Patent No. 7,149,478 :
Issue Date: December 12, 2006 :
Application No. 10/781,252 : NOTICE
Filed: February 18, 2004 :
Attorney Docket No. 160-049 :

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

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-1642.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

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ANDERSON GORECKI & MANARAS LLP
33 NAGOG PARK
ACTON MA 01720

MAILED

APR 06 2012

OFFICE OF PETITIONS

In re Patent No. 7,149,520 :
Issue Date: December 12, 2006 :
Application No. 10/781,309 : NOTICE UNDER 37 CFR. 1.28(c)
Filed: February 18, 2004 :
Attorney Docket No. 160-019 :

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 **DIMISSED**.

37 CFR 1.28(c) 2 (ii) states:

> (ii) *Itemization of the deficiency payment.* An itemization of the total deficiency payment is required. The itemization must include the following information:
>
> (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. This will permit the Office to differentiate, for example, between two one-month extension of time fees erroneously paid as a small entity but on different dates;
>
> (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.

A one (1) month non-extendable time period for reply is given from the mail date of this decision, to avoid the return of the fee deficiency paper, at the option of the Office.

Inquiries related to this communication should be directed to the Michelle R. Eason at (571) 272-4231.

Thurman Page
Petitions Examiner
Office of Petitions

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KAREN ANN ENGLAND
39 GALVEZ COURT
PENSACOLA BEACH FL 32561

MAILED

JUN 21 2011

OFFICE OF PETITIONS

In re Patent No. 6,966,851 :
Issued: November 22, 2005 :
Application No. 10/781,502 : ON PETITION
Filed: February 18, 2004 :
Attorney Docket No. 240368 :

This is a decision on the petition under 37 CFR 1.378(c), filed May 17, 2011 and May 16, 2011, 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 Commissioner.

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 items (2) and (3) above.

With regards to items (2) and (3), petitioner has failed to submit the required $490.00 small entity three and a half year maintenance fee and required $1,640.00 surcharge fee. Therefore, as stated above a $400.00 petition fee is also required for any petition for reconsideration, bring the total to $2,530.00.

If this petition is not renewed or if renewed and not granted, then petitioner may request a refund of the maintenance and surcharge fees paid. The fee for requesting reconsideration is not refundable.

Further, the petition must be signed by:

1) An attorney or agent of record appointed in compliance with § 1.34(b);
2) A registered attorney or agent not of record who acts in a representative capacity under the provisions of§ 1.34(a);
(3) The assignee of record of the entire interest, if there is an assignee of record of the

entire interest;
(4) An assignee of record of an undivided part interest, and any assignee(s) of the remaining interest and any applicant retaining an interest, if there is an assignee of record of an undividing part interest; or
(5) **All of the applicants (§§ 1.42.1.43 and 1.47) for patent, unless there is an assignee of record of the entire interest and such assignee has taken action in the application in accordance with §§ 3.71 and 3.73.**

The instant petition was signed by only one of the two listed inventors. Petitioner appears to have submitted duplicate petitions signed by only one of the two listed inventors. A renewed petition with the signatures of both inventors is required.

If this petition is not renewed or if renewed and not granted, then petitioner may request a refund of the maintenance and surcharge fees paid. The fee for requesting reconsideration is not refundable.

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: 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 (571)-272-7751.

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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KAREN ANN ENGLAND
39 GALVEZ COURT
PENSACOLA BEACH FL 32561

MAILED

OCT 25 2011

OFFICE OF PETITIONS

In re Patent No. 6,966,851 :
Issued: November 22, 2005 :
Application No. 10/781,502 : ON PETITION
Filed: February 18, 2004 :
Attorney Docket No. 240368 :

REQUIREMENT FOR INFORMATION

A renewed petition was filed on September 26, 2011 under 37 CFR 1.378 to accept the delayed payment of a maintenance fee for the above-identified patent.

A decision on this petition will be held in abeyance for a period of **TWO MONTHS** from the date of this communication to permit petitioner to address the following issues before a decision is rendered. **No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b).**

Petitioner has submitted a renewed petition under 37 CFR 1.378(c), however, the petition was not submitted within the two-month period required by the decision mailed June 21, 2011. Therefore, petitioner must now explain the delay from the time the renewed petition was due until the time the renewed petition was filed. Consequently, the renewed petition under 37 CFR 1.378(c), cannot be accepted at this time.

Further, petitioner has submitted $2,530.00 towards the current required small entity three and one-half year $565.00 maintenance fee, the $1,640.00 surcharge fee and the $400.00 reconsideration fee. Additionally, it should be noted that the new fee schedule became effective September 26, 2011. Therefore, petitioner must now submit an additional $75.00 to cover all the above fees.

The response to this Requirement for Information should include a cover letter entitled "Response to Requirement for Information."

At the end of the two month period specified above, a decision will be rendered on the instant petition under 37 CFR 1.378 as supplemented by any information submitted in response to this Requirement for Information.

In order to expedite reinstatement of this patent, petitioner may wish to consider submitting the reply to the requirement for information by facsimile transmission to the telephone number indicated below and to the attention of the undersigned.

By Mail: Mail Stop PETITIONS
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 (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

KAREN ANN ENGLAND
39 GALVEZ COURT
PENSACOLA BEACH FL 32561

MAILED

MAR 06 2012

OFFICE OF PETITIONS

In re Patent No. 6,966,851 :
Issued: November 22, 2005 :
Application No. 10/781,502 : DECISION ON PETITION
Filed: February 18, 2004 :
Attorney Docket No. 240368 :

This is a decision on the renewed petition under 37 CFR 1.378(c), filed February 21, 2012, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on November 23, 2009 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.

Additionally, 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. 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. 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.

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

cc: Karen England
125 N. Thread Street
Covington, LA 70433

UNITED STATES PATENT AND TRADEMARK OFFICE

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

FOLEY HOAG, LLP (w/GPT)
PATENT GROUP
155 SEAPORT BOULEVARD
BOSTON MA 02110-2600

MAILED

JAN 19 2011

OFFICE OF PETITIONS

In re Application of :
ZHAO, Zhong et al. :
Application No. 10/781,562 : DECISION ON PETITION
Filed: February 18, 2004 : TO WITHDRAW
Attorney Docket No. **GPT-032.01** : 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 November 19, 2010.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office requires the practitioner(s) requesting withdrawal to certify that he, she, or they have: (1) given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any responses that may be due and the time frame within which the client must respond, pursuant 37 CFR 10.40(c).

The request was signed by Dana M. Gordan on behalf of all attorneys of record who are associated with customer No. 29755. All attorneys/agents associated have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the address indicated below.

There are no outstanding Office actions at this time.

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

Michelle R. Eason
Paralegal Specialist
Office of Petitions

cc: **EISAI INC.**
ATTENTION : AARON L. SCHWARTZ
4 CORPORATE DRIVE
ANDOVER, MA 01810-2441

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.
10/781,703	02/20/2004	Edward R. Howorka	E3331.0629	4196

32172 7590 05/09/2011

DICKSTEIN SHAPIRO LLP
1633 Broadway
NEW YORK, NY 10019

EXAMINER
LEMIEUX, JESSICA

ART UNIT	PAPER NUMBER
3693	

MAIL DATE	DELIVERY MODE
05/09/2011	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAY - 9 2011

Dickstein Shapiro LLP
1633 Broadway
New York, NY 10019

In re application of :
Howorka et al. :
Application No. 10/781,703 :
Filed: February 20, 2004 :
For: VOCALISATION OF TRADING DATA IN TRADING SYSTEMS :

DECISION ON PETITION TO MAKE SPECIAL (ACCELERATED EXAMINATION)

This is in response to the petition filed on August 23, 2006 to make the above-identified application special on the basis of special examining procedure for certain new applications - accelerated examination as set forth in MPEP § 708.02 VIII. The delay in treating this petition is regretted.

The requirements for granting special status under this section are: (A) a petition to make special accompanied by the fee set forth in 37 CFR 1.17(i); (B) all claims being directed to a single invention, or an election without traverse if the Office determines that all the claims are not directed to a single invention; (C) a statement that a pre-examination search was made listing the field of search; (D) one copy of each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and (E) a detailed discussion of how the claimed subject matter is patentable over the references.

The petition filed August 23, 2006 fails to adequately meet requirement (C) above. Petitioner indicates that a search was performed in a counterpart international or foreign application. However, this does not satisfy requirement (C) above. Furthermore, it is indicated that the claims in the counterpart applications are "of similar scope to the present U.S. application." MPEP 708.02 requires that applicant submit a statement that a preexamination search of the **claimed invention** was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc.

For the above stated reason, the petition is **DISMISSED**.

Petitioner is given one more opportunity to perfect the petition. Any request for reconsideration must be filed within TWO MONTHS of the date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted.

Until the renewed petition is submitted, the application will be returned to the examiner's docket to await treatment on the merits in the normal order of examination.

SUMMARY: Petition to Make Special **DISMISSED**.

Any inquiry regarding this decision should be directed to Teri Luu at (571) 272-7045.

/Teri P. Luu/
Teri P. Luu
Quality Assurance Specialist
Technology Center 3600

TL/tl: 05/05/11

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20100903A

DATE : September 03, 2010

TO SPE OF : ART UNIT 262

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:

/Mohammed Edun/ Primary Patent Examiner

/Hoa T. Nguyen/ Supervisory Patent Examiner

OIPE
NOV 30 2007
PATENT & TRADEMARK OFFICE

03500.017923

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of:	)	Examiner: Mohammad N. Edun
KENGO TAKEUCHI	)	Group Art Unit: 2627
Appl. No.: 10/781,740	)	
Filed: February 20, 2004	)	
For: REPRODUCING APPARATUS	)	
U.S. Patent No.: 7,184,376 B2	)	
Issued: February 27, 2007	)	November 29, 2007

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Certificate
DEC 04 2007
of Correction

CERTIFICATE OF CORRECTION
UNDER RULE 323

Sir:

It is respectfully requested that a Certificate of Correction be issued by the Patent and Trademark Office due to mistakes of a clerical, typographical, or minor character, which were not the fault of the Patent and Trademark Office. A Certificate of Correction form, in duplicate, is enclosed.

Accompanying this letter is a check for $100.00 to cover the statutory fee for such Certificate of Correction.

OK TO ENTER

12/03/2007 SZEWDIE1 00000057 7184376
01 FC:1811 100.00 OP

4 2007

/Muhammad Edun/ (09/03/2010)

Patentee's undersigned attorney may be reached in our Costa Mesa, California office by telephone at (714) 540-8700.

All correspondence should continue to be directed to our address given below.

Respectfully submitted,

Frank L. Cire
Attorney for Patentee
Registration No.: 42,419

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3800
Facsimile: (212) 218-2200

FCHS_WS 1623389v1

1 2007

Staple Here Only!

PRINTER'S TRIM LINE

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO. : 7,184,376 B2

DATED : February 27, 2007

INVENTOR(S) : Takeuchi

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

COLUMN 1:
Line 16, "Such the" should read -- Such an --;
Line 20, "such the" should read -- such an --;
Line 40, "missed to see," should read -- missed, --;
Line 42, "rewind" should read -- recall --;
Line 49, "seen" (second occurrence) should read -- observed --; and
Line 50, "seeing becomes" should read -- sighting fades --.

COLUMN 3:
Line 33, "made to be off," should read -- turned off, --; and
Line 53, "every" should read -- for every --.

COLUMN 4:
Line 5, "waits" should read -- awaits --; and
Line 15, "In case" should read -- In the case --.

COLUMN 5:
Line 42, "two information of" should read -- two items of information: --; and
Line 52, "Steps" should read -- Step --.

MAILING ADDRESS OF SENDER:
FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3800
(212) 218-2100 - Telephone
(212) 218-2200 - Facsimile

PATENT NO. 7,184,376 B2

No. of add'l. copies @ 30¢ per page

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PRINTER'S TRIM LINE

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO. : 7,184,376 B2

DATED : February 27, 2007

INVENTOR(S) : Takeuchi

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

COLUMN 7:
Line 67, "time" should read -- a time --.

COLUMN 8:
Line 18, "position" should read -- position pertaining to --;
Line 19, "preceding by" should read -- preceded by --;
Line 22, "a time" should read -- a time period --; and
Line 60, "a time" should read -- a time period --.

COLUMN 9:
Line 45, "every" should read -- for every --.

COLUMN 10:
Line 11, "wherein" should be deleted; and
Line 16, "wherein" should be deleted.

FCHS_WS 1623117v1

MAILING ADDRESS OF SENDER:
FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3800
(212) 218-2100 - Telephone
(212) 218-2200 - Facsimile

PATENT NO. 7,184,376 B2

No. of add'l. copies @ 30¢ per page

DEC 4 2007

Form PTO 1050 (Rev. 3-82)
1623117v1(Form#30)

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PRINTER'S TRIM LINE

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO. : 7,184,376 B2

DATED : February 27, 2007

INVENTOR(S) : Takeuchi

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

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MAILING ADDRESS OF SENDER:
FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3800
(212) 218-2100 - Telephone
(212) 218-2200 - Facsimile

PATENT NO. 7,184,376 B2

No. of add'l. copies @ 30¢ per page

DEC 4 2007

Form PTO 1050 (Rev. 3-82)
1623117v1(Form#30)

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PRINTER'S TRIM LINE

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO. : 7,184,376 B2

DATED : February 27, 2007

INVENTOR(S) : Takeuchi

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

COLUMN 7:
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COLUMN 8:
Line 18, "position" should read -- position pertaining to --;
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Line 60, "a time" should read -- a time period --.

COLUMN 9:
Line 45, "every" should read -- for every --.

COLUMN 10:
Line 11, "wherein" should be deleted; and
Line 16, "wherein" should be deleted.

FCHS_WS 1623117v1

MAILING ADDRESS OF SENDER:
FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3800
(212) 218-2100 - Telephone
(212) 218-2200 - Facsimile

PATENT NO. 7,184,376 B2

No. of add'l. copies @ 30¢ per page

4 2007

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : **7-26-10**

TO SPE OF : ART UNIT **3693**

SUBJECT : Request for Certificate of Correction for Appl. No.: **10781897** Patent No.: **7469228**

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (C of C)
Randolph Square – 9D10-E
Palm Location 7580

Omega Lewis
Certificates of Correction Branch

703-756-1575

Thank You For Your Assistance

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

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

Comments: _____

/James A Kramer/ 3693

SPE **Art Unit**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 06/24/11

TO SPE OF : ART UNIT 3739

SUBJECT : Request for Certificate of Correction for Appl. No.: 10781925 Patent No.: 7169146

CofC mailroom date: 06/13/11

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580
[redacted]

Note: **Should Claim 25 be approved**

Lamonte Newsome

Certificates of Correction Branch

571-272-3421

Thank You For Your Assistance

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

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

Comments: The actual correction should be claim 25, line 1, delete "the wherein".

SPE :/Linda C.m. Dvorak/ Art Unit:3739

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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WHITHAM, CURTIS & CHRISTOFFERSON & COOK, P.C.
11491 SUNSET HILLS ROAD
SUITE 340
RESTON VA 20190

MAILED
NOV 17 2010
OFFICE OF PETITIONS

In re Application of :
Jia Wei et al. :
Application No. 10/781,931 : NOTICE
Filed: February 20, 2004 :
Attorney Docket No. **01640445AA** :

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) 272-2783.

/Tredelle D. Jackson/
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

MAILED

NOV 22 2011

OFFICE OF PETITIONS

Bayer CropScience LP
Athenix Corporation
2 T.W. Alexander Drive
Research Triangle Park NC 27709

In re Patent No. 7,351,881
Issue Date: April 1, 2008
Application No. 10/781,979
Filed: February 19, 2004
Attorney Docket No. 2916693-015000

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed November 10, 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, 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. Inquiries related to this communication should be directed to the undersigned at (571) 272-3215.

Charlema Grant
Attorney Advisor
Office of Petitions

Cc: Kendal M. Sheets
CPA Global
2318 Mill Road, Suite 12 Floor
Alexandria, VA 22314

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : Feburary 15, 2011

TO SPE OF : ART UNIT 3673 - SPE Peter M. Cuomo.

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/782,050 Patent No.: 7,168,117 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

Antonio Johnson

Should the inventor "Michael S. DeFranks" be added to title page of patent?
See COCIN dated 11-1-2010 and PET.STATUS 7-24-2006; PALM shows 3rd inventor.

_____
Certificates of Correction Branch
(571)272-0483

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

SPE__Peter M. Cuomo_____ Art Unit

_3673_____

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : Feburary 15, 2011

TO SPE OF : ART UNIT 3673 - SPE Peter M. Cuomo.

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/782,050 Patent No.: 7,168,117 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

Antonio Johnson

Should the inventor "Michael S. DeFranks" be added to title page of patent?
See COCIN dated 11-1-2010 and PET.STATUS 7-24-2006; PALM shows 3rd inventor.

_____
Certificates of Correction Branch
(571)272-0483

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 Peter M. Cuomo Art Unit 3673

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

COX SMITH MATTHEWS INCORPORATED
112 EAST PECAN STREET, SUITE 1800
SAN ANTONIO TX 78205-1521

MAILED

JUN 02 2011

OFFICE OF PETITIONS

In re Patent No: 7,123,149 :
Issued: October 17, 2006 :
Application No. 10/782,135 : NOTICE
Filed: February 19, 2004 :
Attorney Docket No. 32450.5 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed April 5, 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 **DISMISSED AS MOOT.**

This patent was granted large entity status on June 11, 2008. Accordingly, all fees paid in this patent must be paid at the large entity rate.

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

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov
DW Feb-11

CAMERON IP
SUITE 1401 - 1166 ALBERNI STREET
VANCOUVER BC V6E 3Z3
CANADA

MAILED

FEB 03 2011

OFFICE OF PETITIONS

In re Application of	:	
Malcolm Thomas Hammond	:	LETTER IN RESPONSE
Application Number: 10/782174	:	TO PETITION
Filing Date: 02/20/2004	:	
Attorney Docket Number:	:	
1786P02US	:	

This is a letter in response to the paper entitled "PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 CFR 1.137(b)," filed on December 3, 2010.

The subject paper, filed on December 3, 2010, appears to be a copy of a petition under 37 CFR 1.137(b) filed on July 14, 2006. A decision granting the subject petition was mailed on February 21, 2007. A copy of the decision is enclosed for petitioner's reference.

Accordingly, the Office is construing the filing of the subject petition as requiring no further action. Petitioners **must** inform the Office if this is an incorrect interpretation.

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

Any inquiries concerning this decision may be directed to the undersigned at 571.272.3231.

D. Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Encl: Copy of Decision mailed on February 21, 2007

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

FASKEN MARTINEAU DUMOULIN LLP
2100 - 1075 WEST GEORGIA STREET
VANCOUVER BC V6E 3G2
CANADA

COPY MAILED

FEB 21 2007

OFFICE OF PETITIONS

In re Application of :
Malcolm Thomas Hammond :
Application No. 10/782,174 : ON PETITION
Filed: 20 February, 2004 :
Atty Docket No. 263593.00002 :

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

The petition is **GRANTED**.

Petitioner states that the present nonprovisional application is the subject of a foreign or international application filed on 3 June, 2004. However, the U.S. Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in a foreign country.

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

A petition under 37 CFR 1.137(f) must be accompanied by:

(1) the reply which is met by the notification of such filing in a foreign country or under a multinational treaty;

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

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

The present petition has been found to be in compliance with 37 CFR 1.137(f). Accordingly, the failure to timely notify the Office of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded.

A Communication Regarding Rescission of Nonpublication Request and/or Notice of Foreign Filing, which sets forth the projected publication date of 31 May, 2007, is enclosed herewith.

The application is being referred to Technology Center Art Unit 3782 for further processing.

Any inquiries concerning this decision may be directed to the undersigned at 571.272.3231.

DIWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Encl: Communication Regarding Rescission of Nonpublication Request and/or Notice of Foreign Filing

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)
7009861	2006-03-07	10782388	2004-02-19	

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

	Fee	Code
◉	3 ½ year	(1551)
○	7 ½ year	(1552)
○	11 ½ year	(1553)

Small Entity

	Fee	Code
○	3 ½ year	(2551)
○	7 ½ year	(2552)
○	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

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.

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)	2011-02-15
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.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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www.uspto.gov

In re Patent No. 7009861
Issue Date: March 7,2006
Application No. 10782388
Filed: February 19,2004
Attorney Docket No. 64476-00005USPX

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

This is a decision on the electronic petition, filed February 15,2011 ,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 15,2011 . 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.: _____

DATE : 2-2-11

TO SPE OF : ART UNIT 3744

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/782,434 Patent No.: 7571617

CofC mailroom date: 1-27-11

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

FOR IFW FILES: Should CofC be approved

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

Chris Young
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: _____

/Cheryl J. Tyler/ 3744
SPE **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No.

MICROSOFT CORPORATION
ONE MICROSOFT WAY
REDMOND WA 98052

MAILED

OCT 04 2011

OFFICE OF PETITIONS

In re Application of :
Zigmund et al. : DECISION ON PETITION
Application No. 10/782,678 :
Filed: February 19, 2004 :
Atty Docket No. 306815.01 :

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a) filed August 25, 2011.

The petition is **DISMISSED**.

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

The above-identified application became abandoned for failure to timely file a response to the Second Examiner's Answer dated December 9, 2008. Petitioner states that applicants never received the Examiner's Answer and thus, the entire delay in filing the reply brief was unavoidable. The petition includes a reply brief and payment of the petition fee. No terminal disclaimer is required.

A review of Office records confirms the alleged irregularity in the mailing of the Examiner's Answer mailed December 9, 2008 in this application. The returned Office action addressed to the correspondence address of record was returned on December 17, 2008.

However, the instant petition under 37 CFR 1.137(a) was not filed until almost three years after the original Office action was mailed and returned to the Office.

Pursuant to 35 U.S.C. 133 and 151, which allow for the revival of applications based on unavoidable delay, 37 CFR 1.137(a) provides that:

> If the delay in reply by applicant or patent owner was unavoidable, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination prosecution terminated under §§ 1.550 (d) or 1.957 (b) or limited under § 1.957 (c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:
> (1) The reply required to the outstanding Office action or notice, unless previously filed;
> (2) The petition fee as set forth in § 1.17(l);
> (3) A showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and
> (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

Requirement 3 is at issue. 35 U.S.C. 133 and 151 each require a showing that the "delay" was "unavoidable," which requires not only a showing that the delay which resulted in the abandonment of the application was unavoidable, but also a showing of unavoidable delay until the filing of a petition to revive. See In re Application of Takao, 17 USPQ2d 1155 (Comm'r Pat. 1990). The burden of continuing the process of presenting a grantable petition in a timely manner likewise remains with the applicant until the applicant is informed that the petition is granted. Id. at 1158. Thus, an applicant seeking to revive an "unavoidably" abandoned application must cause a petition under 37 CFR 1.137(a) to be filed without delay (i.e., promptly upon becoming notified, or otherwise becoming aware, of the abandonment of the application).

The Office does not generally question whether there has been an intentional or otherwise impermissible delay in filing an initial petition pursuant to 37 CFR 1.137(a) or (b), when such petition is filed: (A) within 3 months of the date the applicant

is first notified that the application is abandoned; and (2) within 1 year of the date of abandonment of the application. Thus, an applicant seeking revival of an abandoned application is advised to file a petition pursuant to 37 CFR 1.137 within 3 months of the first notification that the application is abandoned to avoid the question of intentional delay being raised by the Office (or by third parties seeking to challenge any patent issuing from the application). Where a petition pursuant to 37 CFR 1.137(a) or (b) is not filed within 3 months of the date the applicant is first notified that the application is abandoned, the Office may consider there to be a question as to whether the delay was unavoidable or unintentional. In such instances,
(A) the Office will require a showing as to how the delay between the date the applicant was first notified that the application was abandoned and the date a 37 CFR 1.137(a) petition was filed was "unavoidable"; or
(B) the Office may require further information as to the cause of the delay between the date the applicant was first notified that the application was abandoned and the date a 37 CFR 1.137(b) petition was filed, and how such delay was "unintentional."

As the instant petition pursuant to 37 CFR 1.137(a) was not filed within 1 year of the date of abandonment of the application (note that abandonment takes place by operation of law, rather than by the mailing of a Notice of Abandonment) the Office is requiring: (A) further information as to when the applicant (or applicant's representative) first became aware of the abandonment of the application; and (B) a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant (or applicant's representative) (see Pratt, 1887 Dec. Comm'r Pat. at 32-33).

Applicant's failure to carry the burden of proof to establish that the "entire" delay was "unavoidable" or "unintentional" may lead to the denial of a petition under 37 CFR 1.137(a) or 37 CFR 1.137(b) , regardless of the circumstances that originally resulted in the abandonment of the application.

CONCLUSION

While petitioner has not met the requirements for revival under 37 CFR 1.137(a), petitioner is not precluded from obtaining

relief by filing a petition based on unintentional delay, pursuant to 37 CFR 1.137(b).

Petitioner should not delay filing a petition pursuant to 37 CFR 1.137(b)(or a renewed petition under 37 CFR 1.137(a)) as applicant bears the burden of establishing that the entire delay, including the delay from the due date for the reply until the filing of a grantable petition, was unintentional (or unavoidable).

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MICROSOFT CORPORATION
ONE MICROSOFT WAY
REDMOND WA 98052

MAILED
DEC 12 2011
OFFICE OF PETITIONS

In re Application of :
Zigmond et al. : DECISION ON PETITION
Application No. 10/782,678 :
Filed: January 4, 2002 :
Atty Docket No. HI06036USU :
(P01003US) :

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) filed November 28, 2011.

The petition under § 1.137(b) is **GRANTED**.

The above-identified application became abandoned for failure to file a response to the Second Examiner's Answer (with new grounds of rejection) dated December 9, 2008. As no claims stood allowed, the application became abandoned at the end of the period for response. By decision mailed October 4, 2011, a prior petition for revival based on unavoidable delay was dismissed.

In response, applicant filed the instant petition under the less stringent standard of unintentional delay. The petition includes a reply in the form of a reply brief, the petition fee, and the required statement of unintentional delay. Petitioner has met the requirements for revival pursuant to 37 CFR 1.137(b).

Technology Center AU 3685 has been advised of this decision. The application is, thereby, forwarded to the Technology Center for consideration by the examiner of the reply brief.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
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DIW Nov-10

DORSEY & WHITNEY LLP
INTELLECTUAL PROPERTY DEPARTMENT
SUITE 1500
50 SOUTH SIXTH STREET
MINNEAPOLIS MN 55402-1498

MAILED

NOV 02 2010

OFFICE OF PETITIONS

In re Application of :
Fralick, Breiter, Peterson, : DECISION REFUSING STATUS
Gilbert, Distel, Newman, and : UNDER 37 CFR 1.47(a)
Erickson :
Application Number: 10/782733 :
Filing Date: 02/19/2004 :
Title of Invention: BIO-
PHOTONIC FEEDBACK CONTROL
SOFTWARE AND DATABASE

This is a corrected decision in response to the petition under 37 CFR 1.47(a) filed on July 16, 2004.

The Office apologizes for the delay in responding to the subject petition and regrets any inconvenience to petitioners.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified application was filed on February 19, 2004, without an executed oath or declaration. Accordingly, on May 13, 2004, the Office of Patent Application Processing mailed a Notice to File Missing Parts of Nonprovisional Application requiring the statutory basic filing fee, an executed declaration, a surcharge for their late filing, and additional claim fees.

In response, on July 16, 2004 (certificate of mailing date July 13, 2004), the present petition was filed, along with the surcharge, statutory basic filing fee, petition fee, and a declaration naming John Fralick, David L. Breiter, Jack Peterson, Mindy Gilbert, Marvin Distel, Ryan Newman, and Joel Erickson as joint inventors, signed by all inventors except joint inventor Distel on behalf of themselves and non-signing inventor Distel.

Petitioners assert that non-signing inventor Distel "affirmatively declined to sign the required documents" in the subject application.

A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee;

(4) a surcharge of $130 or $65 (small entity) if the petition and/or declaration is not filed at the time of filing the application, and

(5) a statement of the last known address of the non-signing inventors.

The petition lacks item (1), (2), and (5).

Petitioners have not shown that a copy of the application as filed (specification, including claims, drawings, if any, and the declaration) was sent to the non-signing inventor.[1]

MPEP 409.03(c)(II) states that a refusal by an inventor to sign and oath or declaration when the inventor has not been presented with the application papers does not itself suggest that that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. A copy of the application papers should be sent to the last known address of the non-signing inventor, or, if the non-signing inventor is represented by counsel, to the address of the non-signing inventor's attorney.

Petitioners may show proof that a copy of the application was sent or given to the non-signing inventors for review by

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[1] MPEP 409.03(d).

providing a copy of the cover letter transmitting the application papers (specification, including claims, drawings, if any, and the declaration) to the non-signing inventor or details given in an affidavit or declaration of facts by a person having first-hand knowledge of the details.

Likewise, before a *bona fide* refusal to sign the declaration can be alleged, petitioners **must** show that a copy of the application was sent or given to the inventor. If the inventor refuses in writing, petitioners must submit a copy of that written refusal with any renewed petition. If the refusal was made orally to a person, then that person must provide details of the refusal in an affidavit or declaration of fact.

With regards to item (2) the declaration is defective in that it does not state the citizenship the inventors.[2] A statement of the inventors' citizenship is a statutory requirement and cannot be waived.[3] Furthermore, the residence city and state or city and foreign country for each inventor is missing.

MPEP 605.02 states that applicant's place of residence, that is, the city and either state or foreign country, is required to be included in the oath or declaration in a nonprovisional application for compliance with 37 CFR 1.63 unless it is included in an application data sheet (37 CFR 1.76).

It is additionally noted that the residence and mailing address for non-signing inventor Distel are missing from the declaration. Applicant's place of residence, that is, the city and either state or foreign country, is required to be included in the oath or declaration in a nonprovisional application for compliance with 37 CFR 1.63 unless it is included in an application data sheet (37 CFR 1.76).[4]

Each applicant's mailing or post office address is required to be supplied on the oath or declaration, if not stated in an application data sheet. Applicant's mailing address means that address at which he or she customarily receives his or her mail. Either applicant's home or business address is acceptable as the mailing address. The mailing address should include the ZIP Code designation. Since the term "post office address" as

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[2] MPEP 605.01.

[3] 35 U.S.C. § 115, MPEP 605.01.

[4] MPEP 605.02

previously used in 37 CFR 1.63 may be confusing, effective November 7, 2000, 37 CFR 1.63 was amended to use the term "mailing address" instead.

The object of requiring each applicant's mailing address is to enable the Office to communicate directly with the applicant if desired; hence, the address of the attorney with instruction to send communications to applicant in care of the attorney is not sufficient.

In situations where an inventor does not execute the oath or declaration and the inventor is not deceased, such as in an application filed under 37 CFR 1.47, the inventor's most recent home address must be given to enable the Office to communicate directly with the inventor as necessary.[5]

Petitioners are reminded that any oath or declaration filed with a renewed petition must identify both the application number and filing date of the application. The new oath or declaration must be signed by all of the signing inventors on behalf of themselves and the non-signing inventor, and include each inventor's residence, mailing address, and citizenship.

With regard to item (5), an application filed pursuant to 37 CFR 1.47 must state the last known address of the nonsigning inventor. That address should be the last known address at which the inventor customarily receives mail. See MPEP § 605.03. Ordinarily, the last known address will be the last known residence of the nonsigning inventor. Inasmuch as a nonsigning inventor is notified that an application pursuant to 37 CFR 1.47 has been filed on his or her behalf, other addresses at which the nonsigning inventor may be reached should also be given.[6]

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

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[5] MPEP 605.03

[6] MPEP 409.03(e).

Attn: Office of Petitions

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

A reply may also be filed via EFS-Web.

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

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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)
7146817	2006-12-12	10782736	2004-02-19	27620/03

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

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.

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	/J M GILBRETH/	Date (YYYY-MM-DD)	2011-11-08
Name	J M GILBRETH	Registration Number	33388

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. 7146817
Issue Date: December 12,2006
Application No. 10782736
Filed: February 19,2004
Attorney Docket No. 26820/03

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

This is a decision on the electronic petition, filed November 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 November 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.

UNITED STATES DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office
Address : COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10/782,738	18 February, 2004	SARRIS ET AL.	HBZ-013CNRCE

SEED INTELLECTUAL PROPERTY LAW GROUP PLLC
701 FIFTH AVE
SUITE 5400
SEATTLE, WA 98104

EXAMINER	
Gollamudi S. Kishore, PhD	
ART UNIT	PAPER
1612	20120207

DATE MAILED:

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

Commissioner for Patents

In view of the papers filed under 37 C.F.R. §1.48(a) on 6/20/07 , it has been found that this application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and accordingly, this application has been corrected in compliance with 37 CFR 1.48(a). The inventorship of this application has been changed by adding the following inventor.
Lawrence D. Mayer as inventor number seven (7).

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.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gollamudi S. Kishore, PhD whose telephone number is (571)272-0598. The examiner can normally be reached on 6:30 AM- 4 PM, alternate Friday off.
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Krass Frederick can be reached on (571) 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Frederick Krass/ Supervisory Patent Examiner, Art Unit 1612	/Gollamudi S. Kishore/ Primary Examiner, Art Unit 1612

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

KENNETH F. PEARCE, ATTORNEY AT LAW
631 DENMARK DRIVE
DANVILLE KY 40422-2419

MAILED

SEP 08 2010

OFFICE OF PETITIONS

In re Application of	:	
David J. Collodi	:	
Application No. 10/782,745	:	DECISION ON PETITION
Filed: February 19, 2004	:	
Attorney Docket No. 7871/17	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 7, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, February 15, 2007, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on May 16, 2007. A Notice of Abandonment was mailed October 22, 2007.

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

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

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

This application is being referred to Technology Center AU 2123 for further appropriate action by the Examiner in the normal course of business on the reply received.

Joan Olszewski
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20100920

DATE : September 20, 2010

TO SPE OF : ART UNIT 3657

SUBJECT : Request for Certificate of Correction on Patent No.: 7383929

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:

/ROBERT A SICONOLFI/
Supervisory Patent Examiner.Art Unit 3657

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.

PERRY + CURRIER INC.
(FOR RIM)
1300 YONGE STREET
SUITE 500
TORONTO ON M4T-1X3
CANADA

MAILED

JAN 04 2011

OFFICE OF PETITIONS

In re Application of :
Chiu et al. : DECISION ON PETITION
Application No. 10/782,963 :
Filed: February 23, 2004 :
Atty Docket No. 16813-5US :

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) filed November 5, 2010.

The above-identified application became abandoned for failure to file a reply to the final Office action mailed December 15, 2009. The Office action set a three (3) month shortened statutory period for reply, with extensions of time obtainable under 37 CFR 1.136(a). No reply having been received and no extensions of time obtained, the above-identified application became abandoned on March 16, 2010. A courtesy Notice of Abandonment was sent on July 29, 2010.

In response, applicants promptly filed the instant petition. Petitioner seeks revival solely for continuity purposes.

The petition is **GRANTED**.

The above-identified application is being revived solely for purposes of continuity. As continuity has been established by this decision reviving the application, the application is again

abandoned in favor of the continuation application (No. 12/815,779), received June 15, 2010.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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CAESAR, RIVISE, BERNSTEIN,
COHEN & POKOTILOW, LTD.
Attn: PTO Customer No. 31717
11TH FLOOR, SEVEN PENN CENTER
PHILADELPHIA PA 19103-2212

MAILED
SEP 23 2011
OFFICE OF PETITIONS

In re Application of	
Williams	
Application No. 10/782,968	
Filed: February 20, 2004	ON APPLICATION FOR
Attorney Docket No. W1107/20009	PATENT TERM ADJUSTMENT
Title: CLINICAL ASSAYS FOR THROMBOSPONDIN FRAGMENTS IN THE DETECTION, DIAGNOSIS, AND EVALUATION OF CANCER	

This is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705", filed September 20, 2011. Applicant submits that the correct patent term adjustment to be indicated is four hundred four (404) days, not two hundred fifty-four (254) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment.

The merits of the request for reconsideration of the patent term adjustment have not been reviewed because the paper submitted does not contain a signature as required 37 CFR 1.34.

Pursuant to 37 CFR 1.34:

> When a patent practitioner acting in a representative capacity appears in person or signs a paper in practice before the United States Patent and Trademark Office in a patent case, his or her personal appearance or signature shall constitute a representation to the United States Patent and Trademark Office that under the provisions of this subchapter and the law, he or she is authorized to represent the particular party on whose behalf he or she acts. In filing such a paper, the patent practitioner must

set forth his or her registration number, his or her name and signature. Further proof of authority to act in a representative capacity may be required.

Petitioner has not been authorized to prosecute the instant application and has provided an incorrect registration number.

As such the request for reconsideration is **Dismissed**.

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

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
PATENT EXAMINING OPERATION

Applicant(s): Kevin Jon Williams

U.S. application no. 10/782,968 Group Art Unit: 1643

Filed: February 20, 2004 Examiner: Alana M. Harris

Att. Docket No.: W1107/20009 Confirmation No.: 9607

For: Clinical Assays for Thrombospondin Fragments in the Detection, Diagnosis, and Evaluation of Cancer".

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C. F. R. § 1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant requests reconsideration of the Patent Term Adjustment ("PTA") set forth in the "Notice of Allowance and Fee(s) Due" dated June 24, 2011. The basis for the Request starts on page 2 of this paper.

CERTIFICATE OF MAILING/TRANSMISSION PURSUANT TO 37 CFR 1.8
I hereby certify that this correspondence and any attachments referenced therein is/are being mailed/transmitted to the USPTO by EFS-Web (37 CFR § 1.6(a)(4)) on the date shown below.

Date: 9/20/2011 Signature: Allan H. Fried

Name: Allan H. Fried

REQUEST FOR RECONSIDERATION

This request is specific to the calculation under 37 CFR 1.702(a)(1). Applicant understands that any request for a reconsideration of a calculation under 37 CFR 1.702(b) would be premature.

Fee required per 37 CFR §1.18(e)

The fee is being submitted via EFS-web along with this document.

Statement of the facts

Correct patent term adjustments ("PTAs"):

On Notice of Allowance the PTA should be: 404 days

On PAIR, the A delays should be: 705 days

On PAIR, A delay due to notification later than 14 months should be: 674 days

Current incorrect PTAs

On Notice of Allowance the PTA is: 254 days

On PAIR, A delays are: 555 days

On PAIR, A delay due to notification later than 14 months is: 524 days

Basis for adjustments:

The notification mailed September 26, 2006 was an "Office Communication" disclosing, in its first paragraph, that it was essentially a "Notice to Comply With Requirements for Patent

Applications Containing Nucleotide Sequence And/Or Amino Acid Sequence Disclosures". The phrase "attached Notice to Comply" in that paragraph was inaccurate since (as can be seen from PAIR) there was no attached Notice. Rather the essence of the Notice to Comply was set forth in the second paragraph of the Office Communication.

A "Notice to Comply With Requirements for Patent Applications Containing Nucleotide Sequence And/Or Amino Acid Sequence Disclosures" does not qualify as an office action under 35 U.S.C. 132. (See MPEP §2731). Rather the office action mailed February 23, 2007, a Restriction Requirement, does so qualify. (See MPEP §2731). The difference between September 26, 2006 and February 23, 2011 is 150 days.

Relevant dates for which an adjustment is sought:

The mailing of a notification under 35 U.S.C. 132 should not be September 26, 2006. Rather it should be February 23, 2007. (See 37 CFR 1.703(a)(1)).

Terminal Disclaimer:

The patent that will issue on the present application is subject to a terminal disclaimer. The expiration date specified on the terminal disclaimer is "the expiration date of the full statutory term prior patent No.7,655,411".

Circumstances during the prosecution of the application that constituted a failure to engage in reasonable efforts to conclude processing or examination of the application as set forth in §1.704:

These are set forth in PAIR. They total 301 days. They correspond to late responses by Applicant to Patent Office notifications. They are denoted on PAIR as follows:

July 23, 2007:	61 days
June 8, 2008:	93 days
September 3, 2009:	91 days
May 6, 2010:	16 days
November 18, 2010:	40 days
Total:	301 days

Should a Patent Office representative believe that a telephone conversation would be useful, Applicant's undersigned attorney can best be reached on his cell phone at **610-724-2952**.

Respectfully submitted,

CAESAR, RIVISE, BERNSTEIN,
COHEN & POKOTILOW, LTD.

September 20, 2011

By Allan H. Fried

Allan H. Fried
Registration No. ~~35,213~~ 31,253
Customer No. 31717
(215) 567-2010
Attorneys for Applicant

Please charge or credit our Account No. 03-0075 as necessary to effect entry and/or ensure consideration of this submission.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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CAESAR, RIVISE, BERNSTEIN, COHEN & POKOTILOW, LTD.
Attn: PTO Customer No. 31717
11TH FLOOR, SEVEN PENN CENTER
PHILADELPHIA PA 19103-2212

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OCT 04 2011

OFFICE OF PETITIONS

In re Application of :
Williams :
Application No. 10/782,968 : ON APPLICATION FOR
Filed: February 20, 2004 : PATENT TERM ADJUSTMENT
Attorney Docket No. W1107/20009 :
Title: CLINICAL ASSAYS FOR :
THROMBOSPONDIN FRAGMENTS IN THE :
DETECTION, DIAGNOSIS, AND :
EVALUATION OF CANCER :
:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT RECONSIDERATION UNDER 37 C.F.R. §1.705", filed September 29, 2011 in response to the September 23, 2011 decision. This petition is properly treated under 37 CFR 1.705(b). Applicant submits that the correct patent term adjustment to be indicated is four hundred four (404) days, not two hundred fifty-four (254) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment.

The request for review of the 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 three hundred ninety-three **(393)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

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

Applicant contends that the Office communication mailed on September 26, 2006 was improperly considered a notification under 35 USC §132.

Applicant's argument has been considered and deemed persuasive. A review of the record shows that a 674 day, not a 524 day adjustment should have been made for failure by the Office to mail at least one of the notifications under 35 U.S.C. 132 not later than fourteen months after the date the application was filed under 35 USC 1.111(a), pursuant to 37 CFR §1.702(a)(1). A restriction requirement was mailed on February 23, 2007, which is 14 months and 674 days after the application, was filed. The Notice to Comply With Requirements for Patent Applications Containing Nucleotide Sequence And/Or Amino Acid Sequence Disclosures is not an action under 35 USC 132. As such the 524 adjustment will be removed, and the 674 day adjustment will be entered.

Further review of the record shows that a reduction pursuant to 37 CFR 1.704(b) is required for the submission of the September 27, 2004 response to the June 16, 2004 Notice to File Missing Parts. 37 CFR §1.704(b) provides:

> an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in §1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed.

In this instance, a reduction of 11 days for the submission of reply on September 27, 2004 is warranted. The patent term should have been assessed a reduction of 11 days, the number of days in excess of three months that was taken to reply to the June 16, 2004 the Notice of Missing Parts.

Applicants' delay prior to the mailing of the Notice of Allowance is 312 days (11 + 61 + 93 + 91 + 16 + 40). Office

delay prior to the mailing of the Notice of Allowance is 705 days (674 + 14 + 17).

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance is 393 days.

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. Fried 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.

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 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) 272-3215.

/Charlema Grant/

Charlema Grant
Attorney Advisor
Office of Petitions

Enclosure: Copy of REVISED PALM Screen

Best Available

Patent Term Adjustments

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

Application Number*: 10782968 Search | Explanation of PTA Calculation | Explanation of PTE Calculation

PTA Calculations for Application: 10782968

Application Filing Date	02/20/2004	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	555
A Delays	555	PTO Manual Adjustment	139
B Delays	0	Applicant Delay (APPL)	301
C Delays	0	Total PTA (days)	393

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
111	10/01/2011		P028	Adjustment of PTA Calculation by PTO	674		0
110	10/01/2011		P028	Adjustment of PTA Calculation by PTO		524	0
109	10/01/2011		P028	Adjustment of PTA Calculation by PTO		11	0
91	06/24/2011		MN/=.	Mail Notice of Allowance			0
90	06/21/2011		OAR	Office Action Review			0
89	06/21/2011		IREV	Issue Revision Completed			0
88	06/21/2011		DVER	Document Verification			0
87	06/20/2011		N/=.	Notice of Allowance Data Verification Completed			0
86	06/20/2011		DOCK	Case Docketed to Examiner in GAU			0
85	06/20/2011		OAR	Office Action Review			0
84	06/17/2011		CNTA	Allowability Notice			0
83	06/09/2011		P574	Paralegal TD Accepted			0
81	04/26/2011		FWDX	Date Forwarded to Examiner			0
82	04/25/2011	04/25/2011	DIST	Terminal Disclaimer Filed			80
80	04/25/2011		A.NE	Amendment after Final Rejection			0
79	03/04/2011		ELC_RVW	Electronic Review			0
78	03/04/2011		EML_NTF	Email Notification			0
77	03/04/2011		MCTFR	Mail Final Rejection (PTOL - 326)			0
76	02/28/2011		CTFR	Final Rejection			0
75	01/11/2011		FWDX	Date Forwarded to Examiner			0
72	12/23/2010		P575	Paralegal TD Not accepted			0
74	11/18/2010	10/09/2010	A...	Response after Non-Final Action		40	68
73	11/18/2010		XT/G	Request for Extension of Time - Granted			0
71	11/18/2010		DIST	Terminal Disclaimer Filed			0
70	07/09/2010		ELC_RVW	Electronic Review			0
69	07/09/2010		EML_NTF	Email Notification			0
68	07/09/2010		MCTNF	Mail Non-Final Rejection			0
67	07/06/2010		CTNF	Non-Final Rejection			0
66	05/11/2010		FWDX	Date Forwarded to Examiner			0
65	05/06/2010	04/20/2010	A.NE	Amendment after Final Rejection		16	63
64	05/06/2010		XT/G	Request for Extension of Time - Granted			0
63	01/20/2010	01/03/2010	MCTFR	Mail Final Rejection (PTOL - 326)	17		58
62	01/16/2010		CTFR	Final Rejection			0
59	10/19/2009		FWDX	Date Forwarded to Examiner			0
58	09/03/2009	06/04/2009	A...	Response after Non-Final Action		91	55
57	09/03/2009		XT/G	Request for Extension of Time - Granted			0
61	08/10/2009		IDSC	Information Disclosure Statement considered			0
60	08/10/2009		EIDS.	Electronic Information Disclosure Statement			0
56	08/10/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
55	03/04/2009		MCTNF	Mail Non-Final Rejection			0
54	03/02/2009		CTNF	Non-Final Rejection			0
53	01/05/2009		FWDX	Date Forwarded to Examiner			0
52	12/05/2008		ELC.	Response to Election / Restriction Filed			0
51	12/05/2008		XT/G	Request for Extension of Time - Granted			0
50	09/05/2008		MCTRS	Mail Restriction Requirement			0
49	09/02/2008		CTRS	Restriction/Election Requirement			0
47	06/30/2008		FWDX	Date Forwarded to Examiner			0
46	06/08/2008	03/07/2008	A...	Response after Non-Final Action		93	42
45	06/08/2008		XT/G	Request for Extension of Time - Granted			0
48	12/26/2007		IDSC	Information Disclosure Statement considered			0
44	12/26/2007		EIDS.	Electronic Information Disclosure Statement			0
43	12/26/2007		WIDS	Information Disclosure Statement (IDS) Filed			0
42	12/07/2007	11/23/2007	MCTNF	Mail Non-Final Rejection	14		38
41	10/22/2007		C.ADB	Correspondence Address Change			0
40	10/15/2007		CTNF	Non-Final Rejection			0
39	07/31/2007		FWDX	Date Forwarded to Examiner			0
38	07/23/2007	05/23/2007	ELC.	Response to Election / Restriction Filed		61	35
37	07/23/2007		XT/G	Request for Extension of Time - Granted			0
35	02/23/2007		MCTRS	Mail Restriction Requirement			0
34	02/20/2007		CTRS	Restriction/Election Requirement			0
29	12/15/2006		FWDX	Date Forwarded to Examiner			0
33	12/13/2006		LET.	Miscellaneous Incoming Letter			0
24	12/12/2006		CRFE	CRF Is Good Technically / Entered into Database			0
32	12/04/2006		CRFL	CRF Disk Has Been Received by Preexam / Group / PCT			0
30	12/04/2006		LET.	Miscellaneous Incoming Letter			0
28	12/04/2006		A...	Response after Non-Final Action			0
27	12/04/2006		XT/G	Request for Extension of Time - Granted			0
23	09/26/2006	04/20/2005	MCTMS	Mail Miscellaneous Communication to Applicant	524		0.5
22	09/21/2006		CTMS	Miscellaneous Action with SSP			0

20	08/04/2005	WIDS	Information Disclosure Statement (IDS) Filed	0
19	06/28/2005	DOCK	Case Docketed to Examiner in GAU	0
18	12/21/2004	TSSCOMP	IFW TSS Processing by Tech Center Complete	0
16	12/21/2004	DOCK	Case Docketed to Examiner in GAU	0
15	12/13/2004	WROIPE	Application Return from OIPE	0
14	12/13/2004	ROIPE	Application Return TO OIPE	0
13	12/13/2004	OIPE	Application Dispatched from OIPE	0
12	12/13/2004	COMP	Application Is Now Complete	0
10	12/02/2004	CRFE	CRF Is Good Technically / Entered into Database	0
11	10/04/2004	SEQLIST	A set of symbols and procedures, provided to the PTO on a set of computer listings, that describe in	0
9	10/04/2004	ADDFLFEE	Additional Application Filing Fees	0
8	10/04/2004	OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	0
17	09/27/2004	A.PE	Preliminary Amendment	0
5	04/02/2004	L128	Cleared by L&R (LARS)	0
4	03/26/2004	L198	Referred to Level 2 (LARS) by OIPE CSR	0
3	03/26/2004	CLSS	CASE CLASSIFIED BY OIPE	0
2	03/17/2004	SCAN	IFW Scan & PACR Auto Security Review	0
1	02/20/2004	IEXX	Initial Exam Team nn	0
0.5	02/20/2004	EFILE	Filing date	0

Export to: Excel

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OCT 15 2010

OFFICE OF PETITIONS

Bradley Cooper
7323 Emerald Glen Dr.
Sugar Land TX 77479

In re Application of Bradley Cooper :
Application No. 10/783,119 : Decision on Petition
Filing Date: February 20, 2004 :
For: Pitcher's Jacket :

This is a decision on the petition filed June 6, 2005, which is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment of the above-identified application. The Office regrets the delay in the issuance of the instant decision.

The petition is **dismissed**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181."

Facts

The Office mailed a non-final Office action on October 1, 2004. The Office action set a three-month shortened statutory period for reply.

The fee necessary to obtain a one-month extension of time increased from $55 to $60 on December 8, 2004.

On December 22, 2004, petitioner filed a request for a one-month extension of time along with a check for $55.

A reply to the Office action was mailed January 31, 2005.

A domestic return receipt supplied by Petitioner appears to indicate the reply was physically received by the Office on Thursday, February 3, 2005.

The Office mailed a Notice of Abandonment on May 13, 2005.

Discussion

Petitioner states the application is not abandoned because a one-month extension of time was obtained and the reply was "mailed 1/31/2005, which is in compliance with the one month extension that required a reply by 2/01/2005."
A review of the record indicates a one-month extension of time was *not* obtained in this case. The fee for a one-month extension of time on December 22, 2004, when the fee was paid, was $60. Petitioner only filed $55 on December 22, 2004.

Since a one-month extension of time was not obtained, the application became abandoned on Tuesday, January 4, 2010.[1]

Even if a one-month extension of time had been obtained, the instant petition could not be granted.

The reply was not mailed in compliance with 37 CFR 1.8 or 37 CFR 1.10. Absent compliance with 37 CFR 1.8 or 37 CFR 1.10, the date a paper is physically received by the Office, not the date the paper is mailed, will determine if the paper is timely. A one-month extension of time would have only extended the period for reply to February 1, 2005. However, the reply was not received until February 3, 2005. Therefore, the reply would have been untimely even if a one-month extension of time had been obtained.

In view of the prior discussion, the holding of abandonment will not be withdrawn.

Petitioner may wish to consider filing a petition to revive based on unintentional abandonment under 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply (already submitted), the required petition fee ($810 for a small entity), and a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

A copy of a PDF "fillable" petition under 37 CFR 1.137(b) form can be found at: http://www.uspto.gov/web/forms/sb0064_fill.pdf.

The $55 Fee

Since the $55 payment was insufficient to obtain an extension of time and further payment for an extension of time was not submitted, the $55 is refundable. Therefore, the Office has scheduled a refund of the $55.

The Application Number

The instant petition listed the application number as 10/783,199. However, the correct application number is 10/783,119. Petitioner should ensure any future correspondence involving this application includes the correct application number.

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[1] January 1, 2005, was a Saturday, and January 2, 2005, was a Sunday. Therefore, a reply could have been timely filed as late as January 3, 2005.

37 CFR 1.8

As a courtesy, The Office provides the following discussion of 37 CFR 1.8.

37 CFR 1.8 provides "Certificate of Mailing" procedures one may use to ensure certain papers mailed to the Office before the expiration of a period for reply will be treated as timely even if the papers are not physically received by the USPTO until after the expiration of a period for reply. For example, suppose a reply to an Office action is due on or before May 1, 2006, and a reply is mailed on May 1, 2006, but not physically received by the Office until May 5, 2006. *If* the reply was properly mailed using "Certificate of Mailing" procedures, the reply will be considered timely even though the reply was not received by the USPTO until May 5, 2006.

In addition to ensuring a paper is considered timely, "Certificate of Mailing" procedures can allow a party to prove a paper was timely mailed in circumstances where USPTO records fail to indicate a reply to an Office action or notice was ever filed.

Step 1

When using "Certificate of Mailing" procedures, a party must place the proper language on a portion of each paper being submitted and/or place the certification language on a separate sheet.

A suggested format one can use for a Certificate of Mailing appearing on a portion of each paper submitted is shown below.

> Certificate of Mailing
>
> I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage on (put the DATE) as first class mail in an envelope addressed to:
>
> Commissioner for Patents
> PO Box 1450
> Alexandria, VA 22313-1450
>
> Typed or printed name of person signing this certificate
>
> _____
>
> Signature: _____

One may also use "Certificate of Mailing" procedures to submit a paper by facsimile transmission.

If the procedures are used for a facsimile transmission, the certification is called a "Certificate of Transmission."

A suggested format for the Certificate of Transmission can be found below.

Certificate of Transmission

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office (Fax No. (571) 273-8300) on (put the date).

Typed or printed name of person signing this certificate

_____

Signature: _____

If a party includes the certificate on a separate sheet instead of, or in addition to, including a certificate on each paper filed, the separate sheet must:

(1) Be signed,
(2) Be securely attached to the papers filed, AND
(3) Fully and completely identify each paper being attached, e.g., reply to final rejection, Notice of Appeal, etc.

An example of a paper which includes the certification language and allows a party to identify each paper being mailed or transmitted is attached. A PDF "fillable" copy of the paper can be found at: http://www.uspto.gov/web/forms/sb0021.pdf

Step 2

The individual who will be mailing or sending the paper by facsimile transmission should complete the information in the Certificate of Mailing or Transmission and sign the certificate *on the date it will be mailed or transmitted.*

Step 3

After the certificate has been properly completed (dated, signed, etc.), the individual who will be sending the paper should make a copy of the paper and retain the copy for the individual's records.

Step 4

If the paper is mailed to the Office, the paper must be mailed by first class mail using the United States Postal Service on the date listed in the certificate. The term "first class mail" includes first class mail and papers mailed with the USPS by Express Mail or Priority Mail.

If a paper is sent to the Office via facsimile transmission, the individual sending the paper should retain the sheet from the sending unit verifying the transmission was successful.

Additional Information

It should be noted that the benefits of a Certificate of Mailing/Transmission procedures do not apply to all papers.[2] The procedures do not apply to:

1. Original application papers,
2. Continued Prosecution Applications,
3. Papers related to interference practice,
4. The filing of papers in an international application, and
5. The filing of a copy of international applications necessary to enter the national stage.

One may use a Certificate of *Transmission* for some, but not all, drawing submissions. However, since sending a paper by facsimile transmissions degrades the quality of an image on the paper, a person in the United States may wish to mail drawings even in circumstances where the drawings could be submitted by facsimile transmission.

Conclusion

Petitioner has failed to prove a timely reply was filed in response to the non-final Office action mailed October 1, 2004. Therefore, the application is abandoned and the holding of abandonment will not be withdrawn.

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.[3] 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

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[2] Certificate of Mailing or Transmission practice does not apply to the submission of original application papers, Continued Prosecution Applications, some papers related to interference practice, the filing of an international application, the filing of papers in an international application, and the filing of copy of international application and fee required to enter national stage.

[3] General Information concerning EFS Web can be found at http://www.uspto.gov/patents/process/file/efs/index.jsp.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Attached: Form PTO/SB/21

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MERCHANT & GOULD
SCIENTIFIC ATLANTA, A CISCO COMPANY
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

MAILED

APR 25 2011

OFFICE OF PETITIONS

In re Application of :
Dean F. JERDING, et al. :
Application No. 10/783,235 : DECISION GRANTING PETITION
Filed: February 20, 2004 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. :
60374.0004USD3/CPOL968576

This is a decision on the petition under 37 CFR 1.313(c)(2), filed April 25, 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 25, 2011 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 2426 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.*

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 9/16/10 Paper No.: ———

TO SPE OF : ART UNIT 1648

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/783259 Patent No.: 7745762

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: _____

/Zachariah Lucas/ 1648

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www.uspto.gov

Arent Fox LLP and Cardinal Health, Inc.
1050 Connecticut Ave., N.W.
Suite 400
Washington DC 20036

MAILED

SEP 22 2011

OFFICE OF PETITIONS

In re Application of :
Wang et al. :
Application No. 10/783,362 : DECISION ON PETITION
Filed: February 20, 2004 :
Attorney Docket Number: 029714.00017 :

This is a decision on the petition, filed September 15, 2011 which is being treated as a petition under 37 CFR 1.181, 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 Notice of Panel Decision from Pre-Appeal Brief Review ("Notice") of March 30, 2011, which set a one (1) month shortened statutory period for reply.

Petitioner contends this application was prematurely abandoned because the Notice of Panel Decision from Pre-Appeal Brief Review reset the reply period of one month from the mailing of the Panel decision. Petitioner contends the appeal brief was not due until September 30, 2011.

The Notice provided states the time period for filing an appeal brief will be the later of the two month period set in 37 CFR 41.37(a) or one month from mailing of the decision on the Pre-Appeal Brief Request For Review, whichever is greater. Further, the time period for filing of the appeal brief is extendable under 37 CFR 1.136 based upon the mail date of the decision on the request or the receipt date of the notice of appeal, as applicable. As such petitioner was able to purchase an additional five months. Thus the reply period does not expire until September 30, 2011.

Accordingly, the holding of abandonment for failure to timely file a reply to the Notice of Panel Decision from Pre-Appeal Brief Review of March 30, 2011 is hereby withdrawn and the application restored to pending status.

A reply to the Notice of Panel Decision from Pre-Appeal Brief review is required by September 30, 2011 with the appropriate request for extension of time and fee.

This application is being referred to art unit 1615 for appropriate action in the normal course of business.

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

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

DANIEL P. MCCARTHY
PARSONS BEHL & LATIMER
201 SOUTH MAIL STREET, SUITE 1800
P.O. BOX 45898
SALT LAKE CITY UT 84111

MAILED

SEP 13 2010

OFFICE OF PETITIONS

In re Application of	:	
Tony M. PEARCE et al	:	
Application No. 10/783,396	:	DECISION ON PETITION
Filed: February 20, 2004	:	
Attorney Docket No. 5127 P	:	

This is a decision on the petition under 37 CFR 1.59(b), filed February 26, 2010, to expunge information from the above identified application.

The petition is DISMISSED.

Petitioner requests that a document filed, be expunged from the record. The petitioner fails to identify the material to be expunged in the instant application no. 10/783,396. But in any event, the petition is deficient and has not been decided on the merits because the fee, required under 37 CFR 1.17(g), of $200.00 has not been submitted.

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

Thurman K. Page
Petitions Examiner
Office of Petitions

cc: **DANIEL P. MCCARTHY**
2053 PINETREE VILLAGE
BRIGHTON, UTAH 84121

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

MAILED

FEB 28 2011

OFFICE OF PETITIONS

In re Application of :
Kubler, et al. :
Application No. 10/783,572 : DECISION ON APPLICATION
Filed: February 20, 2004 : FOR
Atty Docket No.101. **14364US09** : PATENT TERM ADJUSTMENT

This is a decision on the "APPLICATION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 35 U.S.C. 154(b) ACCOMPANYING THE NOTICE OF ALLOWANCE (37 C.F.R. § 1.705)" filed January 12, 2011, which is properly treated under 37 CFR 1.705(b). Applicant request that the initial Determination of Patent Term Adjustment under 35 U.S.C. 154(b) be corrected from one thousand and four (1,004) days to one thousand, twenty-four (1,024) days.

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

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 **1,024 days**. A copy of the updated PAIR screen, showing the corrected determination, is enclosed.

On December 10, 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 1,004 days. Applicant timely filed the instant application for patent term adjustment.[1]

Applicant asserts that the patent term should be adjusted by an additional 20 days pursuant to 37 CFR 1.702(a)(2) and 37 CFR

[1] PALM finance records indicate the issue fee was paid on January 12, 2011.

1.703(a)(2) for the Office's failure to respond within four months to a reply filed September 2, 2008.

Applicant's argument is supported by a review of the file record. It is noted that a reply was filed September 2, 2008, and an Office action was mailed responsively on January 22, 2009. It is also noted that the Notice Requiring Excess Claim Fees mailed October 16, 2008, does not toll any time period pursuant to 37 CFR 1.702(a)(2). The Office action mailed on January 22, 2009, is the Office action under 35 U.S.C. 132 that should have been used in the calculation of the period of adjustment under 37 CFR 1.702(a)(2). 37 CFR 1.703(a)(2) provides that:

> The period of adjustment under § 1.702(a) is the sum of the following periods:
>
> 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 if either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, which ever occurs first[.]

Accordingly, the period of Office delay pursuant to 37 CFR 1.703(a)(2) began January 3, 2009, and ended on January 22, 2009, with the mailing of the Office Action. Thus, a period of adjustment of 20 days will be entered for Office delay pursuant to 37 CFR 1.703(a)(2).

In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance is 1,024 days (1,136 (1,077 + 20 + 39) days of Office delay - 112 days of applicant delay).

The $200.00 fee set forth in 37 CFR 1.18(e) was received on January 12, 2011. No additional fees are 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 applicants will be notified in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

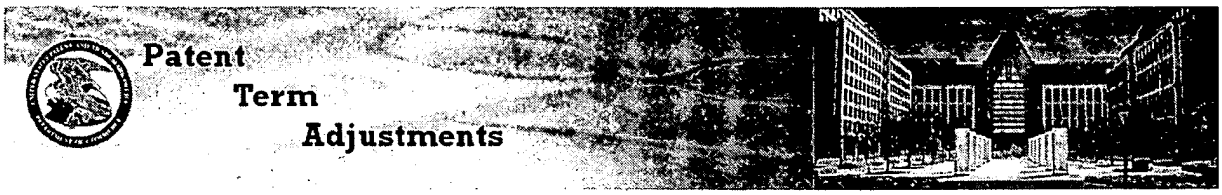
The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this 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 PAIR Screen



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

Application Number*: 10783572 Search | Explanation of PTA Calculation | Explanation of PTE Calculation

PTA Calculations for Application: 10783572

Application Filing Date	02/20/2004	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	1116
A Delays	1116	PTO Manual Adjustment	20
B Delays	0	Applicant Delay (APPL)	112
C Delays	0	Total PTA (days)	1024

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
108	02/24/2011		P028	Adjustment of PTA Calculation by PTO	20	0	
100	12/10/2010		MN/=.	Mail Notice of Allowance		0	
99	12/08/2010		IREV	Issue Revision Completed		0	
98	12/08/2010		N/=.	Notice of Allowance Data Verification Completed		0	
97	12/08/2010		DVER	Document Verification		0	
96	12/06/2010		CNTA	Allowability Notice		0	
90	11/03/2010		FWDX	Date Forwarded to Examiner		0	
89	10/29/2010		A...	Response after Non-Final Action		0	
88	09/14/2010		MCTNF	Mail Non-Final Rejection		0	
87	09/13/2010		CTNF	Non-Final Rejection		0	
86	06/29/2010		FWDX	Date Forwarded to Examiner		0	
85	06/25/2010		A...	Response after Non-Final Action		0	
84	03/25/2010		MCTNF	Mail Non-Final Rejection		0	
83	03/24/2010		CTNF	Non-Final Rejection		0	
82	02/22/2010		FWDX	Date Forwarded to Examiner		0	
79	02/22/2010		ABN9	Disposal for a RCE / CPA / R129		0	
81	02/18/2010		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE		0	
80	02/18/2010	01/06/2010	RCEX	Request for Continued Examination (RCE)		43	75
78	02/18/2010		XT/G	Request for Extension of Time - Granted		0	
77	02/18/2010		BRCE	Workflow - Request for RCE - Begin		0	
76	10/06/2009		DOCK	Case Docketed to Examiner in GAU		0	
75	10/06/2009	08/28/2009	MCTFR	Mail Final Rejection (PTOL - 326)	39		72
74	10/01/2009		CTFR	Final Rejection		0	
73	07/16/2009		FWDX	Date Forwarded to Examiner		0	
72	04/28/2009	04/22/2009	A...	Response after Non-Final Action		6	70
71	04/28/2009		XT/G	Request for Extension of Time - Granted		0	
70	01/22/2009		MCTNF	Mail Non-Final Rejection		0	
69	01/21/2009		CTNF	Non-Final Rejection		0	
64	10/24/2008		FWDX	Date Forwarded to Examiner		0	
68	10/20/2008		IDSC	Information Disclosure Statement considered		0	
66	10/20/2008		RCAP	Reference capture on IDS		0	
65	10/20/2008		M844	Information Disclosure Statement (IDS) Filed		0	
62	10/20/2008		WIDS	Information Disclosure Statement (IDS) Filed		0	
61	10/16/2008		MNFEE	Mail Notice of Required Fees Due		0	
60	10/10/2008		NFEE	Fee (additional) Due Notice		0	
59	10/09/2008		FWDX	Date Forwarded to Examiner		0	
54	10/05/2008		DOCK	Case Docketed to Examiner in GAU		0	
63	09/02/2008		FEE.	Fee Payment Recorded (fees filed separately e.g. not with original papers, etc).		0	
58	09/02/2008	07/01/2008	A...	Response after Non-Final Action		63	50
57	09/02/2008		XT/G	Request for Extension of Time - Granted		0	
53	08/28/2008		DOCK	Case Docketed to Examiner in GAU		0	
67	07/17/2008		IDSC	Information Disclosure Statement considered		0	
56	07/17/2008		RCAP	Reference capture on IDS		0	
55	07/17/2008		M844	Information Disclosure Statement (IDS) Filed		0	
52	07/17/2008		WIDS	Information Disclosure Statement (IDS) Filed		0	
50	04/01/2008	04/20/2005	MCTNF	Mail Non-Final Rejection	1077		0.5
49	03/29/2008		CTNF	Non-Final Rejection		0	
40	02/19/2008		DOCK	Case Docketed to Examiner in GAU		0	
39	10/17/2007		W525	Withdraw Flagged for 5/25		0	
38	10/16/2007		DOCK	Case Docketed to Examiner in GAU		0	
37	10/15/2007		F525	Flagged for 5/25		0	
41	08/23/2007		IDSC	Information Disclosure Statement considered		0	
36	08/23/2007		RCAP	Reference capture on IDS		0	
35	08/23/2007		M844	Information Disclosure Statement (IDS) Filed		0	
34	08/23/2007		WIDS	Information Disclosure Statement (IDS) Filed		0	

33	06/14/2007	DOCK	Case Docketed to Examiner in GAU	0
32	06/14/2007	DOCK	Case Docketed to Examiner in GAU	0
42	11/16/2006	IDSC	Information Disclosure Statement considered	0
31	11/16/2006	RCAP	Reference capture on IDS	0
30.7	11/16/2006	M844	Information Disclosure Statement (IDS) Filed	0
30	11/16/2006	WIDS	Information Disclosure Statement (IDS) Filed	0
43	10/19/2006	IDSC	Information Disclosure Statement considered	0
29	10/19/2006	RCAP	Reference capture on IDS	0
28.7	10/19/2006	M844	Information Disclosure Statement (IDS) Filed	0
28	10/19/2006	WIDS	Information Disclosure Statement (IDS) Filed	0
27	10/18/2006	DOCK	Case Docketed to Examiner in GAU	0
26	10/17/2006	DOCK	Case Docketed to Examiner in GAU	0
25	10/05/2006	DOCK	Case Docketed to Examiner in GAU	0
44	06/23/2006	IDSC	Information Disclosure Statement considered	0
24.7	06/23/2006	M844	Information Disclosure Statement (IDS) Filed	0
24	06/23/2006	WIDS	Information Disclosure Statement (IDS) Filed	0
23	05/15/2006	A.PE	Preliminary Amendment	0
45	05/05/2006	IDSC	Information Disclosure Statement considered	0
22	05/05/2006	RCAP	Reference capture on IDS	0
21.7	05/05/2006	M844	Information Disclosure Statement (IDS) Filed	0
21	05/05/2006	WIDS	Information Disclosure Statement (IDS) Filed	0
20	03/21/2006	DOCK	Case Docketed to Examiner in GAU	0
19	01/27/2006	DOCK	Case Docketed to Examiner in GAU	0
18	05/16/2005	DOCK	Case Docketed to Examiner in GAU	0
17	04/09/2005	TSSCOMP	IFW TSS Processing by Tech Center Complete	0
16	04/09/2005	DOCK	Case Docketed to Examiner in GAU	0
11	11/08/2004	COMP	Application Is Now Complete	0
14	11/05/2004	WROIPE	Application Return from OIPE	0
13	11/05/2004	ROIPE	Application Return TO OIPE	0
12	11/05/2004	WROIPE	Application Return from OIPE	0
10	11/05/2004	ROIPE	Application Return TO OIPE	0
9	11/05/2004	OIPE	Application Dispatched from OIPE	0
8	11/05/2004	COMP	Application Is Now Complete	0
7	11/01/2004	ADDFLFEE	Additional Application Filing Fees	0
6	11/01/2004	OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	0
5	09/02/2004	INCD	Notice Mailed--Application Incomplete--Filing Date Assigned	0
4	08/27/2004	L194	Cleared by OIPE CSR	0
3	08/27/2004	CLSS	CASE CLASSIFIED BY OIPE	0
2	03/09/2004	SCAN	IFW Scan & PACR Auto Security Review	0
15	02/20/2004	A.PE	Preliminary Amendment	0
1	02/20/2004	IEXX	Initial Exam Team nn	0
0.5	02/20/2004	EFILE	Filing date	0

Export to: Excel

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

PTO/SB/131 (01-10)
Approved for use through 02/28/2011. OMB 0651-0020
U.S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

Attorney Docket Number: Cao 2-2-6 (J)-US-NP	Patent Number: 7,660,706
Filing Date (or 371(b) or (f) Date): February 20, 2004	Issue Date: February 9, 2010
First Named Inventor: Jim Cao	
Title: Method and apparatus for allocating link bandwidth as function of QOS requirement	

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

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

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

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

Signature /Gregory J. Murgia/	Date August 9, 2010
Name (Print/Typed) Gregory J. Murgia	Registration Number 41,209

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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United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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Docket Administrator - Room 3D-201E
Alcatel-Lucent USA Inc.
600-700 Mountain Avenue
Murray Hill, NJ 07974

Mail Date: 09/03/2010

Applicant	: Jin Cao	: DECISION ON REQUEST FOR
Patent Number	: 7660706	: RECALCULATION of PATENT
Issue Date	: 02/09/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/783,806	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/20/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1358** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No.

Sterne, Kessler, Goldstein & Fox P.L.L.C.
1100 New York Avene N.W.
Washington DC 20005

MAILED

MAR 28 2011

OFFICE OF PETITIONS

In re Application of :
Hormann et al. :
Application No. 10/783,810 :
Patent No.: 7,304,162 :
Filed: February 19, 2004 :
Issued: December 4, 2007 :
Attorney Docket No.: :
2584.0300001/RWE/GER :
Title: OXADIAZOLINE LIGANDS FOR :
MODULATING THE EXPRESSION OF :
EXOGENOUS GENES VIA AN ECDYSONE :
RECEPTOR COMPLEX :

DECISION ON PETITION
PURSUANT TO
37 C.F.R. § 1.28(c)

This is a notice regarding your request for acceptance of a fee deficiency submission pursuant to 37 C.F.R. § 1.28, received on January 26, 2011. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 C.F.R. § 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 C.F.R. § 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.

Petitioner has identified the particular type of fees that were erroneously paid as a small entity, when the small entity fees were actually paid, the small entity fees that were actually paid, the deficiency owed amounts, and the total deficiency payment owed.

The deficiency payment in the amount of $790 has been received.

Your fee deficiency submission pursuant to 37 C.F.R. § 1.28(c) is hereby accepted. The petition is **GRANTED** accordingly.

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

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[1]

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

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 Petitioner's further action(s).

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CHICAGO IL 60661

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MAR 22 2011

OFFICE OF PETITIONS

In re Application of :
Kubler et al. :
Application No. 10/783,873 :
Filed: February 20, 2004 :
Attorney Docket No. 14364US15 :
For: HIERARCHICAL DATA :
COLLECTION NETWORK SUPPORTING :
PACKETIZED VOICE COMMUNICATIONS :
AMONG WIRELESS TERMINALS AND :
TELEPHONES :

ON APPLICATION FOR
PATENT TERM ADJUSTMENT

This is in response to the "APPLICATION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 35 U.S.C. 154(b) ACCOMPANYING OF NOTICE OF ALLOWANCE (37 CFR §1.705)" filed December 29, 2010. This request is properly treated under 37 CFR 1.705(b). Applicants request that the determination of patent term adjustment be corrected from one thousand thirty-nine (1039) days to two thousand one hundred ninety-nine (2,199) days.

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

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

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not

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

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

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

---

[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 applicant otherwise requests reconsideration of the patent term adjustment at the time of the mailing of the notice of allowance, the application for patent term adjustment is **DISMISSED** to the extent indicated herein.

On November 23, 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 1039 days. The instant application for patent term adjustment was timely filed on December 29, 2010.

Applicants contend that a 2-day reduction for the submission of the reply to the non-final Office action on June 16, 2008 should not be assessed. Applicants maintain that since the response was submitted on the first business day after the deadline falling on a weekend the reply was not late and no reduction is required. Petitioner relies upon 35 USC §(b) and 1.6(a) to establish a reduction is not warranted.

The Office has considered applicant's argument but does not find it persuasive. The Office has concluded that the reduction of 2 days was properly entered based on 37 CFR 1.704(b). 37 CFR §1.704(b) provides:

> an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in §1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed.

In this instance, a reduction of 2 days for the submission of reply on June 16, 2008 is warranted. The PTA was properly reduced by 2 days, the number of days in excess of three months that was taken to reply to the March 14, 2008 Office action. The fact that a reply could be filed on June 16, 2008 and be deemed timely to avoid abandonment does not establish a reduction is

not warranted. The actual date of receipt of the correspondence in the Office is used for all other purposes. The Office notes that the date of filing of a paper will be used in calculating any periods of reduction of patent term adjustment. If applicant wanted to avoid a reduction applicant should have considered the use of the "Express Mail Post Office to Addressee " service of the United States Postal Service (37 CFR 1.10) or facsimile transmission (37 CFR 1.6(d)) for replies to be accorded the earliest possible filing date for patent term adjustment calculations. Alternatively, applicants could have chosen 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. As such the 2 day reduction will not be removed.

Applicants' delay prior to the mailing of the Notice of Allowance is 35 days. Office delay prior to the mailing of the Notice of Allowance is 1074 days.

In view thereof, the determination of PTA at the time of the mailing of the notice of allowance is one thousand thirty-nine **(1,039)** days.

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

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

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

Charlema Grant
Attorney
Office of Petitions

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OFFICE OF PETITIONS

In re Patent No. 7,760,703 : DECISION ON REQUEST
Kubler, et al. : FOR
Issue Date: July 20, 2010 : RECONSIDERATION OF
Application No. 10/783,883 : PATENT TERM ADJUSTMENT
Filed: February 20, 2004 : and
Atty Docket No. **14364US16** : NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on September 20, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand, seven hundred and sixty (1,760) 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, seven hundred and sixty (1,760) days is **GRANTED.**

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 of the above-identified patent is extended or adjusted by **one thousand, seven hundred and sixty (1,760) days.**

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

/Kenya A. McLaughlin/

Kenya Ã. 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 : 7,760,703 B2

DATED : Jul. 20, 2010

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 (1719) days

Delete the phrase "by 1719 days" and insert – by 1760 days--

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : February 23, 2011

TO SPE OF : ART UNIT 1762 - SPE

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/783,995 Patent No.: 7,781,539 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 "3-hydroxypropionate" be deleted in claim 2 of patent as requested by applicant. ***See COCIN dated 2-7-2011***

Antonio Johnson

_____
Certificates of Correction Branch
(571)272-0483

Thank You For Your Assistance

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

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

Comments: _____

_____

_____

_____ SPE _____ **Art Unit** 1796

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HARNESS, DICKEY & PIERCE, P.L.C.
P.O. BOX 828
BLOOMFIELD HILLS MI 48303

MAILED
MAY 23 2011
OFFICE OF PETITIONS

In re Patent No. 7,851,036 :
Issue Date: December 14, 2010 :
Application No. 10/784,090 : DECISION ON PETITION
Filed: February 20, 2004 :
Attorney Docket No. 402200003DVC :

This is a decision on the Request Under 37 C.F.R. §3.81(b) For U.S. Patent 7,851,036 B2 To Be Corrected To State The Name Of Assignees Nike, Inc. and Nike IHM, Inc., filed January 3, 2011, which is being treated as a Petition Under 37 CFR §3.81(b), to change the name of the assignee identified on the Title Page of the patent from "BASF Coatings GmbH" to --Nike, Inc. and Nike IHM, Inc.-- via a Certificate of Correction. The requisite processing and petition fees have been submitted.

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

Petitioner requests that the present Petition was submitted to change the name of the assignee identified on the Title Page of the patent from "BASF Coatings GmbH" to --Nike, Inc. and Nike IHM, Inc.-- on the previously submitted PTOL-85B and such error was inadvertent.

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.

A review of United States Patent and Trademark Office (USPTO) records reveals that the assignment documents recorded in U.S. Patent Application 08/475,276 at Reel: 007718, Frame: 0054 on November 13, 1995 identify *Nike, Inc. and Tetra Plastics, Inc.* as the assignees. However, the present petition requests identification that *Tetra Plastics, Inc.* was re-named *Nike IHM, Inc.* in 1998. Notwithstanding, the name change was not timely filed for recordation, therefore, the instant petition cannot be granted.

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

Cheryl Gibson-Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

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TRASKBRITT, P. C.
P.O. BOX 45898
SALT LAKE CITY UT 84111

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SEP 14 2010

OFFICE OF PETITIONS

In re Application of :
Tony M. PEARCE :
Application No. 10/784,127 : DECISION ON PETITION
Filed: February 20, 2004 :
Attorney Docket No. 03886.053/5128 P :

This is a decision on the petition under 37 CFR 1.59(b), filed February 26, 2010, to expunge information from the above identified application.

The petition is DISMISSED.

Petitioner requests that a document filed, be expunged from the record. The petitioner fails to identify the material to be expunged in the instant application no. 10/784,127. But in any event, the petition is deficient and has not been decided on the merits because the fee, required under 37 CFR 1.17(g), of $200.00 has not been submitted.

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

Thurman K. Page
Petitions Examiner
Office of Petitions

cc: **DANIEL P. MCCARTHY**
2053 PINETREE VILLAGE
BRIGHTON, UTAH 84121

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SALT LAKE CITY UT 84111

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SEP 13 2010

OFFICE OF PETITIONS

In re Application of	:	
Tony M. PEARCE	:	
Application No. 10/784,128	:	DECISION ON PETITION
Filed: February 20, 2004	:	
Attorney Docket No. 03886.050/5125 P	:	

This is a decision on the petition under 37 CFR 1.59(b), filed February 26, 2010, to expunge information from the above identified application.

The petition is DISMISSED.

Petitioner requests that a document filed, be expunged from the record. The petitioner fails to identify the material to be expunged in the instant application no. 10/784,128. But in any event, the petition is deficient and has not been decided on the merits because the fee, required under 37 CFR 1.17(g), of $200.00 has not been submitted.

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

Thurman K. Page
Petitions Examiner
Office of Petitions

cc: **DANIEL P. MCCARTHY**
2053 PINETREE VILLAGE
BRIGHTON, UTAH 84121

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SEP 13 2010

OFFICE OF PETITIONS

In re Application of	:	
Tony M. PEARCE	:	
Application No. 10/784,136	:	DECISION ON PETITION
Filed: February 20, 2004	:	
Attorney Docket No. 03886.050/5126 P	:	

This is a decision on the petition under 37 CFR 1.59(b), filed February 26, 2010, to expunge information from the above identified application.

The petition is DISMISSED.

Petitioner requests that a document filed, be expunged from the record. The petitioner fails to identify the material to be expunged in the instant application no. 10/784,136. But in any event, the petition is deficient and has not been decided on the merits because the fee, required under 37 CFR 1.17(g), of $200.00 has not been submitted.

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

Thurman K. Page
Petitions Examiner
Office of Petitions

cc: **DANIEL P. MCCARTHY**
2053 PINETREE VILLAGE
BRIGHTON, UTAH 84121

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 10/26/10

TO SPE OF : ART UNIT 2436 Moazzami Nasser (Sped)

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/784215 Patent No.: 7545941

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Certificates of Correction Branch

703-756-1571 _____

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: _____

/Philip Chea/ 03/30/2012

SPE

2436

Art Unit

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,341	02/23/2004	Michael S. Beck	2063.007400/VS-00647	2359

23720 7590 11/08/2010
WILLIAMS, MORGAN & AMERSON
10333 RICHMOND, SUITE 1100
HOUSTON, TX 77042

EXAMINER	
NGUYEN, CUONG H	
ART UNIT	**PAPER NUMBER**
3661	
MAIL DATE	**DELIVERY MODE**
11/08/2010	PAPER

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

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

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NOV - 8 2010

WILLIAMS, MORGAN & AMERSON
10333 RICHMOND, SUITE 1100
HOUSTON TX 77042

In re Application of :
Michael S. Beck et al. : DECISION ON PETITION
Application No. 10/784,341 : UNDER 37 CFR §1.181
Filed: February 24, 2004 :
For: SYSTEM AND METHOD FOR :
DYNAMICALLY CONTROLLING :
THE STABILITY OF AN ARTICULATED VEHICLE

This is a decision on applicant's petition under 37 CFR 1.181 filed March 2, 2009 requesting the restriction requirement of May 4, 2007 be withdrawn.

The petition is **DENIED.**

A restriction requirement was set forth in the Office action of May 4, 2007 in which the claims 1-19 form Group I directed to a method for controlling the stability of a vehicle, claims 20-45 form Group II directed to a method and apparatus for controlling a vehicle's stability, and claims 46-53 forms Group III directed to a vehicle having sensors and a controller to control a vehicle's stability. Applicants elected with traverse claims 1-19 of Group I on August 6, 2007. The examiner repeated the restriction requirement in the Office action mailed on October 24, 2007. Applicant filed a response on December 17, 2007 electing claims 1-19 of Group I with traverse along with an appeal brief. The examiner rejected the elected claims 1-19 in the Office action mailed on March 31, 2008, and withdrew claims 20-53 as being drawn to the non-elected invention. The restriction requirement was made final in the final Office action mailed on December 2, 2008.

Applicants argue that the restriction requirement is improper because there is no serious burden for the examiner to examine each group because "all the independent claims are linked and so must be examined together."

Applicants further argue that all three groups are linked and note that claim 1 is generic to claim 20 and 46. However, a serious burden would exist for the examiner to examine the particulars of Groups II and III in the examination of Group I. In particular, claim 20 recites "determining a load on each of a plurality of wheel assemblies" whereas claim 1 recites "determining at least one dynamic property of the vehicle."

The broadly claimed "dynamic property" could be a long list of properties of a vehicle, some of which are unrelated to the claimed "load on each of a plurality of wheel assemblies." The dynamic property, for example, could be speed or acceleration of the vehicle, or even of each individual wheel. This would require a different search. Further, not all loads on a plurality of wheel assemblies are dynamic. For example, during packing of a load in a commercial vehicle the loads would be static. Hence a search for dynamic properties of claim 1 would not necessarily include the loads on wheel assemblies of claim 20, which are not limited to dynamic loads. Likewise, the recitation of "manipulating the articulated suspension... to effect the stability of the vehicle" recited in claim 1 requires a search in suspension control whereas the recitation of "manipulating at least one component of the vehicle to affect at least one of a center of gravity of the vehicle" of claims 20 and 46 could include manipulating other components of a vehicle wholly unrelated to a suspension of claim 1. For example, manipulating the position of a load would affect the center of gravity (this is classified in a different area of class 701, subclass 124) and has no relation whatsoever with the suspension of the vehicle.

Applicants argue that claims 20 and 46, representing groups II and III are linked to claim 1. Applicant argues that "the "manipulation" of claim 1 affects the vehicle's center of gravity in claim 20." However, the control to affect the "vehicle's center of gravity" recited in claims 20 and 46 is not necessarily a narrower version of the claimed "manipulating" of claim 1. For example, inverted pendulum type vehicles (such as the Segway) affect a vehicles center of gravity without manipulating an articulated suspension, but instead focusing on speed and direction of the wheels. These are separate distinct inventions that would require a separate and distinct search. As such, it would have been a serious burden for the examiner to examine all claims 1-53 if restriction is not required.

For the reasons stated above, the restriction requirement is deemed proper. Since the application is pending before the Board of Patent Appeals and Interferences (the Board), applicants' arguments on the issues of improper restriction requirement are considered moot. The application is forwarded to the Board for a decision on applicants' appeal.

Any questions regarding this decision should be directed to Supervisory Patent Examiner Tom Black at (571) 272-6956.

Katherine Matecki

Katherine Matecki, Director
Patent Technology Center 3600
Telephone No.: (571)-272-5250

tb/lm: 9/27/10

LM

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BROOKS, CAMERON & HUEBSCH, PLLC
1221 NICOLLET AVENUE
SUITE 500
MINNEAPOLIS MN 55403

MAILED
MAR 14 2011
OFFICE OF PETITIONS

In re Application of	:	
George Goicoechea, et al.	:	
Application No. 10/784,378	:	DECISION GRANTING PETITION
Filed: February 23, 2004	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 94-P0273US23	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, March 10, 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 4, 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 3773 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

---

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

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YOUNG LAW FIRM PC
4370 ALPINE ROAD SUITE 106
PORTOLA VALLEY CA 94028

MAILED

DEC 08 2010

OFFICE OF PETITIONS

In re Patent No. 7,070,105 :
Issue Date: July 4, 2006 :
Application No. 10/784,580 : DECISION ON PETITION
Filed: February 23, 2004 :

This is a decision on the petition to reinstate an expired patent under 37 CFR 1.378(c), filed September 17, 2010.

The petition under 37 CFR 1.378(c) is **GRANTED**.

The above-identified patent issued July 4, 2006. Accordingly, the first maintenance fee could have been paid during the period from July 4, 2009 through January 4, 2010 without surcharge, or with a late payment surcharge during the period from January 5, 2010 through July 4, 2010. No maintenance fee having been received, the patent expired on July 5, 2010.

Since the instant petition was filed within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c). The maintenance fee in this case is accepted and the above-identified patent is hereby reinstated as of the mail date of this decision.

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

Cliff Congo
Petitions Attorney
Office of Petitions

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,719	02/23/2004	Matthew B. Schoen	Schoen-P1-04	9452

28710 7590 04/16/2012

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

EXAMINER	
MEINECKE DIAZ, SUSANNA M	

ART UNIT	PAPER NUMBER
3684	

MAIL DATE	DELIVERY MODE
04/16/2012	PAPER

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

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

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Peter K. Trzyna, ESQ.
P. O. Box 7131
Chicago, IL 60680

In re Application of	:	
Matthew B. Schoen et al	:	DECISION ON PETITION
Application No. 10/784,719	:	REGARDING RESTRICTION
Filed: February 23, 2004	:	REQUIREMENT
Attorney Docket No.: Schoen-P1-04	:	
For: Superstructure Pool Computer System	:	

Applicants' petition filed on May 31, 2011 requests withdrawal of the election requirement as set forth in the Office action mailed April 28, 2009 and thereafter made final in the Office action mailed February 2, 2010. Applicants further request an examination on the merits of all pending claims. The delay in treating this petition is regretted.

The petition is **DISMISSED**.

A review of the record reveals that the Office action mailed April 28, 2009 set forth an election requirement requiring a provisional election between species identified as Group A (species A-1 – A-22), Group B (species B-1 - B-5), Group C (species C-1 – C-3), Group D (species D-1 – D-5), Group E (species E-1 – E-2), and Group F (species F-1 – F-4). Applicants elected the species of Group A1 (claims 5, 85), B1 (claims 43,123), C3 (claims 51,131), D1(claims 52,132), E1 (claims 65,145), and F2(claims 162, 166) with traverse in the response filed October 28, 2009. The examiner, upon reconsideration, adhered to the election requirement and made the election requirement final. This petition was then timely filed.

Applicants' petition alleges that the election requirement is improper because there is significant overlap between the claims of the identified groups of invention due to the presence of generic claims and that the subject matter is sufficiently related such that a thorough search for the subject matter of the elected species would encompass a search for the subject matter of the other species and as a result that no serious burden on the examiner exists. Applicants have failed to show that search is the only criteria for determining "serious burden" on the part of the examiner. Nevertheless, it should be noted that the search for and examination, including consideration of and response to arguments, of the various specific features of multiple patentably distinct species in the same application creates a serious burden on the examiner when no allowable generic claim is indicated to be present.

Applicants' further allege that the examiner failed to explain how and why there would be series burden on the examiner in searching the claims because various classes and subclasses have not been established for each of the species. With respect to applicants' allegation that the examiner failed to explain how and why the claims were grouped as indicated, it should be noted that the examiner fully complied with Office procedure and practice, see MPEP 809.02(a), by clearly identifying each species by examples and distinguishing characteristic. Further, it is readily apparent from a review of the various examples for each identified species that the Examiner would have to search and find details in the context of specific natures of each respective type (22 distinctive types in Group A) of financial liability. Accordingly, it is evident that the examiner has identified patentably distinct species along the lines of the various financial liabilities

At the outset, it appears from applicants' arguments that applicants have not analyzed the examiner's action in the context of the established practice for requiring a provisional election of species requirement as established in Chapter 800 of the MPEP. In particular, it is a well-established practice that a requirement to elect a single disclosed species is a holding by the examiner that the plural species, as claimed, are patentably distinct, i.e., capable of supporting separate patents, see MPEP 808.01(a) and MPEP 809.02(a). If applicants are of a different view, then applicants need merely clearly state on the record that the species are not patentably distinct.

Lastly, it should be noted that Applicant has not argued the actual merits of the restriction requirement, e.g., by explaining how the different species are not mutually exclusive or by explaining how the different species are not obvious variants of one another or by explaining how the different species are not patentably distinct from one another.

With respect to the alleged presence of generic claims, it should be noted that the presence or absence of generic claims is not indicative of the propriety of an election requirement. A generic claim must be found to be allowable before there is any impact on a provisional election requirement, see MPEP 809.02(b) and MPEP 809.02(c). Further, note MPEP 806.04(d) for the definition of what constitutes a generic claim.

For the foregoing reasons, the examiner's provisional election requirement is proper.

SUMMARY: The Petition **DISMISSED.**

Any questions regarding this decision should be directed to Jason Dunham, Supervisory Patent Examiner, at 571-272-8109.

Greg Vidovich, Director
Technology Center 3600
(571) 272-5350

JBD: 3/4/12

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RESEARCH TRIANGLE PARK NC 27709

MAILED

JAN 24 2011

OFFICE OF PETITIONS

In re Application of :
Frank Dimeo Jr., et al :
Application No. 10/784,750 : DECISION GRANTING PETITION
Filed: February 23, 2004 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 2771-546 CIP 2 :

This is a decision on the petition under 37 CFR 1.313(c)(2), filed January 21, 2011, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on December 17, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 2856 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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RESEARCH TRIANGLE PARK NC 27709

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JUN 30 2011

OFFICE OF PETITIONS

In re Application of	:	
Frank Dimeo Jr., et al	:	
Application No. 10/784,750	:	DECISION GRANTING PETITION
Filed: February 23, 2004	:	UNDER 37 CFR 1.313(c)(3)
Attorney Docket No. 2771-546 CIP 2	:	

This is a decision on the petition, filed June 28, 2011, under 37 CFR 1.313(c)(3) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

Petitioner requests that the above-identified application be withdrawn from issue for express abandonment. *See* 37 CFR 1.313(c)(3).

The application is hereby withdrawn from issue, and the abandonment is hereby recognized.

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

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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BANNER & WITCOFF, LTD.
and ATTORNEYS FOR CLIENT NO. 006943
10 SOUTH WACKER DR.
SUITE 3000
CHICAGO IL 60606

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AUG 04 2010

OFFICE OF PETITIONS

In re Patent No. 7,563,471	:	DECISION ON REQUEST FOR
KEITHLY et al.	:	RECONSIDERATION OF
Issue Date: July 21, 2009	:	PATENT TERM ADJUSTMENT AND
Application No. 10/784,855	:	NOTICE OF INTENT TO ISSUE
Filed: February 23, 2004	:	CERTIFICATE OF CORRECTION
Atty Docket No. 006943.00608	:	

This is a decision on the petition filed on January 19, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by four hundred fifty-nine (459) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.** The term of the above-identified patent is extended or adjusted by **four hundred fifty-eight (458) 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 February 24, 2007, and ends on October 30, 2007, the day before the RCE was filed, and is 249 (not 250) days. See 35 U.S.C. 154(b)(1)(B)(i). As such, the patent term adjustment is 458, not 459 days.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a

certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under 37 CFR 1.136.

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

The Office acknowledges the submission of the $200.00 fee set forth in 37 CFR 1.18(e).

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **four hundred fifty-eight (458) days.**

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

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,563,471 B2

DATED : Jul. 21, 2009 **DRAFT**

INVENTOR(S): KEITHLY 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 209 days

Delete the phrase "by 209 days" and insert – by 458 days--

PTA Calculations for Application: 10/784855			
Application Filing Date:	02/23/2004	PTO Delay (PTO):	322
Issue Date of Patent:	07/21/2009	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	113
Post-Issue Petitions:	0	Total PTA (days):	458
PTO Delay Adjustment:	249		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
88	08/03/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	249		
84.5	07/01/2009	PTA 36 MONTHS			
84	07/21/2009	PATENT ISSUE DATE USED IN PTA CALCULATION	5		70
83	06/22/2009	EXPORT TO FINAL DATA CAPTURE			
82	06/19/2009	FINISHED INITIAL DATA CAPTURE			
81	06/19/2009	DISPATCH TO FDC			
80	06/10/2009	WORKFLOW - QUERY REQUEST - FINISH			
79	06/09/2009	APPLICATION IS CONSIDERED READY FOR ISSUE			
78	06/09/2009	WORKFLOW - QUERY REQUEST - FINISH			
77	06/08/2009	TC RETURN TO PUBS			
76	06/08/2009	MAIL EXAMINER'S AMENDMENT			
75	06/07/2009	TC RETURN TO PUBS			
74	06/07/2009	EXAMINER'S AMENDMENT COMMUNICATION			
73	03/17/2009	PUBS CASE REMAND TO TC			
72	03/18/2009	WORKFLOW - QUERY REQUEST - BEGIN			
71	03/18/2009	TC RETURN TO PUBS			
70	03/16/2009	ISSUE FEE PAYMENT VERIFIED		1	64
69	03/16/2009	ISSUE FEE PAYMENT RECEIVED			
67	01/14/2009	WORKFLOW - QUERY REQUEST - BEGIN			
66	01/05/2009	EXPORT TO INITIAL DATA CAPTURE			
64	12/15/2008	MAIL NOTICE OF ALLOWANCE			
63	12/09/2008	ISSUE REVISION COMPLETED			
62	12/09/2008	DOCUMENT VERIFICATION			
61	12/09/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
60	12/09/2008	CASE DOCKETED TO EXAMINER IN GAU			

59	12/08/2008	EXAMINER'S AMENDMENT COMMUNICATION			
58	12/08/2008	NOTICE OF ALLOWABILITY			
56	10/01/2008	DATE FORWARDED TO EXAMINER			
55	09/26/2008	RESPONSE TO ELECTION / RESTRICTION FILED			
54	08/26/2008	MAIL RESTRICTION REQUIREMENT			
53	08/26/2008	REQUIREMENT FOR RESTRICTION / ELECTION			
52	06/18/2008	DATE FORWARDED TO EXAMINER			
51	05/30/2008	RESPONSE AFTER NON-FINAL ACTION		31	49
50	05/30/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
49	01/29/2008	MAIL NON-FINAL REJECTION			
48	01/28/2008	NON-FINAL REJECTION			
47	12/19/2007	PARALEGAL TD ACCEPTED			
46	10/31/2007	TERMINAL DISCLAIMER FILED			
45	11/20/2007	DATE FORWARDED TO EXAMINER			
44	10/31/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
43	10/31/2007	TERMINAL DISCLAIMER FILED			
42	11/20/2007	DATE FORWARDED TO EXAMINER			
41	10/31/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)		21	37
40	11/20/2007	DISPOSAL FOR A RCE / CPA / R129			
39	10/31/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
38	10/31/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
37	07/10/2007	MAIL FINAL REJECTION (PTOL - 326)			
36	06/25/2007	FINAL REJECTION			
35	04/19/2007	DATE FORWARDED TO EXAMINER			
34	04/17/2007	RESPONSE AFTER NON-FINAL ACTION			
33	04/09/2007	CORRESPONDENCE ADDRESS CHANGE			
32	04/09/2007	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
31	01/18/2007	MAIL NON-FINAL REJECTION			
30	01/09/2007	NON-FINAL REJECTION			
29	11/17/2006	DATE FORWARDED TO EXAMINER			
28	11/01/2006	RESPONSE AFTER NON-FINAL ACTION		60	24
27	11/01/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
26	07/28/2006	CORRESPONDENCE ADDRESS CHANGE			
25	07/28/2006	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			

24	06/02/2006	MAIL NON-FINAL REJECTION			
23	05/30/2006	NON-FINAL REJECTION			
22	07/01/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
21	04/04/2006	CASE DOCKETED TO EXAMINER IN GAU			
20	03/24/2006	DATE FORWARDED TO EXAMINER			
19	03/20/2006	RESPONSE TO ELECTION / RESTRICTION FILED			
18	03/06/2006	MAIL RESTRICTION REQUIREMENT	317		-1
17	03/02/2006	REQUIREMENT FOR RESTRICTION / ELECTION			
16	11/02/2005	MISCELLANEOUS INCOMING LETTER			
15	10/21/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
14	10/21/2004	CASE DOCKETED TO EXAMINER IN GAU			
13	07/01/2004	REFERENCE CAPTURE ON IDS			
12.7	07/01/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
12	07/01/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	07/27/2004	APPLICATION RETURN FROM OIPE			
10	07/27/2004	APPLICATION RETURN TO OIPE			
9	07/27/2004	APPLICATION DISPATCHED FROM OIPE			
8	07/27/2004	APPLICATION IS NOW COMPLETE			
7	06/28/2004	ADDITIONAL APPLICATION FILING FEES			
6	06/28/2004	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
5	05/17/2004	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
4	03/25/2004	CLEARED BY OIPE CSR			
3	03/25/2004	CASE CLASSIFIED BY OIPE			
2	03/16/2004	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	02/23/2004	INITIAL EXAM TEAM NN			

Search Another: Application# [ ] Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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

Back to OASIS | Home page

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)
7154102	2006-12-26	10/784,889	2004-02-24	13016-04CIP

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

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.

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 F. Nixon/	Date (YYYY-MM-DD)	2012-03-13
Name	William F. Nixon	Registration Number	44262

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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www.uspto.gov

In re Patent No. 7154102
Issue Date: December 26,2006
Application No. 10784889
Filed: February 24,2004
Attorney Docket No. 86581-0004 CIP

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

This is a decision on the electronic petition, filed March 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 March 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
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MAILED

SEP 28 2010

OFFICE OF PETITIONS

RESEARCH IN MOTION
ATTN: GLENDA WOLFE
BUILDING 6, BRAZOS EAST, SUITE 100
5000 RIVERSIDE DRIVE
IRVING TX 75039

In re Application of :
Thanh V. Vuong :
Application No. 10/785,189 : DECISION ON PETITION
Filed: February 25, 2004 :
Attorney Docket No. **16813-13US** :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 05, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in Notice of Panel Decision from Pre-Appeal Brief Review (Notice). As an appeal brief (and appeal brief fee) was not filed within one (1) month of the Notice of Appeal dated October 16, 2009, and no extension of time under the provisions of 37 CFR 1.136(a) was 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 November 17, 2009. See MPEP 1215.04.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an appeal brief, (2) the petition fee of $1620, and (3) a proper statement of unintentional delay. Accordingly, the reply to the final Office Action of September 17, 2008 is accepted as having been unintentionally delayed.

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

In regard to the previously submitted request for change of correspondence address noted in the instant petition, petitioner should note that only an attorney of record can make such a request.

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 Tredelle Jackson at (571) 272-2783.

This application is being referred to Technology Center AU 2626 for appropriate action by the Examiner in the normal course of business on the reply received.

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

cc: **MICHAEL VAN EESBEEK**
OGILVY RENAULT LLP
200 BAY STREET
SUITE 3800
TORONTO ON CANADA M5J 2Z4

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

Mail Date: 08/31/2010

Applicant	: Govindarajan Krishnamurthi	: DECISION ON REQUEST FOR
Patent Number	: 7656840	: RECALCULATION of PATENT
Issue Date	: 02/02/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/785,407	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/25/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1101** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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PERKINS COIE LLP
P.O. BOX 1208
SEATTLE, WA 98111-1208

MAILED
AUG 29 2011
OFFICE OF PETITIONS

In re Patent No. 7,347,957
Issue Date: March 25, 2008
Application No. 10/785,644
Filed: February 23, 2004
Attorney Docket No. 76614-8063.US02

NOTICE

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

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-1642.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

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SEP 28 2011
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PERKINS COIE LLP
P.O. BOX 1208
SEATTLE, WA 98111-1208

In re Patent of Wu et al.
Patent No. 7,347,957
Issue Date: March 25, 2008
Application No. 10/785,644
Filing Date: February 23, 2004
Attorney Docket No. 76614.8063.US02

Letter

This is a notice regarding the request for acceptance of a fee deficiency submission under 37 CFR 1.28(c) filed September 9, 2011.

The deficiency payment of $490 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
www.uspto.gov

Date: 06/10/11

Patent No. : **7,407,612 B2**
Ser. No. : **10/785,761**
Inventor(s) : **Warburton-Pitt , et al.**
Issued : **August 5, 2008**
Title : Method of molding a connector and tubing assembly
Docket No. : **1035-ON3843-D1**

Re: Request for Certificate of Correction

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

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

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

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

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

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

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

By mail: Mail Stop PETITIONS

Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand:

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

By fax:

(571) 273-0025
ATTN: Office of Petitions

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

Lamonte M. Newsome
For Mary Diggs, Supervisor
Decisions & Certificates
Of Correction Branch
(571) 272-3421 or (703) 305-8309

ABEL LAW GROUP, LLP
7300 FM2222
Bldg 1, Ste 210
AUSTIN TX 78730

LMN

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MBHB/TRADING TECHNOLOGIES
300 SOUTH WACKER DRIVE
SUITE 3200
CHICAGO IL 60606

MAILED

DEC 13 2010

OFFICE OF PETITIONS

In re Application of	:	DECISION ON
Robert A. West	:	REQUEST FOR
Patent Number: 7,792,741	:	RECONSIDERATION OF
Issue Date: 09/07/2010	:	PATENT TERM ADJUSTMENT
Application No. 10/785816	:	and
Filing or 371(c) Date: 02/24/2004	:	NOTICE OF INTENT TO ISSUE
Attorney Docket Number: 04-110	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on September 2, 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 ninety-four (1094) 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 ninety-four (1094) days is **GRANTED to the EXTENT INDICATED**.

Petitioner requests an additional 35 days of patent term adjustment in connection with the filing of an Amendment under 37 CFR 1.312, filed June 9, 2010. Petitioner provides that a response to the Amendment was mailed on August 4, 2010, 56 days after the filing of the Amendment.

A review of Office records confirms that Patentee filed an Amendment under 37 CFR 1.312, on June 9, 2010, and the Office mailed a reply to the Amendment on August 4, 2010. Pursuant to 37 CFR 1.704(c)(10), the reduction commenced June 9, 2010, the date that the Amendment was filed, and ended August 4, 2010, the mailing date of the Office action in response to the Amendment, and is 57 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 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 ninety-three (1093) 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 : 7,792,741 B1

DATED : **September 7, 2010**

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 1059 days.

Delete the phrase "by 1059 days" and insert – by 1093 days--

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11/12/09

TO SPE OF : ART UNIT 2821 Owens, Douglas (Spe)

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/785867 Patent No.: 7176635

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Certificates of Correction Branch

703-756-1571 _____

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: _____

Doug K. Owens
SPE

2821
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

In re Patent No. 7221282
Issue Date: May 22,2007
Application No. 10785876
Filed: February 24,2004
Attorney Docket No. WIRET.10042

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

This is a decision on the electronic petition, filed June 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 June 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.

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)
7221282	2007-05-22	10785876	2004-02-24	WIRET.10042

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

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.

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	/Justin G. Sanders/	Date (YYYY-MM-DD)	2011-06-08
Name	Justin G. Sanders	Registration Number	59398

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.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 12/27/11

TO SPE OF : ART UNIT 2176

SUBJECT : Request for Certificate of Correction for Appl. No.: 10786201 Patent No.: 7373588

CofC mailroom date: 12/13/11

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580
You can fax the Directors/SPE response to 571-273-3421

Note: Should the Related U.S. Application Data be inserted?

Yes. The correction should be entered.

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: _____

Doug Hutton

SPE

2176

Art Unit

*Please scan this document.

Serial Number: 10/786,201
Document Code: COCX
Date: 01/03/2012

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: _____

_____

_____

_____

_____

_____ 2176

SPE **Art Unit**

DOUG HUTTON
SUPERVISORY PATENT EXAMINER

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 12/27/11

TO SPE OF : ART UNIT 2176

SUBJECT : Request for Certificate of Correction for Appl. No.: 10786201 Patent No.: 7373588

CofC mailroom date: 12/13/11

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 Director/SPE response to 571-273-3421

Note: **Should the Related U.S. Application Data be inserted?**

Yes. The correction should be entered.

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: _____

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_____

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_____

Doug Hutton — 2176

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

FRANK HARTLEY
529 E. LAS FLORES AVE.
ARCADIA, CA 91006

MAILED

AUG 16 2010

OFFICE OF PETITIONS

In re Application of :
Frank T. Hartley :
Application No. 10/786,229 : DECISION ON PETITION
Filed: February 26, 2004 : TO WITHDRAW
Attorney Docket No. ION-10 : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent under 37 C.F.R. § 1.36(b) or 37 C.F.R. § 10.40 filed July 7, 2008.

The request is **APPROVED**.

A review of the file record indicates that Carl A. Kukkonen, III: (1) does not have power of attorney in this patent application; and (2) has been employed or otherwise engaged in the proceedings in this patent application. In view of the present decision, Carl A. Kukkonen has been withdrawn from the present application and may not prepare or submit papers under 37 C.F.R. § 1.34, or correspond in any manner in this application unless appointed in an acceptable power of attorney under 37 C.F.R. § 1.32(b).

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

/Irvin Dingle/
Irvin Dingle
Petitions Examiner
Office of Petitions

cc: Carl A. Kukkonen, III
525 Seabright Lane
Solana Beach, CA 92075

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

FRANK HARTLEY
529 E. LAS FLORES AVE.
ARCADIA, CA 91006

MAILED

AUG 23 2010

OFFICE OF PETITIONS

In re Patent No. 6,940,074 :
Issue Date: September 6, 2005 :
Application No. 10/786,229 : ON PETITION
Filed: February 26, 2004 :
Patentee(s) Frank T. Hartley :

This is a decision on the petition under 37 CFR 1.378(c), filed July 6, 2010, 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

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)
7098469	2006-08-29	10786508	2004-02-25	P-6236-04-04

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

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.

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	/Peter D. Sachtjen/	Date (YYYY-MM-DD)	2011-11-14
Name	Peter D. Sachtjen	Registration Number	24619

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. 7098469
Issue Date: August 29,2006
Application No. 10786508
Filed: February 25,2004
Attorney Docket No. P-6236-04-04

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

This is a decision on the electronic petition, filed November 14,2011 ,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 14,2011 . 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

Patent No. : **7651664**
Ser. No. : **10/786580**
Inventor(s) : **APPOLDT, YVONNE**
Issued : **01/26/2010**
Title : **APPARATUS AND METHOD FOR PREPARING SOLUTIONS AND/OR DILUTIONS IN THE LABORATORY**
Docket No. : **032498-022**

Re: Request for Certificate of Correction

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

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

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

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

A. **the processing fee set forth in 37 CFR 1. 17(i) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

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

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

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

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

By fax: (703) 872-9306
ATTN: Office of Petitions

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

A Certificate of Correction will be issued for the remaining errors.

Omega Lewis
For Mary Diggs
Decisions & Certificates
of Correction Branch
(703)756-1575 or (703) 756-1814

Buchanan Ingersoll & Rooney PC
P.O. Box 1404
Alexandria, VA 22313-1404

OL

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11-1-10

TO SPE OF : ART UNIT 1773

SUBJECT : Request for Certificate of Correction for Appl. No.: 10786580 Patent No.: 7651664

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: _____

_____

_____

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_____

/Jill Warden/ _____ _1773__
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

BUCHANAN, INGERSOLL & ROONEY PC
POST OFFICE BOX 1404
ALEXANDRIA VA 22313-1404

MAILED

MAR 15 2011

OFFICE OF PETITIONS

In re Patent No. 7,651,664 :
Issue Date: January 26, 2010 :
Application No. 10/786,580 : DECISION ON PETITION
Filed: February 26, 2004 :
Attorney Docket No. 032498-022 :

This is a decision on the petition filed December 20, 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.**

A Certificate of Correction was issued on February 22, 2011.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-4231. 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/
Thurman K. Page
Petitions Examiner
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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POST OFFICE BOX 1404
ALEXANDRIA VA 22313-1404

MAILED

FEB 22 2011

OFFICE OF PETITIONS

In re Patent No. 7,651,664 :
Issue Date: January 26, 2010 :
Application No. 10/786,664 : DECISION ON PETITION
Filed: February 26, 2004 :
Attorney Docket No. 032498-022 :

This is a decision on the petition, filed, December 20, 2010, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the assignee's name on the Fee(s) Transmittal form PTOL-85(b) by way of a certificate of correction in the patent to be issued from the above-identified application.

The request is **GRANTED**.

Petitioner states that the correct assignee's name is "Mettler-Toledo AG" and that the incorrect assignee's name was included on the Fee(s) Transmittal form PTOL-85(b) at the time of payment of the issue fee. Accordingly, petitioner requests that a certificate of correction be issued to reflect the correct assignee on the front page of the Letters Patent in the patent to be issued from the application.

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

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

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

The request was accompanied by a certificate of correction (and fee) as required by 3.81(b). Further, Office assignment records reflect that "Mettler-Toledo AG" is the assignee of record. Accordingly, as the request complies with the provisions of 37 CFR 3.81(b), it would be appropriate for a certificate of correction to be processed after issuance of this application into a patent.

Inquiries concerning this decision should be directed to the Michelle R. Eason at (571) 272-4231. 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 after issuance of this application into a patent.

Thurman Page
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

12/14/2011

Patent No. :8069413
Ser. No. :10/786844
Inventor(s) :John Douglas Methot
Issued :11/29/11
Title : SYSTEMS FOR PROVIDING EXTENSIBLE HELP
Docket No. :

Re: Request for Certificate of Correction

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

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

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

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

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

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

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

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

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

By fax: (703) 872-9306
ATTN: Office of Petitions

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

A certificate of correction will be issued to correct the remaining errors noted in your request.

Henry Randall
Decisions & Certificates
of Correction Branch
(703) 756-1571

SQUIRE, SANDERS & DEMPSEY LLP
8000 TOWERS CRESCENT DRIVE, 14TH FLOOR
VIENNA, VIRGINIA 22182-6212

HR

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United States Patent and Trademark Office
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SQUIRE SANDERS (US) LLP
ORACLE INTERNATIONAL CORPORATION
8000 TOWERS CRESCENT DRIVE
14TH FLOOR
VIENNA VA 22182

MAILED
JAN 31 2012
OFFICE OF PETITIONS

In re Patent No. 8,069,413 :
Issue Date: November 29, 2011 :
Application No. 10/786,844 : DECISION ON PETITION
Filed: February 25, 2004 :
Attorney Docket No. 104402.00017 :

This is a decision on the "REQUEST AND PETITION TO CORRECT ASSIGNEE'S NAME UNDER 37 CFR 3.81(C)", filed January 4, 2012.

The petition is **GRANTED.**

An application may issue in the name of an assignee rather than the applicant if requested prior to issuance of a patent.[1] However, in the event the request is not made prior to issuance, a Certificate of Correction under 37 CFR 1.323 may be requested. A request for a Certificate of Correction under 37 CFR 1.323 to correct the assignee's name will not be granted unless a petition under 37 CFR 3.81(b) is granted. Such request under 37 CFR 3.81(b) should include:

(A) the processing fee required by 37 CFR 1.17(i);

(B) a request for issuance of the application in the name of the assignee, or a request that a patent be corrected to state the name of the assignee;

[1] See 37 CFR 3.81.

(C) a statement that the assignment was submitted for recordation as set forth in 37 CFR 3.11 before issuance of the patent; and

(D) a request for a certificate of correction under 37 CFR 1.323 accompanied by the fee set forth in 37 CFR 1.20(a).[2]

Receipt of the $100 fee for the Certificate of Correction is and the $130 processing fee for the instant petition is acknowledged.

The application is being forwarded to the Certificate of Corrections Branch for issuance of the requested Certificate of Correction.

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

Cliff Congo
Petitions Attorney
Office of Petitions

[2] MPEP 307.

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AUG 25 2011

OFFICE OF PETITIONS

McCarter & English LLP
265 Franklin Street
Boston MA 02110

In re Patent No. 7,553,828 :
Nelson et al. : DECISION UPON REMAND AND
Issue Date: June 30, 2009 : RECONSIDERATION OF
Application No. 10/786,881 : PATENT TERM ADJUSTMENT
Filed: February 24, 2004 : AND NOTICE OF INTENT
Attorney Docket No. TTP 117728-22201 : TO ISSUE CERTIFICATE OF CORRECTION
Title: 9-Aminomethyl substituted minocycline compounds :

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

The patent term adjustment indicated on the above-identified patent has been recalculated as directed by the Court. The term of the above-identified patent is extended or adjusted by seven hundred and three (703) 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 seven hundred fifty-four (703) 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 : 7,553,828

DATED : **June 30, 2009** **DRAFT**

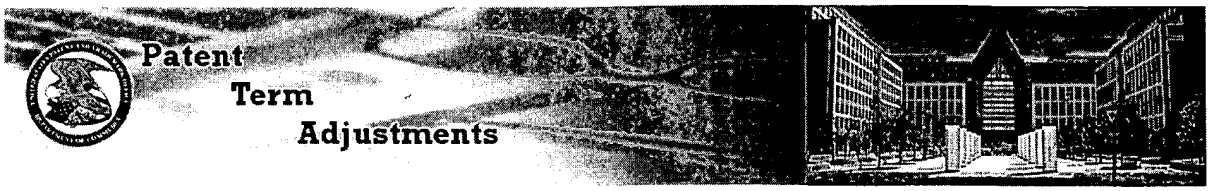
INVENTOR(S) : Nelson et al.

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 358 days

Delete the phrase "by 358 days" and insert – by 703 days--



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

Application Number*: 10786881 Search | Explanation of PTA Calculation | Explanation of PTE Calculation

PTA Calculations for Application: 10786881

Application Filing Date	02/24/2004	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent	06/30/2009	Non-Overlapping USPTO Delays:	570
A Delays	570	PTO Manual Adjustment	345
B Delays	0	Applicant Delay (APPL)	212
C Delays	0	Total PTA (days)	703

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
118	08/22/2011		P028	Adjustment of PTA Calculation by PTO	345		0
107	06/30/2009		PTAC	Patent Issue Date Used in PTA Calculation			0
107.5	06/10/2009	02/24/2007	PTA36M	PTA 36 Months	0		0
105	06/01/2009		EFDC	Export to Final Data Capture			0
104	05/29/2009		D1935	Dispatch to FDC			0
103	05/28/2009		PILS	Application Is Considered Ready for Issue			0
102	05/27/2009		N084	Issue Fee Payment Verified			0
101	05/27/2009		IFEE	Issue Fee Payment Received			0
100	05/21/2009		FIDC	Finished Initial Data Capture			0
99	05/03/2009		QURF	Workflow - Query Request - Finish			0
98	05/01/2009		MM327	Mail Miscellaneous Communication to Applicant			0
97	05/01/2009		M327	Miscellaneous Communication to Applicant - No Action Count			0
96	04/07/2009		PA..	Change in Power of Attorney (May Include Associate POA)			0
95	04/07/2009		C.AD	Correspondence Address Change			0
93	04/01/2009		QURI	Workflow - Query Request - Begin			0
94	03/30/2009		PUBTC	Pubs Case Remand to TC			0
92	03/16/2009		EIDC	Export to Initial Data Capture			0
91	03/11/2009		MN/=.	Mail Notice of Allowance			0
90	03/10/2009		IREV	Issue Revision Completed			0
89	03/10/2009		DVER	Document Verification			0
88	03/10/2009		N/=.	Notice of Allowance Data Verification Completed			0
87	02/27/2009		CNTA	Allowability Notice			0
86	02/24/2009		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
77	01/04/2009		FWDX	Date Forwarded to Examiner			0
76	12/16/2008		A...	Response after Non-Final Action			0
75	12/15/2008		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
74	12/09/2008		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
73	12/01/2008	10/27/2008	MCTNF	Mail Non-Final Rejection	35		67
71	12/01/2008		CTNF	Non-Final Rejection			0
70	11/21/2008		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
72	11/14/2008		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
69	10/21/2008		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
68	08/08/2008		FWDX	Date Forwarded to Examiner			0
67	06/27/2008		A...	Response after Non-Final Action			0
66	06/13/2008		MCTNF	Mail Non-Final Rejection			0
65	05/27/2008		CTNF	Non-Final Rejection			0
64	03/18/2008		P574	Paralegal TD Accepted			0
62	03/18/2008		FWDX	Date Forwarded to Examiner			0
60	03/18/2008		FWDX	Date Forwarded to Examiner			0
58	03/18/2008		ABN9	Disposal for a RCE / CPA / R129			0
63	02/26/2008	02/26/2008	DIST	Terminal Disclaimer Filed			59
61	02/26/2008		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
59	02/26/2008		RCEX	Request for Continued Examination (RCE)			0
46	02/26/2008		BRCE	Workflow - Request for RCE - Begin			0
45	02/19/2008		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
44	02/13/2008		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
57	02/05/2008	11/06/2007	N/AP	Notice of Appeal Filed		91	41
56	02/05/2008		XT/G	Request for Extension of Time - Granted			0
43	01/08/2008		DOCK	Case Docketed to Examiner in GAU			0
42	09/05/2007		C.ADB	Correspondence Address Change			0
41	08/06/2007		MCTFR	Mail Final Rejection (PTOL - 326)			0
40	08/04/2007		CTFR	Final Rejection			0
39	06/04/2007		FWDX	Date Forwarded to Examiner			0
36	05/23/2007		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
38	05/22/2007	03/05/2007	A...	Response after Non-Final Action		78	34

37	05/22/2007		XT/G	Request for Extension of Time - Granted			0
35	03/08/2007		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
34	12/05/2006		MCTNF	Mail Non-Final Rejection			0
33	11/27/2006		CTNF	Non-Final Rejection			0
30	11/21/2006		FWDX	Date Forwarded to Examiner			0
29	11/10/2006		ELC.	Response to Election / Restriction Filed			0
31	10/20/2006		IDSC	Information Disclosure Statement considered			0
28	10/20/2006		RCAP	Reference capture on IDS			0
27.7	10/20/2006		M844	Information Disclosure Statement (IDS) Filed			0
27	10/20/2006		WIDS	Information Disclosure Statement (IDS) Filed			0
26	10/11/2006	04/24/2005	MCTRS	Mail Restriction Requirement	535		-1
25	10/02/2006		CTRS	Restriction/Election Requirement			0
24	04/27/2005		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
23	04/27/2005		DOCK	Case Docketed to Examiner in GAU			0
32	03/14/2005		IDSC	Information Disclosure Statement considered			0
20	03/14/2005		RCAP	Reference capture on IDS			0
19.7	03/14/2005		M844	Information Disclosure Statement (IDS) Filed			0
19	03/14/2005		WIDS	Information Disclosure Statement (IDS) Filed			0
18	10/25/2004		WROIPE	Application Return from OIPE			0
17	10/25/2004		COMP	Application Is Now Complete			0
14	10/25/2004		W/OA	Pre-Exam Office Action Withdrawn			0
9	10/25/2004		COMP	Application Is Now Complete			0
13	10/23/2004		ROIPE	Application Return TO OIPE			0
12	10/23/2004		WROIPE	Application Return from OIPE			0
11	10/23/2004		ROIPE	Application Return TO OIPE			0
10	10/23/2004		OIPE	Application Dispatched from OIPE			0
21	09/30/2004		A.PE	Preliminary Amendment			0
16	09/30/2004	08/18/2004	FLFEE	Payment of additional filing fee/Preexam		43	5
6	09/30/2004		OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic			0
5	05/18/2004		INCD	Notice Mailed--Application Incomplete--Filing Date Assigned			0
4	03/29/2004		L194	Cleared by OIPE CSR			0
3	03/29/2004		CLSS	CASE CLASSIFIED BY OIPE			0
2	03/16/2004		SCAN	IFW Scan & PACR Auto Security Review			0
15	02/24/2004		CLAIM	Claim Preliminary Amendment			0
1	02/24/2004		IEXX	Initial Exam Team nn			0

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STATION D
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OTTAWA ON K1P 5Y6 CA
CANADA

MAILED

AUG 01 2011

OFFICE OF PETITIONS

In re Patent No. 7,840,192
Rao, et al.
Application No. 10/787,302
Issue Date: November 23, 2010
Filed: February 27, 2004
Attorney Docket No. 52404-317

: 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 FOR PATENT TERM ADJUSTMENT", filed January 24, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected from one thousand five hundred eighty-four (1584) days to one thousand seven hundred fifty-three (1753) days.

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

On November 23, 2011, the instant application matured into U.S. Patent No. 7,840,192 with a patent term adjustment of 1584 days. The Office determined a patent term adjustment of 1584 days based upon 488 days of Office delay pursuant to 37 CFR 1.703(a)(1), 230 days of Office delay pursuant to 37 CFR 1.703(a)(2), and 1132 days pursuant to CFR 1.703(b), reduced by 60 and 37 day of Applicant delay pursuant to 37 CFR 1.704(c)(8), and 2 days of Applicant delay pursuant to 37 CFR 1.704(b).

The proper amount of days over 36 months from the filing date of the application until the issue date was included in the "B" delay period. The over three year period began on February 28, 2007 and ended on November 23, 2010 (the day the patent issued), and is 1365 days. See 35 U.S.C. 154(b)(1)(B)(i).

However, 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 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).

Here the period consumed by appellate review is 234 days (not 233 days as alleged by patentees), beginning on August 13, 2007, the date of filing of the notice of appeal, and ending on April 2, 2008, the date the examiner reopened prosecution by mailing a non-final Office action. Thus, B delay is 1131 (1365 - 234) days.

In addition, Patentees dispute the period of reduction of 2 days entered for Applicant delay, pursuant to 37 CFR 1.704(b). This reduction has been reconsidered, and it is determined that entry of a reduction for this reply timely filed pursuant to 37 CFR 1.704(b) is not warranted. Accordingly, the period of reduction of 2 days is being removed.

In view thereof, the correct number of days of patent term adjustment is **one thousand seven hundred fifty-two (1752)** days (718 days of "A" delay and 1131 days of "B" delay, reduced by 97 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 **one thousand seven hundred fifty-two (1752) days.**

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

Cliff Congo
Petitions Attorney
Office of Petitions

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JUL 19 2011
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K&L GATES LLP
PO BOX 1135
CHICAGO IL 60690

In re Patent No. 7,815,503 : DECISION ON
Walker, et al. : REQUEST FOR RECONSIDERATION
Application No. 10/787,356 : of PATENT TERM ADJUSTMENT
Issue Date: October 19, 2010 : and
Filed: February 26, 2004 : NOTICE OF INTENT TO ISSUE
Attorney Docket No. 3718582-00103 : CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)", filed December 17, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected from one thousand four hundred thirty-one (1431) days to one thousand six hundred sixty-five (1665) days.

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

On October 19, 2010, the instant application matured into U.S. Patent No. 7,815,503 with a patent term adjustment of 1431 days. The Office determined a patent term adjustment of 1431 days based upon 631 days of Office delay pursuant to 37 CFR 1.703(a)(1), 61 days of Office delay pursuant to 37 CFR 1.703(a)(4), and 942 days pursuant to CFR 1.703(b), reduced by 79, 31, and 28 days of Applicant delay pursuant to 37 CFR 1.704(b), and 4 days of Applicant delay pursuant to 37 CFR 1.704(c)(8).

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 February 27, 2007 and ended on May 16, 2010 (the day before applicant filed an RCE), and is 1175 days. See 35 U.S.C. 154(b)(1)(B)(i).

However, 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 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).

Here the period consumed by appellate review is 295 days, beginning on January 28, 2008, the date of filing of the notice of appeal, and ending on November 17, 2008, the date that applicants filed a paper requesting that prosecution be reopened. Thus, B delay is 880 (1175 –295) days.

In view thereof, the correct number of days of patent term adjustment is **one thousand three hundred sixty-nine (1369)** days (682 days of "A" delay and 880 days of "B" delay, reduced by 142 days of Applicant delay and 51 days of overlap between "A" and "B" 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, Patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the date of the final rule to file a request for reconsideration. No extensions of time will be granted under § 1.136.

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

The 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 three hundred sixty-nine (1369) 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 : 7,815,503 B2

DATED : **October 19, 2010**

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 1431 days.

Delete the phrase "by 1431 days" and insert – by 1369 days--

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110823

DATE : August 23, 2011

TO SPE OF : ART UNIT 2617

SUBJECT : Request for Certificate of Correction on Patent No.: 7,328,016

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

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - ST (South Tower) 9A22
Palm location **7590** - Tel. No. (703) 305-8309

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

Thank You For Your Assistance **Certificates of Correction Branch**

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

Note your decision on the appropriated box.

☒ **Approved** All changes apply.

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

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

Comments:

Changes are OK.

/DWAYNE BOST/
Supervisory Patent Examiner.Art Unit 2617

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SHERIDAN ROSS P.C.
1560 BROADWAY
SUITE 1200
DENVER CO 80202

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AUG 03 2011
OFFICE OF PETITIONS

In re Application of :
Tore L. Christensen :
Application No. 10/787,922 : DECISION ON PETITION
Filed: February 25, 2004 :
Attorney Docket No. 4366-158 :

This is a decision on the petition under the unavoidable provisions of 37 CFR 1.137(a), filed July 1, 2011, to revive the above-identified application, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

This application was held abandoned for failure to reply to the non-final Office action mailed October 4, 2010, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on June 14, 2011.

Petitioner asserts that the Office action dated October 4, 2010 was not received.

A review of the written record indicates no irregularity in the mailing of the Office action and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner;

2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and

3. a copy of the docket record where the non-received Office action would have been entered had it been received must be attached to and referenced in the practitioner's statement.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition fails to satisfy items 2 and 3 of the above-stated requirements.

Accordingly, absent the required evidence to establish non-receipt of the Office action of October 4, 2010, the petition requesting withdrawal of the holding of abandonment cannot be granted at this time.

If petitioner cannot supply the evidence necessary to withdraw the holding of abandonment, or simply does not wish to, petitioner should consider filing a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the $1620 petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Any request for reconsideration of this decision should be filed within **TWO (2) MONTHS** from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

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

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

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

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

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

/dab/
David Bucci
Petitions Examiner
Office of Petitions

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
www.uspto.gov

SHERIDAN ROSS, PC
1560 BROADWAY
SUITE 1200
DENVER, CO 80202

MAILED

SEP 09 2011

OFFICE OF PETITIONS

In re Application of
Tore L. Christensen
Application No. 10/787,922
Filed: February 25, 2004
Attorney Docket No. 4366-158

ON PETITION

This is a decision on the renewed petition under 37 CFR 1.137(a), filed August 29, 2011 to revive the above-identified application, which is being treated as a petition under 37 CFR 1.181 requesting withdrawal of the Notice of Abandonment mailed June 14, 2011.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the final Office action, mailed October 4, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on January 5, 2011.

Petitioner asserts the Notice of Abandonment mailed June 14, 2011 be withdrawn as petitioner never received the final Office action mailed October 4, 2010.

To support this assertion petitioner has submitted: (1) a statement from petitioner stating that the Office communication was not received by the inventor and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and (2) a copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed. Accordingly, it is concluded that petitioner never received the final Office action, mailed October 4, 2010.

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 2443 for appropriate action by the Examiner in the normal course of business on the reply received July 1, 2011.

/dab/
David Bucci
Petitions Examiner
Office of Petitions

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

In re Application :
Anthony John Fist et al. :
Application No. 10/788,114 : DECISION ON APPLICATION
Filed: February 26, 2004 : FOR PATENT TERM ADJUSTMENT
Attorney Docket No. **J&J2085USADIV** :

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT filed October 6, 2011. Applicant requests that the determination of patent term adjustment be corrected from 382 days to 383 days.

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

On July 7, 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 382 days. The instant application for patent term adjustment was timely filed[1] on or before payment of the issue fee.

Applicants dispute the reduction of 1 day for the response filed March 28, 2011. "The USPTO mailed a non-final rejection to the applicants on December 27, 2010, setting a shortened statutory period of three months to reply. The three month response date fell on Sunday, March 27, 2011, which was a weekend day. The applicants filed a response to the non- final office action on March 28,2011, the next business day".

In Arqule v. Kappos, _ F.Supp.2d _ (D.D.C. 2011), the District Court of the District of Columbia ruled that the 35 U.S.C. § 21 (b) "weekend add holiday" exception applies to "any action" including the § 154(b)(2)(C) Accordingly, because March 27, 2011 was a Sunday, the time period to calculate Applicant delay commenced on March 28,2011 rather than March 27, 2011. Therefore, a delay of 1 days was accrued, corresponding to the time period between March 27, 2010 (three months after the mailing date of the Office Action, in accordance with 37 CFR §1.704(b)) and March 28, 2011. Applicants respectfully request the Office to remove the 1 day of Applicant delay and correct the total Applicant delay from 279 days to 278 days.

[1] PALM records indicate that the issue fee was paid on October 6, 2011.

The reduction is being reconsidered and, based upon the decision in the Arqule case,it is determined that entry of a reduction for this reply timely filed pursuant to 35 U.S.C. §21(b) is not warranted. Accordingly, the period of reduction of 1 day is being removed.

Thus, instead of a 1 day reduction for applicant delay pursuant to 37 C.F.R. §1.704(b), 0 days should have been accorded for applicant delay.

In view thereof, the determination of Patent Term Adjustment at the time of the mailing of the notice of allowance should have been 383 days (661 days of Office delay reduced by 278 days of applicant delay) rather than 382 days).

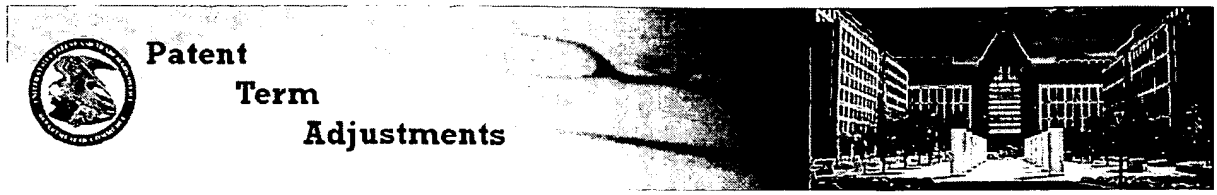
The Office acknowledges the authorization to charge the $200.00 fee set forth in 37 CFR 1.18(e) to deposit account no. 10-0750.

The Office of Data Management has been advised of this decision. The application is, thereby, forwarded to the Office of Data Management for issuance of the application. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

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

Patricia Faison-Ball
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*: 10788114 Search | Explanation of PTA Calculation | Explanation of PTE Calculation

PTA Calculations for Application: 10788114

Application Filing Date	02/26/2004	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	661
A Delays	661	PTO Manual Adjustment	1
B Delays	0	Applicant Delay (APPL)	279
C Delays	0	Total PTA (days)	383

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL		Parent Action Number
88	10/12/2011		P028	Adjustment of PTA Calculation by PTO	1		0	
81	07/07/2011		MN/=.	Mail Notice of Allowance			0	
80	07/01/2011		OAR	Office Action Review			0	
79	07/01/2011		IREV	Issue Revision Completed			0	
78	07/01/2011		DVER	Document Verification			0	
77	07/01/2011		N/=.	Notice of Allowance Data Verification Completed			0	
76	07/01/2011		DOCK	Case Docketed to Examiner in GAU			0	
75	06/16/2011		CNTA	Allowability Notice			0	
71	03/30/2011		FWDX	Date Forwarded to Examiner			0	
70	03/28/2011	03/27/2011	A...	Response after Non-Final Action		1	67	
69	12/27/2010		ELC_RVW	Electronic Review			0	
68	12/27/2010		EML_NTF	Email Notification			0	
67	12/27/2010	06/24/2010	MCTNF	Mail Non-Final Rejection	186		62	
66	12/20/2010		CTNF	Non-Final Rejection			0	
64	02/25/2010		FWDX	Date Forwarded to Examiner			0	
61	02/25/2010		ABN9	Disposal for a RCE / CPA / R129			0	
65	02/24/2010		BRCE	Workflow - Request for RCE - Begin			0	
63	02/24/2010		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0	
62	02/24/2010		RCEX	Request for Continued Examination (RCE)			0	
60	11/30/2009		MCTFR	Mail Final Rejection (PTOL - 326)			0	
59	11/23/2009		CTFR	Final Rejection			0	
58	09/11/2009		FWDX	Date Forwarded to Examiner			0	
57	08/12/2009		A...	Response after Non-Final Action			0	
56	05/15/2009		MCTNF	Mail Non-Final Rejection			0	
55	05/11/2009		CTNF	Non-Final Rejection			0	
52	03/06/2009		FWDX	Date Forwarded to Examiner			0	
50	03/06/2009		FWDX	Date Forwarded to Examiner			0	
48	03/06/2009		ABN9	Disposal for a RCE / CPA / R129			0	
54	02/20/2009		IDSC	Information Disclosure Statement considered			0	
53	02/20/2009		M844	Information Disclosure Statement (IDS) Filed			0	
51	02/20/2009		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0	
49	02/20/2009	11/21/2008	RCEX	Request for Continued Examination (RCE)		91	41	
47	02/20/2009		XT/G	Request for Extension of Time - Granted			0	
43	02/20/2009		BRCE	Workflow - Request for RCE - Begin			0	
42	02/20/2009		WIDS	Information Disclosure Statement (IDS) Filed			0	
41	08/21/2008	07/25/2008	MCTFR	Mail Final Rejection (PTOL - 326)	27		38	
40	08/18/2008		CTFR	Final Rejection			0	
39	05/05/2008		FWDX	Date Forwarded to Examiner			0	
38	03/25/2008	12/26/2007	A...	Response after Non-Final Action		90	36	
37	03/25/2008		XT/G	Request for Extension of Time - Granted			0	
36	09/26/2007	02/23/2007	MCTNF	Mail Non-Final Rejection	215		28	
35	09/17/2007		CTNF	Non-Final Rejection			0	
31	11/06/2006		FWDX	Date Forwarded to Examiner			0	
29	11/06/2006		FWDX	Date Forwarded to Examiner			0	
27	11/06/2006		ABN9	Disposal for a RCE / CPA / R129			0	
26	10/24/2006		FIDC	Finished Initial Data Capture			0	
34	10/23/2006		IDSC	Information Disclosure Statement considered			0	
33	10/23/2006		RCAP	Reference capture on IDS			0	
32.7	10/23/2006		M844	Information Disclosure Statement (IDS) Filed			0	
32	10/23/2006		WIDS	Information Disclosure Statement (IDS) Filed			0	
30	10/23/2006		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0	
28	10/23/2006	10/20/2006	RCEX	Request for Continued Examination (RCE)		3	23	
25	10/23/2006		BRCE	Workflow - Request for RCE - Begin			0	
24	07/24/2006		EIDC	Export to Initial Data Capture			0	
23	07/20/2006		MN/=.	Mail Notice of Allowance			0	

22	05/30/2006		N/=.	Notice of Allowance Data Verification Completed			0
21	05/30/2006		IREV	Issue Revision Completed			0
20	05/30/2006		CNTA	Allowability Notice			0
19	05/16/2006		FWDX	Date Forwarded to Examiner			0
18	05/08/2006	02/03/2006	A...	Response after Non-Final Action		94	15
17	05/01/2006		NINA	Mail Notice of Informal or Non-Responsive Amendment			0
16	02/23/2006		FWDX	Date Forwarded to Examiner			0
15.1	02/03/2006		A.I.	Informal or Non-Responsive Amendment after Examiner Action			0
15	02/03/2006		A...	Response after Non-Final Action			0
14	12/15/2005	04/26/2005	MCTNF	Mail Non-Final Rejection	233		0.5
13	12/12/2005		CTNF	Non-Final Rejection			0
12	10/25/2005		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
11	10/25/2005		DOCK	Case Docketed to Examiner in GAU			0
9	07/02/2004		CLSS	CASE CLASSIFIED BY OIPE			0
8	05/20/2004		WROIPE	Application Return from OIPE			0
7	05/20/2004		ROIPE	Application Return TO OIPE			0
5	05/20/2004		COMP	Application Is Now Complete			0
6	05/19/2004		OIPE	Application Dispatched from OIPE			0
4	03/30/2004		L194	Cleared by OIPE CSR			0
3	03/30/2004		CLSS	CASE CLASSIFIED BY OIPE			0
2	03/22/2004		SCAN	IFW Scan & PACR Auto Security Review			0
10	02/26/2004		A.PE	Preliminary Amendment			0
1	02/26/2004		IEXX	Initial Exam Team nn			0
0.5	02/26/2004		EFILE	Filing date			0

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P.O. BOX 2550
SALT LAKE CITY UT 84110

MAILED
OCT 20 2011
OFFICE OF PETITIONS

In re Patent No. 7,332,169 :
Issue Date: February 19, 2008 :
Application No. 10/788,232 : NOTICE
Filed: February 26, 2004 :
Attorney Docket No. **2183-4646.1US** :

This is a notice regarding your request filed August 26, 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 **NOT ACCEPTED**.

Petitioner has submitted with the instant petition an assertion regarding 37 CRR 1.28. However, the request appears not to be properly signed by a person having authority to prosecute in the above-identified patent. Therefore, the request can not be accepted at this time.

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.

Accordingly, the request cannot be accepted until it is signed by all inventors, an attorney /agent who is registered to practice before the U.S. Patent and Trademark Office, or the assignee of the entire interest. If the request is signed by an assignee, the assignee the assignee must comply with the requirements of 37 CFR 3.73(b).

I would also like to bring to petitioner attention that petitioner only provided the calculation of the deficiency owed. A request for acceptance of a fee deficiency submission under 37 CFR 1.28 petitioners is required to provide an itemization of the deficiency payment. Petitioner's attention is directed to 37 CFR 1.28(c)(2) (ii) which states:

> (2) *Payment of deficiency owed.* The deficiency owed, resulting from the previous erroneous payment of small entity fees, must be paid.
>
> (ii) *Itemization of the deficiency payment.* An itemization of the total deficiency payment is required. The itemization must include the following information:
>
> (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. This will permit the Office to differentiate, for example, between two one-month extension of time fees erroneously paid as a small entity but on different dates;
>
> (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.

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

JoAnne Burke
Petitions Examiner
Office of Petitions

cc: Dennemeyer & Co LTD
Regent House Heaton Lane
Stockport Cheshire
England SK4 1BB

cc: ELMORE,TAMARA
Vereenigde
Utrechtseweg 1
Amersfoort, 3811 -NA

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OFFICE OF PETITIONS

In re Patent No. 7,332,169 :
Issue Date: February 19, 2008 :
Application No. 10/788,232 : NOTICE
Filed: February 26, 2004 :
Attorney Docket No. **2183-4646.1US** :

This is a notice regarding your renewed request filed December 20, 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 **NOT ACCEPTED**.

Petitioner still has not met the requirements for acceptance. As stated in the previous decision mailed October 20, 2011, petitioner only provided the calculation of the deficiency owed. A request for acceptance of a fee deficiency submission under 37 CFR 1.28 petitioners is required to provide an itemization of the deficiency payment. Petitioner's attention is directed to 37 CFR 1.28(c)(2) (ii) which states:

> (2) *Payment of deficiency owed.* The deficiency owed, resulting from the previous erroneous payment of small entity fees, must be paid.
>
> (ii) *Itemization of the deficiency payment.* An itemization of the total deficiency payment is required. The itemization must include the following information:
>
> (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. This will permit the Office to differentiate, for example, between two one-month extension of time fees erroneously paid as a small entity but on different dates;

(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.

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

JoAnne Burke
Petitions Examiner
Office of Petitions

cc: ELMORE,TAMARA
Vereenigde
2517 JR Den Haag
the Netherlands

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MAILED
MAR 13 2012
OFFICE OF PETITIONS

In re Patent No. 7,332,169 :
Issue Date: February 19, 2008 :
Application No. 10/788,232 : NOTICE
Filed: February 26, 2004 :
Attorney Docket No. **2183-4646.1US** :

This is a notice regarding your renewed request filed February 10, 2012, for acceptance of a fee deficiency submission under 37 CFR 1.28.

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

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

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/
JoAnne Burke
Petitions Examiner
Office of Petitions

cc: ELMORE,TAMARA
Vereenigde
2517 JR Den Haag
the Netherlands

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NEW YORK NY 10016

MAILED

SEP 24 2010

OFFICE OF PETITIONS

In re Patent No. 7,758,890	:	DECISION ON REQUEST FOR
Anderson et al.	:	RECONSIDERATION OF
Issue Date: July 20, 2010	:	PATENT TERM ADJUSTMENT
Application No. 10/788,413	:	
Filed: March 1, 2004	:	
Attorney Docket No. 820.1020	:	

This is a decision on the petition filed on July 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 one hundred fourteen (1114) days.

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

Patentee is given **TWO (2) MONTHS** from the mailing date of this decision to respond. No extensions of time will be granted under 37 CFR 1.136.

37 CFR 1.703(b) indicates that the period of adjustment under 37 CFR 1.702(b) ("over three year period") is the number of days, if any, in the period beginning on the day after the date that is three years after the actual filing date of the application and ending on the date a patent was issued. 35 U.S.C. 154(b)(1)(B). However, 37 CFR 1.703(b) also sets forth the limitations on patent term adjustment specified in 35 U.S.C.

154(b)(1)(B)(i) and (ii). Specifically, 37 CFR 1.703(b)(1) provides that the period of adjustment of the term of a patent shall not include 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.

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 March 2, 2007, and ends on December 11, 2008, the day before the RCE was filed, and is 651 (not 652) days. See 35 U.S.C. 154(b)(1)(B)(i).

Accordingly, the patent term adjustment remains 1113 days.

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

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MAR 07 2011

OFFICE OF PETITIONS

In re Patent No. 7,842,344
Issued: November 30, 2010
Application No. 10/788,414
Filed: March 1, 2004
Attorney Docket No. 08384740235

:DECISION ON APPLICATION
:FOR PATENT TERM ADJUSTMENT

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FOR PATENT UNDER 37 C.F.R. §1.705(b)," filed January 28, 2011. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from 1339 to 1451 days. Since the request is after issuance, the request is being treated under 37 CFR 1.705(d).

The request for review of the patent term adjustment is **DISMISSED.**

Patentees are 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 § 1.136.

On November 30, 2010, the above-identified application matured into U.S. Patent No. 7,842,344 with a revised patent term adjustment of 1339 days. On January 28, 2010, patentees timely submitted this application for patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 1451 days.

Applicants argue that while a Restriction Requirement was mailed May 4, 2006, it was vacated by the Examiner, and a new Restriction Requirement was mailed August 24, 2006. Therefore, the number of days between the filing date (March 1, 2004) and issuance of a first Office Action (August 24, 2006) is 480 days. Thus, the total PTA for the present patent should be 1451 days.

Applicant's argument is not persuasive. 37 CFR 1.702(a)(1) provides that: 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:

Mail at least one of a notification under 35 U.S.C. 132 or a notice of

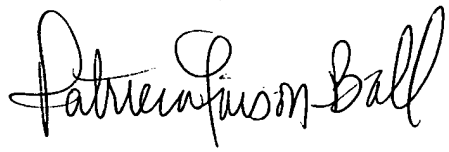
> allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 in an international application;

In this instance, the Office action mailed May 4, 2006 was mailed within fourteen months and 368 days of the filing date. As the Office failed to take action within the time provided for in 37 CFR 1.702(a)(1), an adjustment to the Patent Term Adjustment was made in the amount of 368 days. The fact that the Office subsequently mailed a further Office action withdrawing the May 4, 2006 Office action does not negate the fact that the Office took action within the meaning of 37 CFR 1.702(a)(1). Accordingly, entry of an additional period of adjustment for examination delay pursuant to 37 CFR 1.702(a)(1) is not warranted.

In view thereof, the patent term adjustment indicated in the patent is properly reflected.

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

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



Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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Paper No.

KING & SPALDING
1185 AVENUE OF THE AMERICAS
NEW YORK NY 10036-4003

MAILED
MAR 15 2011
OFFICE OF PETITIONS

In re Application of	:	
Wender et al.	:	DECISION
Application No. 10/788,506	:	ON APPLICATION FOR
Filed: February 26, 2004	:	PATENT TERM ADJUSTMENT
Atty Docket No. 16908-105002	:	
Title: METHOD OF EVALUATING	:	
AN OPTION SPREAD	:	

This is in response to the "PETITION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(B)," filed January 26, 2011. Applicants submit that the correct patent term adjustment to be indicated on the patent is one thousand, two hundred and fifteen (1215) days, not nine hundred and twenty-one (921) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction partly on the basis that the Office will take in excess of three years to issue this patent. In addition, Applicants contend that an additional period of examination delay should have been accorded.

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

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under

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

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

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

---

[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 mailed a non-final Office action on March 3, 2010, and a response was received on April 12, 2010. A final Office action under 35 U.S.C. § 132(a) was mailed on July 23, 2010. On August 24, 2010, the Office mailed an Examiner's Interview which stated, *in pertinent part*, "…the final rejection dated 7/23/2010 is vacated. A new office action will be forthcoming." On December 9, 2010 (four months and 119 days after the April 12, 2010 response was received), the Office mailed a Notice of Allowance.

Applicants assert that since the July 23, 2010 Office action was vacated, it "should not be considered as a response by the USPTO to Applicants' submissions of April 12, 2010 for the purpose of calculating patent term adjustment."[2] In other words, Applicants contend that the period of adjustment to the patent term under 37 CFR 1.702(a)(2) and 1.703(a)(2) is properly calculated using the December 9, 2010 notice of allowance, rather than the July 23, 2010 final Office action; therefore, since the Office responded to the April 12, 2010 four months and 119 days after the receipt of the same, an adjustment of 119 days is warranted.

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

[2] Petition, page 3.

> 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

Applicants in essence argue that the Examiner's Interview Summary of August 24, 2010 "vacated" the final Office action under 35 U.S.C. § 132(a) of July 23, 2010, and as such the Office action under 35 U.S.C. § 132(a) of July 23, 2010 should be treated as not having been issued for purposes of determining whether the issuance of the patent was delayed due to the failure of the USPTO to respond to Applicant's reply of April 12, 2010 within four months after the date on which the reply was filed. Applicants' arguments have been considered but are not persuasive.

The vacatur of an Office action sets aside or withdraws any rejection, objection or requirement in an Office action, as well as the requirement that the applicant timely reply to the Office action to avoid abandonment under 35 U.S.C. § 133. The vacatur of an Office action signifies that the Office action has been set aside, voided, or withdrawn as of the date of the vacating

Office action or notice. The vacatur of an Office action, however, does **not** signify that the vacated Office action is void *ab initio* and is to be treated as if the USPTO had never issued the Office action. The patent examination process provided for in 35 U.S.C. §§ 131 and 132 contemplates that Office actions containing rejections, objections or requirements will be issued, and that the applicant will respond to these Office action, "with or without amendment." (35 U.S.C. § 132(a)). The mere fact that an examiner or other USPTO employee upon further reflection determines that an Office action, or that a rejection, objection or requirement in an Office action, is not correct and must be removed does not warrant treating the Office action as void *ab initio* and as if the USPTO had never issued the Office action.

The USPTO appreciates that there may be situations in which it is appropriate to treat an Office action or notice issued in an application as void *ab initio* and as if the USPTO had never issued the Office action. However, these would be extremely rare situations, such as the issuance of an Office action or notice by an employee who does not have the authority to issue that type of Office action or notice, the issuance of an Office action or notice in the wrong application, or the issuance of an Office action or notice containing language not appropriate for inclusion in an official document. In essence, the situations in which it is appropriate to treat an Office action or notice issued in an application as void *ab initio* and as if the USPTO had never issued the Office action are the situations in which it is appropriate to expunge an Office action or notice from the USPTO's record of the application. That is simply **not** the case in this situation.

Pursuant to 35 U.S.C. § 154(b)(1)(A)(ii), patentees are entitled to day-to-day adjustment if the USPTO delays the issuance of a patent by failing to respond to a reply by the applicant within four months from the filing of the reply. The record of the above-identified patent indisputably indicates that the USPTO entered an Office action under 35 U.S.C. § 132, specifically a final Office action, on July 23, 2010, within four months of the filing of a reply under 37 C.F.R. § 1.111 on April 12, 2010. The fact that the Office later set aside the final Office action of July 23, 2010 does not negate the fact that the Office responded within the meaning of 35 U.S.C. § 154(b)(1)(A)(ii) and 37 C.F.R. § 1.702(a)(2) on July 23, 2010 to the reply under 37

C.F.R. § 1.111 on April 12, 2010. Unless expunged from the record (which is not warranted in this situation), for purposes of calculating patent term adjustment, the Office action entered by the examiner on July 23, 2010, was properly used to determine whether the USPTO delayed the issuance of the above-identified patent by failing to respond to the reply of April 12, 2010 within four months from the filing of the reply under of 35 U.S.C. § 154(b)(1)(A)(ii) and 37 CFR 1.702(a)(2). *See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term*, 65 *Fed. Reg.* 54366 (Sept. 18, 2000) (final rule).

CONCLUSION

The request for 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 is dismissed as premature.

The request to accord a single period of examination delay associated due to the vacating of the July 23, 2010 final Office action is dismissed.

The Office acknowledges submission of the $200.00 fee set forth in 37 C.F.R. § 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 C.F.R. § 1.705(d) and must include payment of the required fee under 37 C.F.R. § 1.18(e). 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 regarding this decision should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

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SEED INTELLECTUAL PROPERTY LAW GROUP PLLC
701 FIFTH AVE
SUITE 5400
SEATTLE WA 98104

MAILED
DEC 08 2011
OFFICE OF PETITIONS

In re Patent No: 7,364,923 :
Issued: April 29, 2008 :
Application No. 10/788,546 : NOTICE
Filed: February 27, 2004 :
Attorney Docket No. 240105.438 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed November 1, 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 **DISMISSED.**

The request under 37 CFR 1.28 cannot be accepted at this time since it appears that the petition is not signed by a person having authority to act in the above-identified patent.

Petitioner's attention is directed to 37 CFR 1.33(b), which states.

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.

Further, that part of the request that is directed to the maintenance fee deficiency payment is not signed by the proper party. A.J. Peach is not authorized to sign the request. Accordingly, the request cannot be accepted until it is signed by all inventors, an attorney or agent registered to practice before the U.S. Patent and Trademark Office or the assignee of the entire interest under 37 CFR 3.73(b).

Additionally, the current large entity three and a half year maintenance fee is $1,130.00. Petitioner has submitted $490.00 towards the required $640.00 deficiency fee payment, thus creating a $150.00 shortage.

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

By Mail: Mail Stop PETITION
Commissioner for Patents
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Alexandria, VA 22313-1450

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

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

Additionally, the address given on the request 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.

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

cc: A J PEACH
DENNEMEYER & CO LTD
REGENT HOUSE HEATON LANE
STOCKPORT CHESHIRE
ENGLAND SK4 1BB

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701 FIFTH AVE
SUITE 5400
SEATTLE WA 98104

MAILED
FEB 28 2012
OFFICE OF PETITIONS

In re Patent No. 7,364,923 :
Issued: April 29, 2008 :
Application No. 10/788,546 : ON PETITION
Filed: February 27, 2004 :
Attorney Docket No. 240105.438 :

This is a notice regarding your renewed request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed January 30, 2012 and November 25, 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.

Additionally, petitioner has submitted an unnecessary duplicate payment of $150.00 on November 24, 2011. Therefore, this overage will be refunded to petitioner's deposit account in due course.

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

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

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IBM_SVL
c/o Sawyer Law Group, P.C.
P.O. Box 51418
Palo Alto CA 94303

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JAN 12 2012
OFFICE OF PETITIONS

In re Application of

Beyer, et al.

Application No. 10/788,556

Filed: February 27, 2004

DECISION ON PETITION

Attorney Docket No. SVL920030140US1/3026P

This is a decision on the petition under 37 CFR 1.137(b), filed December 23, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned August 31, 2011, for failure to seek judicial review after a decision on appeal was rendered on June 30, 2011. A Notice of Abandonment was mailed September 30, 2011.

The Request for Continued Examination filed December 23, 2011, is noted.

The application file is being forwarded to Technology Center 2100, GAU 2158 for further processing.

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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CAMPBELL STEPHENSON LLP
11401 CENTURY OAKS TERRACE
BLDG. H, SUITE 250
AUSTIN, TX 78758

MAILED
MAY 05 2011
OFFICE OF PETITIONS

In re Patent No. 7,565,568 :
Issue Date: July 21, 2009 :
Application No. 10/788,698 : ON PETITION
Filed: February 27, 2004 :
Attorney Docket No. VRT0128US :

This is a decision on the petition filed February 2, 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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OFFICE OF PETITIONS

DLA PIPER LLP (US)
4365 EXECUTIVE DRIVE
SUITE 1100
SAN DIEGO CA 92121-2133

In re Application of
Kenneth W. Carpenter, et al.
Application No. 10/788,747
Filed: February 26, 2004
Attorney Docket No. MEDIV2020-2

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 8, 2010, to revive the above-identified application.

The petition is **DISMISSED**.

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

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of May 20, 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 (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). ***See Attached Advisory Action***.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item(s) (1).

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

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

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

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

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

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

Enclosure: Advisory Action

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/788,747	Applicant(s) CARPENTER ET AL.	
	Examiner CARALYNNE HELM	Art Unit 1615	

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

THE REPLY FILED 08 July 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: *1-5, 11, 18-19, and 34*.
   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.

/Caralynne Helm/
Examiner, Art Unit 1615

/Juliet C Switzer/
Primary Examiner, Art Unit 1634

Continuation of 13. Other: The Office Action mailed included a typographical error in its inclusion of Lang et al. in the statement of rejection made under 35 USC 103(a). In light of the entry of the amendment, the objection to claims 1 and 12-14 is hereby withdrawn and claims 1-5, 11, 18-19, and 34 will stand rejected under 35 USC 103(a) over Chu et al. The amendment imports the limitations of claims 10 and 17 into claim 1. The amendment also corrects the naming of the formula in claim 1 and redundant definition of R3. These changes do not obviate the rejection made over Chu et al.

Applicants argue that Chu et al. do not teach stents with the polymer as recited in claim 1 with an aminoxyl bioactive agent covalently bound via a 2 to 25 amino acid where the surface hydrophobicity is improved as well as the accessibility of the polymer to enzyme activation and the release profile of the bioactive agent. Chu et al. teach the same polymers instantly claimed as well as the attachment of bioactive agents to these polymers with a 2 to 25 amino acid peptide linker and also exemplify an aminoxyl as a particular bioactive agent to attach to the polymer. They also explicitly teach the polymer/linker/drug as a polymeric film on the surface of a stent. Applicants only provide assertions of their improvements discussed in the arguments and these properties are not claimed. It is noted that the features upon which applicant relies are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Moreover, since the Chu et al. teach the same polymer, with the same linker, and the same bioactive agent claimed, they must also have the same properties. A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present." This treatment results from In re Spada, which states that, "Products of identical chemical composition can not have mutually exclusive properties." In re Spada, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). (see MPEP 2112.01) Therefore applicants' arguments are unpersuasive.

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JAN 11 2011

OFFICE OF PETITIONS

DLA PIPER LLP (US)
4365 EXECUTIVE DRIVE
SUITE 1100
SAN DIEGO CA 92121-2133

In re Application of
Kenneth W. Carpenter, et al.
Application No. 10/788,747
Filed: February 26, 2004
Attorney Docket No. MEDIV2020-2

DECISION ON PETITION

This is a renewed decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 2, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed May 20, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned at midnight August 20, 2009.

In view of the renewed petition, no extension of time fee is unnecessary. Accordingly, the $130.00 submitted with the renewed petition is being refunded to petitioner in due course.

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

This application is being referred to Technology Center AU 1615 for processing of the RCE in accordance with 37 CFR 1.114.

Cheryl Gibson-Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

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Docket Administrator - Room 3D-201E
Alcatel-Lucent USA Inc.
600-700 Mountain Avenue
Murray Hill, NJ 07974

Mail Date: 08/04/2010

Applicant	: Iraj Saniee	: DECISION ON REQUEST FOR
Patent Number	: 7653042	: RECALCULATION of PATENT
Issue Date	: 01/26/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/788,824	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/27/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1022** 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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TUNG & ASSOCIATES
Suite 120
838 W. Long Lake Road
Bloomfield Hills, MI 48302

MAILED

MAR 10 2011

OFFICE OF PETITIONS

In re Patent No. 7,071,100 :
Issue Date: July 4, 2006 :
Application No. 10/788,912 : ON PETITION
Filed: February 27, 2004 :
Patentee(s): Kei-Wei Chen, et. al. :

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.

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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United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,979	02/27/2004	Wolfgang Aderhold	008304	6862

60300 7590 06/30/2011

LAW OFFICES OF CHARLES GUENZER
ATTN: APPLIED MATERIALS, INC.
2211 PARK BOULEVARD
P.O. BOX 60729
PALO ALTO, CA 94306

EXAMINER	
PAIK, SANG YEOP	
ART UNIT	**PAPER NUMBER**
3742	

MAIL DATE	DELIVERY MODE
06/30/2011	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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LAW OFFICES OF CHARLES GUENZER
ATTN: APPLIED MATERIALS, INC.
2211 PARK BOULEVARD
P.O. BOX 60729
PALO ALTO CA 94306

In re Application of:
ADERHOLD, WOLFGANG
Serial No.: 10/788,979
Filed: Feb. 27, 2004
Docket: 008304
Title: BACKSIDE RAPID THERMAL PROCESSING OF PATTERNED WAFERS

DECISION ON PETITION

This is a decision on the petition filed on June 13, 2011 seeking to withdraw the non-final office action mailed on April 1, 2011 and issue a Notice of Allowance. This petition is being considered pursuant to 37 CFR §1.181. No fee is required.

The petition is denied as untimely.

In the June 13, 2011 petition, the petitioner requests the non-final Office action of April 1, 2011 be withdrawn because the petitioner believes the examiner's rejection is improper. Petitioner also argues that the re-opening of prosecution is waste of time because the Board of Patent Appeals and Interferences has already considered the references as applied.

Discussion

A review of the record shows that the reopening of prosecution subsequent to a decision by the Board under 37 CFR 1.198 was signed by a Technology Center Director, thus indicating her approval in accordance with MPEP 1002.02(c). The non-final Office action is proper. The instant petition of June 13, 2011 was filed more than two months after the mailing date of the non-final Office action of April 1, 2011. Pursuant to 37 CFR 1.181(f)[1], the petition must be filed

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

within two months from the action complained of. Since the petition was not timely filed, the requested withdrawal of non-final Office action of April 1, 2011 will not be granted.

If the applicant believes that the examiner has erred in his judgment, a proper course of action would be to file an appeal brief to have the examiner's rejection reversed. A TC Director can not compel an examiner to ignore prior art references and direct the examiner to allow the claims in this application. Moreover, the applicant has the right to appeal the examiner's patentability determination to the Board if the applicant still disagrees with the stated position of the examiner. Therefore, the requested relief for issuance of a Notice of Allowance can not be granted.

Conclusion

For the foregoing reasons, the relief requested by the petitioner will not be granted. In particular, the non-final rejection of February 3, 2011 remains in effect. The non-final rejection is proper in accordance with MPEP § 1214.04 and 37 CFR § 1.198. Petitioner is reminded that the mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings as stated in (37 CFR 1.18 l (f).

The application is being forwarded to the examiner via the Supervisory Patent Examiner of Art Unit 3742 awaiting a response to the outstanding Office action mailed on April 1, 2011. Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision, 37 CFR 1.181(0. No extension of time under 37 CFR 1.136(a) is permitted. The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181" and directed to the Office of the Deputy Commissioner for Patent Examination Policy at Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria Virginia 22313-1450. See MPEP 1002.02(b).

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

PETITION DENIED AS UNTIMELY.

Angela D. Sykes, Director
Technology Center 3700

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Briscoe, Kurt G.
Norris McLaughlin & Marcus, PA
875 Third Avenue, 8th Floor
New York NY 10022

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In re Application :
Vona :
Application No. 10/789,004 : PATENT TERM ADJUSTMENT
Filing or 371(c) Date: February 27, 2004 :
Dkt. No.: 110963-5 (SPG6611PDUS) :

This is in response to the application for patent term adjustment under 37 CFR 1.705(b), filed September 29, 2011.

Applicant submits that the correct patent term adjustment to be indicated on the patent is 1421 days, not 361 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction on the basis that the Office will take in excess of three years to issue this patent.

Insofar 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 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.

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].

Receipt is hereby acknowledged of the required patent term adjustment application fee under 37 CFR 1.705(b) of $200.00. See, 37 CFR 1.18(e).

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

The application file is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

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

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
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.

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

PTO/SB/131 (01-10)
Approved for use through 02/28/2011. OMB 0651-0020
U.S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE
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REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

Attorney Docket Number: 040158	Patent Number: 7,668,561
Filing Date (or 371(b) or (f) Date): 2-27-2004	Issue Date: 2-23-2010
First Named Inventor: JEAN PUT LING AU	
Title: APPARATUS AND METHOD FOR CONTROLLING REVERSE LINK INTERFERENCE AMONG ACCESS TERMINALS IN WIRELESS COMMUNICATIONS	

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 08-06-2010
Name (Print/Typed) Rupit M. Patel	Registration Number 53441

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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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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QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO, CA 92121

Mail Date: 09/02/2010

Applicant	: Jean Put Ling Au	: DECISION ON REQUEST FOR
Patent Number	: 7668561	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/789,516	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/27/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **720** 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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KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

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AUG 17 2010

OFFICE OF PETITIONS

In re Application of Dobie et al. :
Application No. 10/789,526 : On Application For
Filing Date: February 26, 2004 : Patent Term Adjustment
Attorney Docket No. BIOL0002US/ISIS.035A :

This is in response to the "Application for Patent Term Adjustment 37 C.F.R. § 1.705(b)" filed February 17, 2010. Applicants request the initial determination of patent term adjustment be corrected from fifty-three (53) days to two hundred thirty-five (235) days.

The request for reconsideration of the initial determination of patent term adjustment is **granted to the extent indicated herein**.

The Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) mailed with the Notice of Allowance on November 17, 2009, advised Applicants of a patent term adjustment to date of 53 days.

The petition asserts:

1. "[T]he PTA sent with the Notice of Allowance, 53 days, is inconsistent with the calculation listed on PAIR, which lists a PTA of 24 days;"
2. The period of Office delay under 35 U.S.C. § 154(b)(1)(A) ("A delay") is 161 days;
3. The period of Office delay under 35 U.S.C. § 154(b)(1)(B) ("B delay") is 211 days;
4. The period of delay under 35 U.S.C. § 154(b)(2)(C) ("Applicant Delay") is 137 days; and
5. The correct patent term adjustment is 235 days, which is the sum of 161 days of A Delay and 211 days of B Delay reduced by 137 days of Applicant Delay.

B Delay

To the extent 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 request is 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 C.F.R. § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the 37 C.F.R. § 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 C.F.R. § 1.702(a)(4) or applicant delay under 37 C.F.R. § 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 C.F.R. § 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.

Rather than file an application for patent term adjustment under 37 C.F.R. § 1.705(b) contesting the 37 C.F.R. § 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 C.F.R. § 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 C.F.R. § 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 C.F.R. § 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 C.F.R. § 1.705(d) and must include payment of the required fee under 37 C.F.R. § 1.18(e).

The November 17, 2009 Determination of Patent Term Adjustment and PAIR

The Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) mailed with the Notice of Allowance on November 17, 2009, advised Applicants of a patent term adjustment to date of 53 days. However, as recognized by Applicants, Office PALM records indicate the patent term adjustment is 24 days.

The Office has reviewed the record and determined the patent term adjustment is 24 days, which is 161 days of A Delay reduced by 137 days of Applicant Delay.

---

[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.

Conclusion

The patent term adjustment as of November 17, 2009, the date the Office mailed the Notice of Allowance, is 24 days.

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.

Anthony Knight
Director
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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ALEXANDRIA, VA 22313-1450
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Paper No.

EDWARDS ANGELL PALMER & DODGE LLP
P.O. BOX 55874
BOSTON MA 02205

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JAN 18 2011

OFFICE OF PETITIONS

In re Application of :
Nakamura et al. :
Application No. 10/789,537 :
In re Patent No. 7,796,884 : DECISION ON PETITION
Filing Date: February 26, 2004 : PURSUANT TO 37 C.F.R.
Issue Date: September 14, 2010 : § 3.81(B)
Attorney Docket Number: 60931 :
(47762) :
Title: WAVELENGTH PATH SWITCHING :
NODE APPARATUS AND WAVELENGTH :
PATH ALLOCATION METHOD :

This is a decision on the petition pursuant to 37 C.F.R. § 3.81(b), filed December 8, 2010, to correct the Assignee's information on the Issue Fee Transmittal Form PTOL-85(b).

The petition is **GRANTED.**

With this petition, Petitioner requests that a Certificate of Correction be issued to correct the assignee information that appears on the face of the patent. Petitioner has requested that the name of the Assignee should be changed from "Kiddi Corporation" to "KDDI CORPORATION."

37 C.F.R. § 3.81(b), effective June 25, 2004, reads:

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

Petitioner has set forth that the assignment was submitted for recordation as set forth in 37 C.F.R. § 3.11 before issuance of the patent, and Office records confirm that an assignment was received in the Office on May 26, 2004, listing KDDI Corporation of Tokyo, Japan as the assignee.

Payment of the required $100 certificate of correction fee and the $130 processing fee is acknowledged.

The Certificates of Correction Branch will be notified of this decision so that the requested Certificate of Correction can be issued, correcting the Assignee information to "KDDI Corporation, Tokyo (JP)."

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225. Any questions concerning the issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (703) 756-1814.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE
BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte Matthew P. Chant *et al*

Application 10/789,574
Technology Center 2400

DECISION ON PETITION

This is a decision on the "Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b)," filed September 27, 2010 ("Petition to Revive").

See 75 Fed. Reg. 15,689-90 (Mar. 30, 2010) for authority of the Chief Administrative Patent Judge.

FINDINGS

1. On May 8, 2009, Appellants filed an Appeal Brief.

2. On August 11, 2009, the Primary Examiner issued a Notification of Non-Compliant Appeal Brief (37 CFR 41.37). The Notification granted Appellants a period of one month within which to file a corrected brief, i.e., until September 11, 2009.

3. On April 21, 2010, having received no response to the Notification of Non-Compliant Appeal Brief of August 11, 2009, the Primary Examiner issued a Notice of Abandonment.

4. On September 27, 2010, Appellants filed the present Petition and an Appeal Brief.

5. In respect to revival of an unintentionally abandoned application, 37 C.F.R. § 1.137(b) provides that:

> (b) *Unintentional.* If the delay in reply by applicant or patent owner was unintentional, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination prosecution terminated under §§ 1.550(d) or 1.957(b) or limited under § 1.957(c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:
>
> (1) The reply required to the outstanding Office action or notice, unless previously filed;
>
> (2) The petition fee as set forth in § 1.17(m);
>
> (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and
>
> (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

6. The Petition to Revive was accompanied by:

(a) an Appeal Brief;

(b) the Petition fee; and

(c) A statement that "The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional."

7. There are no facts known by the Office that would cause the Office to question whether either the abandonment or delay in filing the Petition to Revive was unintentional.

8. Since the application was filed after June 8, 1995, on February 27, 2004, no terminal disclaimer is required.

9. A review of the Appeal Brief filed on September 27, 2010 indicates that it is compliance with 37 C.F.R. § 41.37.

DISCUSSION

As indicated above, Appellants have complied with all of the requirements of a petition under 37 C.F.R. § 1.137(b) for revival of an unintentionally abandoned application.

DECISION

In view of the foregoing, the Petition to Revive is GRANTED and the Appeal Brief of September 27, 2010 will be returned to the Examiner for preparation of an Examiner's Answer.

James T. Moore
Acting Chief Administrative Patent Judge

Steven M. Greenberg
Carey, Rodriguez, Greenberg & Paul
950 Peninsula Corporate Circle
Suite 2022
Boca Raton, FL 33487

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 03/31/11

TO SPE OF : ART UNIT 3764

SUBJECT : Request for Certificate of Correction for Appl. No 10/789579.: 7618346

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.

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

Comments: _____

/GR/

_____

_____

_____

_____ _____

SPE **Art Unit**

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DEC 22 2010

OFFICE OF PETITIONS

HARRIS FAB= AL HARRIS
2439 VALINE LN
CHICO CA 95928

In re Patent No. 7,081,754 :
Issue Date: July 25, 2006 :
Application No. 10/789,715 : DECISION ON PETITION
Filed: February 27, 2004 : UNDER 37 CFR 1.378(b)
Attorney Docket No. 23-0332 :
Patentee(s): Al Harris :

This is a decision on the petition under 37 CFR 1.378(b), filed November 1, 2010 and resubmitted November 8, 2010, to accept an unavoidably delayed payment of a maintenance fee for the above-identified patent.

The petition is **DISMISSED**.

The patent issued July 25, 2006. The first maintenance fee could have been paid from July 25, 2009, through January 25, 2010, or with a surcharge during the period from January 26, 2010 through July 25, 2010. Accordingly, the patent expired at midnight July 25, 2010, for failure to timely submit the first maintenance fee.

A petition to accept the delayed payment of a maintenance fee under 35 U.S.C. § 41(c) and 37 CFR 1.378(b) must be accompanied by (1) an adequate showing that the delay was unavoidable, since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent, (2) payment of the appropriate maintenance fee, unless previously submitted, and (3) payment of the surcharge set forth in 37 CFR 1.20(i)(1).

This petition lacks item (1), (2) and (3) above.

The Director may accept late payment of the maintenance fee if the delay is shown to the satisfaction of the Director to have been "unavoidable". 35 U.S.C. § 41(c)(1).

With respect to item 1:

Petitioner states that the delay in payment of the 3 ½ year maintenance fee was unavoidable due to financial difficulties at the time in question.

The showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.378(b)(3).

Acceptance of late payment of a maintenance fee is considered under the same standard as that for reviving an abandoned application under 35 U.S.C. § 133 because 35 U.S.C. § 41(c)(1) uses the identical language, i.e. "unavoidable delay". Ray v. Lehman, 55 F.3d 606, 608-09, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995)(quoting In re Patent No. 4,409,763, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1988)). Decisions on reviving abandoned applications have adopted the "reasonably prudent person" standard in determining if the delay in responding to an Office action was unavoidable. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887)(the term "unavoidable" "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business"); In re Mattullath, 38 App. D.C. 497, 514-515 (D.C. Cir. 1912); and Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141. In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition to revive an application as unavoidably abandoned cannot be granted where a petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay. Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

In essence, petitioner must show that he was aware of the need to pay the maintenance fee, and to that end was tracking it, or had engaged someone to track it before the expiration, but when the fee came due, was "unavoidably" prevented from making the maintenance fee payment due to his financial condition until the petition was filed.

In determining whether a delay in paying a maintenance fee was unavoidable, one looks to whether the party responsible for payment of the maintenance fee exercised the due care of a reasonably prudent person. Ray, 55 F3d at 608-609, 34 USPQ2D at 1787. It is incumbent upon the patent owner to implement steps to schedule and pay the fee, or obligate another to do so. See California Medical Products v. Technol. Med. Prod., 921 F.Supp 1219, 1259 (D. Del. 1995). That is, 37 CFR 1.378(b)(3) requires a showing of the steps in place to pay the maintenance fee, and the record currently lacks a showing that any steps were emplaced by petitioner or anyone else. In the absence of a showing that petitioner or anyone else was engaged in tracking the maintenance fee due dates, and that party had in fact been tracking the due dates with a reliable tracking system, such as would be used by prudent and careful men in relation to their most important business, petitioner cannot reasonably show that the delay was unavoidable delay. In re Katrapat, 6 USPQ2d 1863, 1867-1868 (Comm'r Pat. 1988); California, supra. Put otherwise, the issues of petitioner's health and financial problems are immaterial in the absence of a showing that these, and not the lack of any steps in place to pay the fee, caused or contributed to the delay.

A showing of unavoidable delay based upon financial condition must establish that the financial condition of the petitioner during the entire period of the delay was such as to excuse the delay.

See Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (1891). The showing of record does not adequately establish that petitioner's entire delay in paying the first maintenance fee from July 25, 2010, until the petition was filed on or about November 1, 2010, was unavoidable within the meaning of 35 U.S.C. § 41(c) and 37 CFR 1.378(b).

A complete showing, with supporting documentation, is required of the financial condition of petitioner or the party responsible for payment of the maintenance fees. Such showing should include all income, expenses, assets, credit, and obligations, which made the delay in payment of the maintenance fee from July 25, 2010, until the filing of the petition on or about November 1, 2010, "unavoidable." A monthly breakdown is preferred. In essence, petitioner must show that she was aware of the need to pay the maintenance fee, and to that end was tracking it, or had engaged someone to track it before the expiration, but when the fee came due, was financially unable to make the payment until the petition was filed. The showing should include documentary proof of the maintenance fee tracking system, the entry of this patent in that system and an explanation of how the system worked.

Additionally, petitioner must state how he manages to conduct his daily personal and business affairs, including scheduling and settlement of short and long term debts and business obligations, bills, rent or mortgage payments, income taxes etc., during the time in question. Petitioner must demonstrate that his financial problems were such as to cause the payment of the maintenance fee to have been unavoidably delayed.

With respect to items 2 and 3:

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition to accept a delayed payment of a maintenance fee patent based on unavoidable delay. In this instance, the fee required by law is $700. Petitioner is further required to pay the maintenance fee due of $490.

The petition in the above identified application was not accompanied by payment of the required fee. No consideration on the merits can be given that petition until the required fee is received.

ALTERNATIVE VENUE

Petitioner should also note that if the maintenance fee is proffered within 24 months of the date of expiration date of the patent, he has an alternate remedy under the unintentional provisions of 37 CFR 1.378(c) which does not require a showing of the delay in timely paying the maintenance fee in order to reinstate the patent. The surcharge for the filing of a petition to accept unintentionally delayed payment of the maintenance fee is $1,640 fee along with the payment of the actual maintenance fee of $490.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within **TWO (2) MONTHS** from the mail date of this decision. No extension of this 2-month time limit can be granted under 37 CFR 1.136(a) or (b). **Any such petition for reconsideration must be accompanied by the petition fee of $400 as set forth in 37 CFR 1.17(f).** The petition for reconsideration should include an exhaustive attempt to

provide the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.

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

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

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

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

Any questions concerning this matter may be directed to April M. Wise at (571) 272-1642.

/dab/
David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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DIW Apr-11

Paper No.

VICTOR E. VELAZQUEZ
P.O. BOX 8538
HUMACAO PR 00792

MAILED

APR 18 2011

OFFICE OF PETITIONS

In re Patent No. 6,895,884 :
Issue Date: 05/24/2005 :
Application Number: 10/789,855 : DECISION ON PETITION
Filing Date: 02/27/2004 :
For: ANCHORING SYSTEMS AND METHODS :
FOR ANCHORING AN OBJECT :

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

The petition is **dismissed as moot**.

The patent issued on May 24, 2005. The first maintenance fee was timely paid on May 27, 2008.

Petitioner asserts that payment of the first maintenance fee was unavoidably delayed. However, as a review of Office records indicates that the first maintenance fee was timely paid on May 27, 2008, no petition is necessary. The petition is therefore dismissed as moot.

Petitioner should note that the window for payment of the second maintenance fee opens on May 24, 2012. A copy of the maintenance fee window dates is enclosed for patentee's reference.

The maintenance fee and surcharge are unnecessary and will be refunded to petitioner.

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

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Encl:

Maintenance Fee Statement
Maintenance Fee Window Dates

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Victor Eli Velazquez
P.O. Box 8538
Humacao PR 00792

MAINTENANCE FEE STATEMENT

According to the records of the U.S.Patent and Trademark Office (USPTO), the maintenance fee and any necessary surcharge have been timely paid for the patent listed below. The "PYMT DATE" column indicates the payment date (i.e., the date the payment was filed).

The payment shown below is subject to actual collection. If the payment is refused or charged back by a financial institution, the payment will be void and the maintenance fee and any necessary surcharge unpaid.

Direct any questions about this statement to: Mail Stop M Correspondence, Director of the USPTO, P.O.Box 1450, Alexandria, VA 22313-1450.

PATENT NUMBER	FEE AMT	SUR CHARGE	PYMT DATE	U.S. APPLICATION NUMBER	PATENT ISSUE DATE	APPL. FILING DATE	PAYMENT YEAR	SMALL ENTITY?	ATTY DKT NUMBER
6,895,884	**$465.00**	**$0.00**	**05/27/08**	**10/789,855**	**05/24/05**	**02/27/04**	**04**	**YES**	

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Maintenance Fees Window Dates

04/12/2011 11:55 AM EDT

Patent Number: 6895884

Application Number: 10789855

	4th Year	8th Year	12th Year
Open Date	05/24/2008	05/24/2012	05/24/2016
Surcharge Date	11/25/2008	11/27/2012	11/26/2016
Close Date	05/26/2009	05/24/2013	05/24/2017

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : October 19, 2010

TO SPE OF : ART UNIT 2621 - SPE

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/789,947 Patent No.: 7,751,482 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

Antonio Johnson

Should the dependency in claim 40 be changed from "27" to "28"?
See COCIN dated 08-27-2010

_____
Certificates of Correction Branch
(571)272-0483

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 /Marsha D. Banks-Harold/ **Art Unit** 2482

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HEWLETT-PACKARD COMPANY
INTELLECTUAL PROPERTY ADMINISTRATION
3404 E. HARMONY ROAD
MAIL STOP 35
FORT COLLINS CO 80528

MAILED

DEC 27 2010

OFFICE OF PETITIONS

In re Application of :
Sen et al. :
Application No. 10/789,963 : ON PETITION
Filed: February 27, 2004 :
Attorney Docket No. 200312102-1 :

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 1762 for processing of the Request for Continued Examination under 37 1.114 filed concurrently with the instant petition.

Liana Walsh
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 8-20-10 Paper No.: _____

TO SPE OF : ART UNIT 2174

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/789970 Patent No.: 7650572

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 (C of C)
Randolph Square 9C62-D
Palm Location 7580

Ennis Young
Certificates of Correction Branch
703-756-1542

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: Presently numbered claim 14 should have had the subject matter of the previously numbered claim 15. As correctly indicated by the applicant.

/Doon Chow/ — SPE

2174 — Art Unit

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OFFICE OF PETITIONS

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

In re Patent No. 7,553,299 : DECISION ON APPLICATION FOR
Issued: June 30, 2009 : PATENT TERM ADJUSTMENT and
Application No. 10/790,024 : NOTICE OF INTENT TO ISSUE
Filed: March 2, 2004 : CERTIFICATE OF CORRECTION
Dkt. No.: 02481.1837 :

This is a decision on the petition filed August 24, 2009 requesting that the patent term adjustment be increased from 435 days to 901 days.

The request for reconsideration of the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein**.

The patent is entitled to an overall adjustment of 827 days.

The above-identified application issued as U.S. Pat. No. 7,553,299 on June 30, 2009. The patent issued with a patent term adjustment of 435 days. The instant application for patent term adjustment was timely filed August 24, 2009. Patentees assert entitlement to an additional adjustment of 644 days for the Office's failure to issue the patent within three years of the date that the application was filed.

Review of the record reveals that the application is entitled to an adjustment of 466 days pursuant to 37 CFR 1.703(a)(1) plus an adjustment of 644 days pursuant to 37 CFR 1.703(b) less 74 days in connection with the Notice of Appeal filed June 27, 2008 pursuant to 37 CFR 1.703(b)(4) less 209 days of applicant delay pursuant to 37 CFR 1.704.

In view thereof, the patent is entitled to an overall adjustment of 827 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. See 37 CFR 1.323(a)(4).

The required $200.00 fee set forth in 37 CFR 1.18(e) has been charged to the authorized deposit account. 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 827 days.

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

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

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,553,299

DATED : June 30, 2009 **DRAFT**

INVENTOR(S) : Veasey, 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 435 days

Delete the phrase "by 435 days" and insert -- by 827 days --

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MORRIS MANNING MARTIN LLP
3343 PEACHTREE ROAD, NE
1600 ATLANTA FINANCIAL CENTER
ATLANTA GA 30326

MAILED
NOV 17 2010
OFFICE OF PETITIONS

In re Application of	:	
Subash Kabarga	:	
Application No. 10/790,160	:	NOTICE
Filed: March 01, 2004	:	
Attorney Docket No. 12454-75756	:	

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

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-2783.

/Tredelle D. Jackson/
Paralegal Specialist
Office of Petitions

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Paper No.

RICHARD A. HAASE (INVENTOR)
4402 RINGROSE DRIVE
MISSOURI CITY TX 77459

MAILED

JAN 03 2012

OFFICE OF PETITIONS

In re Application of :
Hasse :
Application No. 10/790,316 : DECISION ON PETITION
Filed: March 1, 2004 : PURSUANT TO
Attorney Docket No.: CV-49 : 37 C.F.R. § 1.181(A)
Title: WATER COMBUSTION :
TECHNOLOGY - METHODS, :
PROCESSES, SYSTEMS AND :
APPARATUS FOR THE COMBUSTION OF :
HYDROGEN AND OXYGEN :
:

This is a decision on the petition filed December 20, 2011, pursuant to 37 C.F.R. § 1.181(a), requesting that the holding of abandonment in the above-identified application be withdrawn.

This petition pursuant to 37 C.F.R. § 1.181(a) is **DISMISSED.**

BACKGROUND

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Corrected Application Papers (notice), mailed July 22, 2011, which set a non-extendable period for reply of two months. No response was received, and no extensions of time under the provisions of 37 C.F.R. § 1.136(a) were available. Accordingly, the above-identified application became abandoned on September 23, 2011. A notice of abandonment was mailed on October 7, 2011.

RELEVANT PORTIONS OF THE C.F.R. AND MPEP

37 C.F.R. § 1.134 sets forth, *in toto*:

An Office action will notify the applicant of any non-statutory or shortened statutory time period set for reply to an Office action. Unless the applicant is notified in writing that a reply is required in less than six months, a maximum period of six months is allowed.

37 C.F.R. § 1.135 sets forth, *in toto*:

(a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.
(b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.
(c) When reply by the applicant is a bona fide attempt to advance the application to final action, and is substantially a complete reply to the non-final Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, applicant may be given a new time period for reply under § 1.134 to supply the omission.

Section 711.03(c)(I)(A) of the MPEP sets forth, *in toto*:

In *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of *Delgar*, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of Delgar is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133).

To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. **The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response** (emphasis added).

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the

practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

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

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).

Evidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment. Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment. See *Lorenz v. Finkl*, 333 F.2d 885, 889-90, 142 USPQ 26, 29-30 (CCPA 1964); *Krahn v. Commissioner*, 15 USPQ2d 1823, 1824 (E.D. Va 1990); *In re Application of Fischer*, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1988).

ANALYSIS

With this petition, Petitioner has stated that the notice of July 22, 2011 was not received at the correspondence address of record[1] that a search of the "files" indicates that the Office communication was not received,[2] and that he does not "keep a Master Docket."[3] Petitioner has further included a copy of the docket record that is associated with this particular application.

Petitioner's assertion of non-receipt has not been adequately supported, as will be now pointed out.

---

1 Declaration of facts, paragraph 4.
2 Id. at 5.
3 Id. at 7.

Petitioner has not provided a statement describing the system used for recording an Office communication received at the correspondence address of record with the USPTO. It follows that Petitioner has not established that the docketing system is sufficiently reliable.

CONCLUSION

The time period for filing a renewed petition is governed by 37 C.F.R. § 1.181(f). Therefore, if reconsideration of this decision is desired, any response to this decision must be submitted within **TWO MONTHS** from the mail date of this decision, and **extensions of time under 37 C.F.R. § 1.136(a) are not permitted.** The reply should include a cover letter entitled "Renewed Petition pursuant to 37 C.F.R. § 1.181(a)". This is not a final agency action within the meaning of 5 U.S.C § 704.

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail,[4] hand-delivery,[5] or facsimile.[6] Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web.[7]

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.

It is noted in passing that Petitioner has attempted to submit an amendment to the specification, however this amendment is contained on pages eight and nine of this petition: put another way, this amendment is contained within the text of the petition, as opposed to having been submitted as a separate paper. It follows that this amendment to the specification cannot be entered since it fails to comply with 37 C.F.R. § 1.4(c), which sets forth, *in toto*:

> Since different matters may be considered by different branches or sections of the United States Patent and Trademark Office, each distinct subject, inquiry or order must be contained in a separate paper to avoid confusion and delay in answering papers dealing with different subjects.

---

4 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
5 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.
6 (571) 273-8300: please note this is a central facsimile number.
7 https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[8] All other inquiries concerning examination procedures should be directed to the Technology Center.

Paul Shanoski
Senior Attorney
Office of Petitions

8 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

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MAILED
JAN 26 2012
OFFICE OF PETITIONS

RICHARD A. HAASE (INVENTOR)
4402 RINGROSE DRIVE
MISSOURI CITY TX 77459

In re Application of :
Hasse :
Application No. 10/790,316 : DECISION ON RENEWED
Filed: March 1, 2004 : PETITION PURSUANT TO
Attorney Docket No.: CV-49 : 37 C.F.R. § 1.181(A)
Title: WATER COMBUSTION :
TECHNOLOGY - METHODS, :
PROCESSES, SYSTEMS AND :
APPARATUS FOR THE COMBUSTION OF :
HYDROGEN AND OXYGEN :

This is a decision on the renewed petition filed January 12, 2012, pursuant to 37 C.F.R. § 1.181(a), requesting that the holding of abandonment in the above-identified application be withdrawn.

This renewed petition pursuant to 37 C.F.R. § 1.181(a) is **GRANTED**.

Receipt of the concurrently submitted amendment to the specification is acknowledged.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Corrected Application Papers (notice), mailed July 22, 2011, which set a non-extendable period for reply of two months. No response was received, and no extensions of time under the provisions of 37 C.F.R. § 1.136(a) were available. Accordingly, the above-identified application became abandoned on September 23, 2011. A notice of abandonment was mailed on October 7, 2011.

An original petition pursuant to 37 C.F.R. § 1.181(a) was filed December 20, 2011, where Petitioner stated that the notice of July 22, 2011 was not received at the correspondence address

of record[1] that a search of the "files" indicates that the Office communication was not received,[2] and that he does not "keep a Master Docket."[3] Petitioner further included a copy of the docket record that is associated with this particular application. The original petition pursuant to 37 C.F.R. § 1.181(a) was dismissed via the mailing of a decision on January 3, 2012.

With this renewed petition pursuant to 37 C.F.R. § 1.181(a), Petitioner has provided a statement describing the system used for recording an Office communication received at the correspondence address of record with the USPTO, such that it has been established that the docketing system is sufficiently reliable.[4]

Considering the facts and circumstances of the delay at issue, as set forth on petition, it is concluded that Petitioner has met his burden of establishing that the Notice to File Corrected Application Papers of July 22, 2011 was not received, pursuant to MPEP § 711.03(c).

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 this decision. 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 Declaration of facts submitted with the original petition pursuant to 37 C.F.R. § 1.181(a), paragraph 4.
2 Id. at 5.
3 Id. at 7.
4 Declaration of facts submitted with the renewed petition pursuant to 37 C.F.R. § 1.181(a), paragraph 6.

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.[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.

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OCT 18 2010

OFFICE OF PETITIONS

SCHOX PLC
500 3RD STREET, SUITE 515
SAN FRANCISCO CA 94107

In re Application of :

Caleb C. RUTAN, et al :
Application No. 10/790,359 : DECISION ON PETITION
Filed: March 1, 2004 : TO WITHDRAW
Attorney Docket No. INST-P01 : 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 24, 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 an assignee of the entire interest who has been properly made of record under 37 CFR 3.71 or the first named inventor.

In order to request or take action in a patent matter, the assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, a Statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (*e.g.*, reel and frame number).

All future communications from the Office will continue to be directed to the above-identified address until otherwise properly notified.

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

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

Cc: THOMSON SCIENTIFIC, INC.
3501 MARKET STREET
PHILADELPHIA, PA 19104

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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SCHOX PLC
500 3RD STREET, SUITE 515
SAN FRANCISCO CA 94107

MAILED

NOV 02 2010

OFFICE OF PETITIONS

In re Application of :

Caleb C. RUTAN, et al :
Application No. 10/790,359 : DECISION ON PETITION
Filed: March 1, 2004 : TO WITHDRAW
Attorney Docket No. INST-P01 : 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 22, 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 an assignee of the entire interest who has been properly made of record under 37 CFR 3.71 or the first named inventor.

In order to request or take action in a patent matter, the assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, a Statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (*e.g.*, reel and frame number).

All future communications from the Office will continue to be directed to the above-identified address until otherwise properly notified.

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

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

Cc: THOMSON SCIENTIFIC, INC.
3501 MARKET STREET
PHILADELPHIA, PA 19104

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NOV 30 2010

OFFICE OF PETITIONS

In re Application of :

Caleb C. RUTAN, et al :
Application No. 10/790,359 : DECISION ON PETITION
Filed: March 1, 2004 : TO WITHDRAW
Attorney Docket No. INST-P01 : 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 11, 2010.

The request is **APPROVED.**

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office requires the practitioner(s) requesting withdrawal to certify that he, she, or they have: (1) given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any responses that may be due and the time frame within which the client must respond, pursuant 37 CFR 10.40(c).

The request was signed by Jeffrey Schox, on behalf of the attorneys of record associated with Customer No. 49142.

The attorneys of record associated with Customer No. 49142 have been withdrawn.

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

The correspondence address for future communications from the Office has been changed and the new correspondence address is indicated below.

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

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

Cc: CALEB C. RUTAN
555B LONGSHORE DRIVE
ANN ARBOR MI 48105

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/790,359	03/01/2004	Caleb C. Rutan	INST-P01

CONFIRMATION NO. 9337

49142
SCHOX PLC
500 3rd Street, Suite 515
San Francisco, CA 94107

POWER OF ATTORNEY NOTICE

OC000000044696751

Date Mailed: 11/29/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 11/11/2010.

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

/dcgoodwyn/

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

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. 7294947
Issue Date: November 13,2007
Application No. 10790571
Filed: March 1,2004
Attorney Docket No. FLUX 2004-1

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

This is a decision on the electronic petition, filed December 23,2011 ,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 December 23,2011 . 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)
7294947	2007-11-13	10790571	2004-03-01	Flux 2004-1

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

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.

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	/Steven J Miller/	Date (YYYY-MM-DD)	2011-12-23
Name	Steven J Miller	Registration Number	48368

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.

A

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11-23-10

TO SPE OF : ART UNIT 3775

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/790670 Patent No.: 7686807

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 703-756-1541
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: _____

/Michael Araj/

_____ _____
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

Raytheon Company
Intellectual Property & Licensing, EO/E04/N119
2000 East El Segundo Boulevard
P. O. Box 902
El Segundo CA 90245

MAILED

AUG 30 2010

OFFICE OF PETITIONS

In re Application of :
Mary Morabito O'Neill et al. :
Application No. 10/790,889 : DECISION ON PETITION
Filed: March 1, 2004 :
Attorney Docket No. 03W124 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 6, 2010, to revive the above-identified application.

This application became abandoned for failure to timely pay the issue and publication fees on or before July 26, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed April 26, 2010. Accordingly, the date of abandonment of this application is July 27, 2010

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 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.

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 JoAnne Burke at 571-272-4584.

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

JoAnne Burke
Petitions Examiner
Office of Petitions

cc: David G. Miranda, Raytheon Company
870 Winter Street
Waltham, MA 02451

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,923	03/01/2004	Nancy C. Frye	063293.0110	1435

5073 7590 05/02/2011

BAKER BOTTS L.L.P.
2001 ROSS AVENUE
SUITE 600
DALLAS, TX 75201-2980

EXAMINER	
PATTERSON, MARIE D	

ART UNIT	PAPER NUMBER
3765	

NOTIFICATION DATE	DELIVERY MODE
05/02/2011	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):

ptomail1@bakerbotts.com
glenda.orrantia@bakerbotts.com

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BAKER BOTTS L.L.P.
2001 ROSS AVENUE
SUITE 600
DALLAS TX 75201-2980

In re Application of:
FRYE, NANCY C.
Serial No.: 10/790,923
Filed: March 1, 2004
Docket: 063293.0110
Title: SHOE AND LAST

DECISION ON PETITION TO WITHDRAW DRAWING OBJECTION

This is a decision on the petition filed on March 22, 2011 seeking reversal of the drawing objection under 37 CFR 1.83(a). The petition is being considered pursuant to 37 CFR 1.181. No fee is required.

The petition is **DISMISSED**.

In the petition, the petitioner requests a review of the examiner's objection to the drawings under 37 CFR § 1.83(a)[1]. The examiner objected to the drawing on the grounds that the claimed subject matter of claims 8, 9, 16 and 20 were not illustrated. In particular, the examiner required the applicant to illustrate the claimed "midsole(s)". Petitioner believes that the Replacement drawing to Fig. 14 is supported y the originally filed specification and overcome the Rule 83 drawing objection. The examiner disagrees because the Replacement drawing of Fig. 14 contains new matter not supported by the originally filed specification.

Discussion and Analysis

A review of the record indicates that the drawing objection and claim rejection are directed to the same issues. In the non-final Office action of April 21, 2011 rejection of

[1] § 1.83 Content of drawing. (a) The drawing in a nonprovisional application must show every feature of the invention specified in the claims. However, conventional features disclosed in the description and claims, where their detailed illustration is not essential for a proper understanding of the invention, should be illustrated in the drawing in the form of a graphical drawing symbol or a labeled representation (e.g., a labeled rectangular box). In addition, tables and sequence listings that are included in the specification are, except for applications filed under 35 U.S.C. 371, not permitted to be included in the drawings.

claims 1, 5-9, 11, 14-16 and 19-24 under 35 USC 112, first paragraph, as failing to comply with the enablement requirement. The remainder rejection[2] has been reproduced below. The examiner cannot find support for these claim limitations. It is not clear how these limitations and structural arrangements were disclosed in the original specification or drawings. On Paragraph 8 of the non-final Office action of April 21, 2011, the examiner further states that page 22 of the specification is confusing and not clear as to how planar surfaces of a midsole would provide the claimed benefits of a negative heel configuration as stated. These passages do not provide clear basis for claiming a midsole or for addition of a midsole to the drawings. There is no language as to how thick the midsole are, the length, the shape, exact location, etc. of a midsole. The examiner believes that the specification as a whole lacks enablement for claiming a midsole.
In the non-final Office action of April 21, 2011, the examiner also objected to the drawing that the subject matters of claims are not shown by the original drawings. That is, the correctness of the examiner's drawing objection, resting on the lack of clarity of the claimed the location of point 824 of midsole, is dependent on the correctness of the examiner's 35 USC 112 first paragraph rejection of claims based on the original specification. It is the policy of the USPTO in appropriate circumstances to decline to rule on a petitionable issue, when, as here, that an issue is also determinative of a rejection, and as such, is appropriate for consideration on appeal to the BPAI. In this case, the issue in the objection and rejection, as here, additionally and necessarily requires the exercise of technical skill and legal judgment in order to evaluate the facts presented, the issue is properly decided on the merits, and is properly reviewed on appeal, not petition. Under the circumstances, it is believed that the issues presented under the claim rejections and drawing objection in the instant case require the same review by the BPAI. Thus, this issue is appealable and should not be decided by petition.

Conclusion

For the foregoing reasons, the relief requested by the petitioner will not be granted. Because there is both an objection to drawings under 37 CFR 1.83(a) and a rejection to claims under 35 USC 112, first paragraph, and both the correctness of the objection and the rejection depend on the same issue, the issue is an appealable one and will not be decided by petition.

---

[2] The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification and drawings are confusing and inconsistent and therefore do not provide adequate basis to enable one of ordinary skill in the art to make the claimed shoe because it is not clear where the location of point 824 is to be located. The specification states "approximately 1/2 the length" however the drawings clearly show such a location to be in the forefoot of the footwear. One of ordinary skill in the art would not be able to determine which location is appropriate for the invention. Also the drawings do not show a midsole and one of ordinary skill in the art would not know what thickness, shape, exact location etc. would be appropriate. Therefore the specification lacks enablement for a midsole or the location of the point which the forward toe section of constant thickness of the insole meets the heel section of the insole with a decreasing thickness.

The application is being forwarded to the examiner via the Supervisory Patent Examiner of Art Unit 3765 awaiting a response to the outstanding Office action of April 21, 2011. Any request for reconsideration on of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision, 37 CFR 1.181(f). No extension of time under 37 CFR 1.136(a) is permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181". Any inquiry regarding this decision should be directed to Henry C. Yuen, Special Programs Examiner, at (571) 272-3468.

PETITION DISMISSED

Angela D. Sykes for
Donald T. Hajec, Director
Technology Center 3700

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UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,923	03/01/2004	Nancy C. Frye	063293.0110	1435

5073 7590 09/06/2011

BAKER BOTTS L.L.P.
2001 ROSS AVENUE
SUITE 600
DALLAS, TX 75201-2980

EXAMINER	
PATTERSON, MARIE D	
ART UNIT	**PAPER NUMBER**
3765	

NOTIFICATION DATE	DELIVERY MODE
09/06/2011	ELECTRONIC

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

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

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

ptomail1@bakerbotts.com
glenda.orrantia@bakerbotts.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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BAKER BOTTS L.L.P.
2001 ROSS AVENUE
SUITE 600
DALLAS TX 75201-2980

In re Application of:
FRYE, NANCY C.
Serial No. 10/790,923
Filed: March 1, 2004
Docket: 063293.0110
Title: SHOE AND LAST

::: DECISION ON PETITION

This is a decision on the renewed petition filed on July 5, 2011 seeking reversal of the drawing objection under 37 CFR 1.83(a). The petition is being considered pursuant to 37 CFR 1.181. No fee is required.

The petition is **DENIED.**

In the earlier petition, the petitioner requests a review of the examiner's objection to the drawings under 37 CFR § 1.83(a)[1]. The examiner objected to the drawing on the grounds that the claimed subject matter of claims 8, 9, 16 and 20 were not illustrated. In particular, the examiner required the applicant to illustrate the claimed "midsole(s)". Petitioner believes that the Replacement drawing to Fig. 14 is supported y the originally filed specification and overcome the Rule 83 drawing objection. The examiner disagrees because the Replacement drawing of Fig. 14 contains new matter not supported by the originally filed specification. In the current renewed petition, petitioner alleges that in the decision of March 1, 2010 rendered by the Board of Patent Appeals and Interferences (BPAI), the appellant was informed that the Drawing objection is decided by petition and not an appealable matter. Petitioner believes the applicant is now caught in an endless loop where the issue is passed off by the Board.

[1] § 1.83 Content of drawing. (a) The drawing in a nonprovisional application must show every feature of the invention specified in the claims. However, conventional features disclosed in the description and claims, where their detailed illustration is not essential for a proper understanding of the invention, should be illustrated in the drawing in the form of a graphical drawing symbol or a labeled representation (e.g., a labeled rectangular box). In addition, tables and sequence listings that are included in the specification are, except for applications filed under 35 U.S.C. 371, not permitted to be included in the drawings.

Discussion and Analysis

A review of the record indicates that the drawing objection and claim rejection are directed to the same issues. In the non-final Office action of April 21, 2011 rejection of claims 1, 5-9, 11, 14-16 and 19-24 under 35 USC 112, first paragraph, as failing to comply with the enablement requirement. The remainder rejection[2] has been reproduced below. The examiner cannot find support for these claim limitations. It is not clear how these limitations and structural arrangements were disclosed in the original specification or drawings. On Paragraph 8 of the non-final Office action of April 21, 2011, the examiner further states that page 22 of the specification is confusing and not clear as to how planar surfaces of a midsole would provide the claimed benefits of a negative heel configuration as stated. These passages do not provide clear basis for claiming a midsole or for addition of a midsole to the drawings. There is no language as to how thick the midsole are, the length, the shape, exact location, etc. of a midsole. The examiner believes that the specification as a whole lacks enablement for claiming a midsole. In the non-final Office action of April 21, 2011, the examiner also objected to the drawing that the subject matters of claims are not shown by the original drawings. That is, the correctness of the examiner's drawing objection, resting on the lack of clarity of the claimed the location of point 824 of midsole, is dependent on the correctness of the examiner's 35 USC 112 first paragraph rejection of claims based on the original specification. It is the policy of the USPTO in appropriate circumstances to decline to rule on a petitionable issue, when, as here, that an issue is also determinative of a rejection, and as such, is appropriate for consideration on appeal to the BPAI. In this case, the issue in the objection and rejection, as here, additionally and necessarily requires the exercise of technical skill and legal judgment in order to evaluate the facts presented, the issue is properly decided on the merits, and is properly reviewed on appeal, not petition. Under the circumstances, it is believed that the issues presented under the claim rejections and drawing objection in the instant case require the same review by the BPAI. Thus, this issue is appealable and should not be decided by petition.

Petitioner also argues that the drawing objection was decided by the Board in the decision rendered on March 1, 2010. This is incorrect because the rejection of the present claims under the first paragraph of the 35 USC 112 was not present in the Examiner's Answer of October 8, 2008. However, on page 16 of the decision the Board did acknowledge that the drawing objection under 37 CFR 1.83 issue was unrelated to the claim rejection under appeal. Therefore, the Board could not have decided on the issue of the drawing objection.

---

[2] The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification and drawings are confusing and inconsistent and therefore do not provide adequate basis to enable one of ordinary skill in the art to make the claimed shoe because it is not clear where the location of point 824 is to be located. The specification states "approximately 1/2 the length" however the drawings clearly show such a location to be in the forefoot of the footwear. One of ordinary skill in the art would not be able to determine which location is appropriate for the invention. Also the drawings do not show a midsole and one of ordinary skill in the art would not know what thickness, shape, exact location etc. would be appropriate. Therefore the specification lacks enablement for a midsole or the location of the point which the forward toe section of constant thickness of the insole meets the heel section of the insole with a decreasing thickness.

With regard to the request for issuance of a Notice of Allowance, a TC Director can not compel an examiner to ignore the patent statutes of 35 USC 112 and direct the examiner to allow an application. If petitioner believes that the examiner has erred in his judgment in the non-final Office action of April 21, 2011, a proper course of action would be to file an appeal brief to have the examiner's rejection reversed. The applicant always has the right to appeal the examiner's patentability determination to the Board if the applicant still disagrees with the stated position of the examiner. Therefore, the requested relief for issuance of a Notice of Allowance can not be granted.

Conclusion

The renewed petition fails to add anything new that is persuasive to cause reversal of the previous decision. The previous decision is maintained. For the foregoing reasons, the relief requested by the petitioner will not be granted. Because there are both an objection to drawings under 37 CFR 1.83(a) and a rejection to claims under 35 USC 112, first paragraph, and both the correctness of the objection and the rejection depend on the same issue, the issue is an appealable one and will not be decided by petition. Petitioner is reminded that the mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings.

The application is being forwarded to the examiner via the Supervisory Patent Examiner of Art Unit 3765 awaiting a response to the outstanding Office action mailed on April 21, 2011. Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision, 37 CFR 1.181(f). The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. No extension of time under 37 CFR 1.136(a) is permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181" and directed to the Office of the Deputy Commissioner for Patent Examination Policy at Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450. See MPEP 1002.02(b).

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

Accordingly, the petition is **denied**

Sharon A. Gibson, Director
Technology Center 3700

UNITED STATES PATENT AND TRADEMARK OFFICE

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LAM RESEARCH CORPORATION
4650 CUSHING PARKWAY CA-1
FREMONT CA 94538

MAILED
SEP 15 2011
OFFICE OF PETITIONS

In re Patent No. 7,062,411 :
Issued: June 13, 2006 :
Application No. 10/791,132 : ON PETITION
Filed: March 2, 2004 :
Attorney Docket No. 54593/297131 :

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

It is not apparent whether the person signing the instant petition was ever given a power of attorney or authorization of agent regarding this patent. In accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts.

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

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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KILPATRICK TOWNSEND & STOCKTON LLP
ADOBE SYSTEMS, INC. 58083
1100 PEACHTREE STREET
SUITE 2800
ATLANTA GA 30309-4530

MAILED

JUL 11 2011

OFFICE OF PETITIONS

In re Patent No. 7,822,428 :
Issued: October 26, 2010 :
Application No. 10/791,298 : DECISION ON APPLICATION
Filed: March 1, 2004 : FOR PATENT TERM ADJUSTMENT
Attorney Docket No. 58083/374981 :

This is a decision on the REQUEST FOR RECONSIDERATION OF PATENT TERM INDICATED ON PATENT PURSUANT TO 37 C.F.R. 1.705 (d) filed on February 4, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected from 1538 days to 1774 days.

The request for review of the patent term adjustment is **DISMISSED.**

Patentees are 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 § 1.136.

The patent term adjustment indicated in the patent is properly reflected.

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 March 1, 2007 and ends on May 11, 2010, the day before the RCE was filed, the B delay would be 1167 days. See 35 U.S.C. 154(b)(1)(B)(i). However, patentee fails to take into account that Notices of Appeal were filed March 28, 2008, October 23, 2008 and February 15, 2010. The period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). In this instance, the period is 363 days, beginning on March 28, 2008 and ending on August 6, 2008, beginning on October 23, 2008 and ending on March 18, 2009, beginning on February 15, 2010 and ending on May 12, 2010. The time for appellate review is excluded (1167-363); thus the "B delay is 804 days. *See* 35 U.S.C. § 154(b)(1)(B)(ii). Additionally, the Office has determined that there is no overlap. As such, the patent term adjustment is 1538 days (796 "A delay days" + 804 "B delay days" - 62 Applicant delay days), not 1774 days.

The Office acknowledges the submission of the required fee of $200.00 set forth in 37 CFR 1.18(e) .

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

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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FOX ROTHSCHILD LLP
PRINCETON PIKE CORPORATE CENTER
997 LENOX DRIVE
BLDG. #3
LAWRENCEVILLE NJ 08648

MAILED

SEP 14 2010

OFFICE OF PETITIONS

In re Application of :
Fred R. Kramer et al. :
Application No. 10/791,502 : NOTICE
Filed: March 02, 2004 :
Attorney Docket No. **96747.00056/P32690A** :

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 **NOT ACCEPTED.**

The fee deficiency cannot be accepted because no itemization has been submitted, as required by 37 CFR 1.28(C) (ii) which states:

(2) Payment of deficiency owed. The deficiency owed, resulting from the previous erroneous payment of small entity fees, must be paid.

(ii) *Itemization of the deficiency payment.* An itemization of the total deficiency payment is required. The itemization must include the following information:

(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 non-

small entity;

(B) The small entity fee actually paid, and when. This will permit the Office to differentiate, for example, between two one-month extension of time fees erroneously paid as a small entity but on different dates;

(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.

Inquiries related to this communication should be directed to Tredelle Jackson at (571) 272-2783.

/Tredelle D. Jackson/
Paralegal Specialist
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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OCT 13 2010

OFFICE OF PETITIONS

FOX ROTHSCHILD LLP
PRINCETON PIKE CORPORATE CENTER
997 LENOX DRIVE
BLDG. #3
LAWRENCEVILLE NJ 08648

In re Application of	:	
Fred R. Kramer et al.	:	
Application No. 10/791,502	:	NOTICE
Filed: March 02, 2004	:	
Attorney Docket No. **96747.00056/P32690A**	:	

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

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-2783.

/Tredelle D. Jackson/
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

HOWISON & ARNOTT, L.L.P
P.O. BOX 741715
DALLAS TX 75374-1715

MAILED

SEP 29 2010

OFFICE OF PETITIONS

In re Application of :
Jeffry Jovan Philyaw :
Application No. 10/791,678 : DECISION ON PETITION
Filed: March 2, 2004 : TO WITHDRAW
Attorney Docket No. RPXC-26,664 : 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 **APPROVED**.

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

The request was signed by Michael Hoelter, attorney/agent of record. Michael Hoelter has been withdrawn. All other attorneys/agents will remain of record.

The correspondence address will remain the same until further notified by applicant.

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: Michael L. Hoelter
3045 Country Place Drive E.
Collierville, TN 38017

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20100803

DATE : August 4, 2010

TO SPE OF : ART UNIT 2628

SUBJECT : Request for Certificate of Correction on Patent No.: 7262783

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 appropriate box.

☒ **Approved** **All** changes apply.

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

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

Comments:

The corrections has not added new matter or changed the scrope of the invention.

SPE: Kee M. Tung **Art Unit** 2628

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.
10/792,107	03/03/2004	Michelle Grandy	Grandy01	4100

91892 7590 06/22/2011

The Law Office of Charlena Thorpe Inc.
C/O Charlena Thorpe
P.O. Box 1601
Suwanee, GA 30024

EXAMINER	
LE, TAN	

ART UNIT	PAPER NUMBER
3632	

NOTIFICATION DATE	DELIVERY MODE
06/22/2011	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):

charlena.thorpe@gmail.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE
BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte MICHELLE GRANDY

Application 10/792,107
Technology Center 3600

DECISION ON PETITION

This is a decision on the "Petition for Revival of an Application for Patent Abandoned Unavoidably Under 37 CFR 1.137(a)" filed May 30, 2011 ("Petition"). According to Appellant, the application became abandoned for failure to respond to the Notification of Non-Compliant Brief of January 11, 2010. Petition 3.

See 75 Fed. Reg. 15,689 (Mar. 30, 2010) for authority of the Chief Administrative Patent Judge.

FINDINGS

1. On December 15, 2009, Appellant filed an Appeal Brief.

2. On January 11, 2010, a Patent Appeal Specialist entered a Notification of Non-Compliant Appeal Brief into the electronic record for this application. The notification granted Appellants a period of one month within which to file a corrected brief, i.e., until February 11, 2010. A review of the electronic record for this application shows that the notification did

not have the official PTOL-90A cover page used by the Office when mailing communications to an applicant.

3. Having received no response to the Notification of Non-Compliant Appeal Brief, the Examiner entered a Notice of Abandonment on July 21, 2010.

4. On May 30, 2011, Appellant filed the present Petition accompanied by a corrected Appeal Brief (amended section). The corrected Appeal Brief is compliant with applicable rules.

5. Appellant states that the Notification of Non-Compliant Appeal Brief was not received. Petition 3. Appellant further states that "it appears based on the Examiner's delayed acknowledgement of the [1]0/13/2009 [sic] power of attorney/correspondence address change form and 12/15/2009 power of attorney/correspondence address change form, the Examiner likely mailed the Notice of Defective Appeal Brief to the wrong/old correspondence address." *Id.*

RELEVANT AUTHORITY

With respect to revival of an unavoidably abandoned application, 37 C.F.R. § 1.137(a) provides that:

> (a) Unavoidable. If the delay in reply by applicant or patent owner was unavoidable, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination prosecution terminated under § 1.550(d) or § 1.957(b) or limited under § 1.957(c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:
>
> (1) The reply required to the outstanding Office action or notice, unless previously filed;

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

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

(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

DISCUSSION

The application became abandoned on February 12, 2010, as a result of Appellant's failure to timely respond timely to the Notification of Non-Compliant Appeal Brief.

Appellant's Petition was accompanied by the reply required, namely a compliant Appeal Brief (Finding 4), and the petition fee set forth in 37 C.F.R. § 1.17(l). A terminal disclaimer is not required because the application was filed on March 3, 2004, which is after the critical date of June 8, 1995 set forth in in 37 C.F.R. § 1.137(d).

Revival under 37 C.F.R. § 137(a), requires, *inter alia,* an evidentiary showing that the delay was unavoidable. *See* MPEP § 711.03(c)(II)(C).2.

Appellant's evidentiary showing relies on "USPTO PAIR records." Petition 3.

Appellant notes that "[b]ased on the USPTO PAIR records, it is not clear where this [Notification of Non-Compliant Appeal Brief] was delivered. In the USPTO records, the front cover page, indicating where the notice was delivered, is missing." *Id.* A review of the electronic record for this application shows that a cover page in the form of a blank page was used instead of the official PTOL-90A cover page used by the Office when

mailing communications to an Applicant. Thus, there is no evidence that the Notification of Non-Compliant Appeal Brief was mailed by the Office properly.

Appellant's Petition under 37 C.F.R. § 1.137(a) of May 30, 2011 and accompanying showing is to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable. Accordingly, the Petition to revive the application 37 C.F.R. § 1.137(a) is **granted**. The Appeal Brief filed concurrently with this petition will be entered into the record.

DECISION

In view of the foregoing, the Petition for Revival of an Application for Patent Abandoned Unavoidably Under 37 CFR 1.137(a) filed May 30, 2011 is GRANTED.

The Appeal Brief filed May 30, 2011 will be entered into the record. The application will be returned to the Examiner for preparation of an Examiner's Answer or other action, as appropriate.

Merrell C. Cashion, Jr.
Case Management Administrator

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Date: November 1, 2011

Medtronic Cardiovascular, Inc.
3576 Unocal Place
IP Legal Department
Santa Rosa, CA 95403

Patent No: 7,959,674 B2
Applicant: Mark Shu, et al.
Application No.: 10/792,186
Issued: June 14, 2011
Title: **SUTURE LOCKING ASSEMBLY AND METHOD OF USE**

Request for Certificate of Correction:

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

Inspection of the file of application reveals that column 40 lines 3 are 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

vt

Copy

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110124

DATE : January 24, 2011

TO SPE OF : ART UNIT 3762

SUBJECT : Request for Certificate of Correction on Patent No.: 7742811B2

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:

/NIKETA I PATEL/
Supervisory Patent Examiner.Art Unit 3762

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED

OCT 12 2010

OFFICE OF PETITIONS

ANDREW F. SAYKO JR.
1014 CROOKED OAKS LANE
SEABROOK ISLAND 29455-6502

In re Application of :
Kenneth KEUCHEL, et al :
Application No. 10/792,483 : DECISION ON PETITION
Filed: March 3, 2004 :
Attorney Docket No. 2004/01 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 7, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in 37 CFR 41.37(a)(1). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the decision dated May 27, 2010, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on July 28, 2010. *See* MPEP 1215.04.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Appeal Brief and fee; (2) the petition fee of $810; and (3) the required statement of unintentional delay.

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

This application is being referred to Technology Center 1798 for further processing in the normal course of business.

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : February 29, 2012

TO SPE OF : ART UNIT 2188

SUBJECT : Request for Certificate of Correction for Appl. No.: 10792484 Patent No.: 8122215

CofC mailroom date: Feb. 3, 2012

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: _____

_____

_____

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: _____

_____

_____

_____

Marvin Padmanabhan
SPE

2188
Art Unit

PTO/SB/44 (09-07)
Approved for use through 08/31/2010. OMB 0651-0033
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,693,035 B2

APPLICATION NO.: ~~11/792,515~~ 10/792,515

OK TO ENTER: /H.N./

12/15/10

ISSUE DATE : April 6, 2010

INVENTOR(S) : Tsuyoshi HASEGAWA 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:

The following are added to the front page of the patent in the left column:

-- (63) Related U.S. Application Data

Continuation of application No. PCT/JP01/08487, filed on Sept. 28, 2001. --

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

Katten Muchin Rosenman LLP
575 Madison Avenue
New York, NY 10022-2585

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

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

Privacy Act Statement

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

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

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor	:	Tsuyoshi HASEGAWA et al.
U. S. Patent No.	:	7,693,035 B2
Serial No.	:	10/792,515
Issued	:	April 6, 2010
For	:	OFDM RECEIVING METHOD...

November 30, 2010

Certificate of Corrections Branch
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR A CERTIFICATE OF CORRECTION

SIR:

We request a Certificate of Correction under 35 U.S.C. §254, to add the following items below:

Related U.S. Application Data, which was omitted. Please add: **-- Continuation of application No. PCT/JP01/08487, filed on September 28, 2001. --**

Attached, please find a copy of the front page of the Patent, Filing Receipt and Declaration and Power of Attorney for Patent Application.

This was due to an error made by the USPTO.

Any fee due as a result of this paper, may be charged to Deposit account No. 50-1290.

Respectfully submitted,

/ Dexter T. Chang /
Dexter T. Chang
Reg. No. 44,071

Customer No.: 026304
KATTEN MUCHIN ROSENMAN, LLP
575 Madison Avenue, 15th Floor
New York, NY 10022-2585
(Tel) 212-940-8800
Docket No.: FUSA 21.008(100807-00099)

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
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AUG 17 2004

APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
10/792,515	03/02/2004	2661	770	FUSA 21.008	19	17	2

CONFIRMATION NO. 5387

026304
KATTEN MUCHIN ZAVIS ROSENMAN
575 MADISON AVENUE
NEW YORK, NY 10022-2585

FILING RECEIPT

OC000000013512463

Date Mailed: 08/12/2004

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Filing Receipt Corrections, facsimile number 703-746-9195. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).**

Applicant(s)

Tsuyoshi Hasegawa, Kawasaki, JAPAN;
Takashi Dateki, Kawasaki, JAPAN;

Domestic Priority data as claimed by applicant

This application is a CON of PCT/JP01/08487 09/28/2001

Foreign Applications

if Required, Foreign Filing License Granted: 08/11/2004

Projected Publication Date: 11/18/2004

Non-Publication Request: No

Early Publication Request: No

Title

OFDM receiving method and OFDM receiving apparatus

Preliminary Class

370

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

GRANTED

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

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

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

NOT GRANTED

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

US007693035B2

(12) **United States Patent**
Hasegawa et al.

(10) **Patent No.: US 7,693,035 B2**
(45) **Date of Patent: Apr. 6, 2010**

(54) **OFDM RECEIVING METHOD AND OFDM RECEIVING APPARATUS**

(75) Inventors: **Tsuyoshi Hasegawa**, Kawasaki (JP); **Takashi Dateki**, Kawasaki (JP)

(73) Assignee: **Fujitsu Limited**, Kawasaki (JP)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 1458 days.

(21) Appl. No.: **10/792,515**

(22) Filed: **Mar. 2, 2004**

(65) **Prior Publication Data**

US 2004/0228272 A1 Nov. 18, 2004

(51) **Int. Cl.**
H04J 11/00 (2006.01)
H04L 12/28 (2006.01)
H04L 27/00 (2006.01)

(52) **U.S. Cl.** **370/208**; 370/412; 375/324

(58) **Field of Classification Search** 370/204, 370/208, 209, 210, 205, 503, 509, 510, 350, 370/506, 519, 517, 203, 329, 342; 375/343, 375/362, 260, 364, 366
See application file for complete search history.

(56) **References Cited**

U.S. PATENT DOCUMENTS

6,711,123 B1 * 3/2004 Taira 370/208
6,993,083 B1 * 1/2006 Shirakata et al. 375/260
6,993,084 B1 * 1/2006 Eberlein et al. 375/260

FOREIGN PATENT DOCUMENTS

JP 10-75229 3/1998
JP 10-224319 8/1998
JP 11-284596 10/1999
JP 2000-22657 1/2000
JP 2000-115087 4/2000

OTHER PUBLICATIONS

Sadayuki Abeta, et al. Performance of Coherent Multi-Carrier/DS-CDMA and MC-CDMA for Broadband Packet Wireless Access. IEICE Trans. Commun., Mar. 2001, pp. 406-414, vol. E84-B, No. 3.
Shinsuke Hara, et al. Overview of Multicarrier CDMA. IEEE Communications Magazine. Dec. 1997, pp. 126-133.
International Search Report dated Nov. 13, 2001, from the corresponding International Application No. PCT/JP01/08487.
International Preliminary Examination Report dated Apr. 17, 2002 from the corresponding International Application No. PCT/JP01/08487.
Notification of Reasons for Refusal dated Aug. 25, 2009, from the corresponding Japanese Application No. 2003-53580.
Notification of Reasons for Refusal dated Jan. 5, 2010 from the corresponding Japanese Application No. 2003-535380.

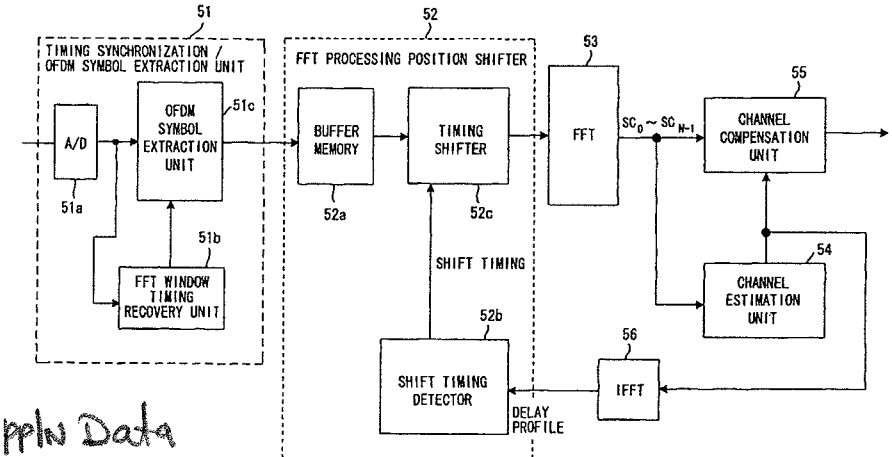
* cited by examiner

Primary Examiner—Hanh Nguyen
(74) *Attorney, Agent, or Firm*—Katten Muchin Rosenman LLP

(57) **ABSTRACT**

In an OFDM receiving apparatus for receiving a signal that has undergone Orthogonal Frequency Division Multiplexing (OFDM) and applying FFT processing to the receive signal to demodulate transmit data, an OFDM symbol comprising a fixed number of items of sample data is extracted from a receive signal, a position at which FFT processing of the OFDM symbol starts is shifted based upon the state of multipath and FFT processing is executed from the position to which the shift has been made. For example, a channel estimation value is obtained from result of FFT processing of known data contained in the receive signal, a multipath delay profile is obtained by applying FFT processing to this channel estimation value, and the position at which the FFT processing begins is decided based upon the position of a path for which power is maximized among the delay profiles.

11 Claims, 19 Drawing Sheets



Insert:
Related U.S. Appln Data
(63) Continuation of Appln No. PCT/JP01/08487, Filed on Sept. 28, 2001.

FUSA 21.008

Declaration and Power of Attorney for Patent Application

特許出願宣言書及び委任状

Japanese Language Declaration

日本語宣言書

私は、以下に記名された発明者として、ここに下記の通り宣言する：	As a below named inventor, I hereby declare that:
私の住所、郵便の宛先そして国籍は、私の氏名の後に記載された通りである。	My residence, post office address and citizenship are as stated next to my name.
下記の名称の発明について、特許請求範囲に記載され、且つ特許が求められている発明主題に関して、私は、最初、最先且つ唯一の発明者である（唯一の氏名が記載されている場合）か、或いは最初、最先且つ共同発明者である（複数の氏名が記載されている場合）と信じている。	I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled
_____	OFDM RECEIVING METHOD AND OFDM RECEIVING
_____	APPARATUS
上記発明の明細書はここに添付されているが、下記の欄がチェックされている場合は、この限りでない：	the specification of which is attached hereto unless the following box is checked:
☐ _____の日に出願され、 この出願の米国出願番号またはＰＣＴ国際出願番号は、 _____であり、且つ _____の日に補正された出願（該当する場合）	☐ was filed on _____ as United States Application Number or PCT International Application Number _____ and was amended on _____ (if applicable).
私は、上記の補正書によって補正された、特許請求範囲を含む上記明細書を検討し、且つ内容を理解していることをここに表明する。	I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.
私は、連邦規則法典第３７編規則１．５６に定義されている、特許性について重要な情報を開示する義務があることを認める。	I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, Section 1.56.

Japanese Language Declaration
（日本語宣言書）

私は、ここに、以下に記載した外国での特許出願または発明者証の出願、或いは米国以外の少なくとも一国を指定している米国法典第３５編第３６５条(a)によるＰＣＴ国際出願について、同第１１９条(a)-(d)項又は第３６５条(b)項に基づいて優先権を主張するとともに、優先権を主張する本出願の出願日よりも前の出願日を有する外国での特許出願または発明者証の出願、或いはＰＣＴ国際出願については、いかなる出願も、下記の枠内をチェックすることにより示した。

I hereby claim foreign priority under Title 35, United States Code, Section 119(a)-(d) or 365(b) of any foreign application(s) for patent or inventor's certificate, or 365(a) of any PCT International application which designated at least one country other than the United States listed below and have also identified below, by checking the box, any foreign application for patent or inventor's certificate, or PCT International application having a filing date before that of the application for which priority is claimed.

Prior Foreign Application(s)
外国での先行出願

Priority Not Claimed
優先権主張なし

(Number) (番号)	(Country) (国名)	(Day/Month/Year Filed) (出願日／月／年)	☐
(Number) (番号)	(Country) (国名)	(Day/Month/Year Filed) (出願日／月／年)	☐

私は、ここに、下記のいかなる米国仮特許出願についても、その米国法典第３５編１１９条(e)項の利益を主張する。

I hereby claim the benefit under Title 35, United States Code, Section 119(e) of any United States provisional application(s) listed below.

(Application No.) (出願番号)	(Filing Date) (出願日)	(Application No.) (出願番号)	(Filing Date) (出願日)

私は、ここに、下記のいかなる米国出願についても、その米国法典第３５編第１２０条に基づく利益を主張し、又米国を指定するいかなるＰＣＴ国際出願についても、その同第３６５条(c)に基づく利益を主張する。また、本出願の各特許請求の範囲の主題が、米国法典第３５編第１１２条第１段に規定された態様で、先行する米国出願又はＰＣＴ国際出願に開示されていない場合においては、その先行出願の出願日と本国内出願日またはPCT国際出願日との間の期間中に入手された情報で、連邦規則法典第３７編規則１．５６に定義された特許性に関わる重要な情報について開示義務があることを承認する。

I hereby claim the benefit under Title 35, United States Code, Section 120 of any United States application(s), or 365(c) of any PCT International application designating the United States, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application in the manner provided by the first paragraph of Title 35, United States Code Section 112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, Section 1.56 which became available between the filing date of the prior application and the national or PCT International filing date of application.

PCT/JP01/08487 (Application No.) (出願番号)	September 28, 2001 (Filing Date) (出願日)	Pending (Status: Patented, Pending, Abandoned) (現況 ： 特許許可、係属中、放棄)
(Application No.) (出願番号)	(Filing Date) (出願日)	(Status: Patented, Pending, Abandoned) (現況 ： 特許許可、係属中、放棄)

私は、ここに表明された私自身の知識に係わる陳述が真実であり、且つ情報と信ずることに基づく陳述が、真実であると信じられることを宣言し、さらに、故意に虚偽の陳述などを行った場合は、米国法典第１８編第１００１条に基づき、罰金または拘禁、若しくはその両方により処罰され、またそのような故意による虚偽の陳述は、本出願またはそれに対して発行されるいかなる特許も、その有効性に問題が生ずることを理解した上で陳述が行われたことを、ここに宣言する。

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Japanese Language Declaration
（日本語宣言書）

委任状： 私は本出願を審査する手続を行い、且つ米国特許商標庁との全ての業務を遂行するために、記名された発明者として、下記の弁護士及び／または弁理士を任命する。（氏名及び登録番号を記載すること）

POWER OF ATTORNEY: As a named inventor, I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith (list name and registration number).

Aaron B. Karas, #18,923; Samson Helfgott, #23,072; Linda S. Chan, #42,400; Michael Markowitz, #30,659; Brian S. Myers, #46,947; Harris A. Wolin, #39,432; Shahan Islam , #32,507; Serle Mosoff #25,900; Emma Shleifer, #29,734; and Thomas J. Bean, #44,528.

書類送付先	Send Correspondence to: Katten Muchin Zavis Rosenman 575 Madison Avenue New York, NY 10022-2585
直通電話連絡先: (氏名及び電話番号)	Direct Telephone Calls to: (name and telephone number) the responsible attorney, or to Samson Helfgott at (212) 940-8800 Docket:

唯一または第一発明者氏名	Full name of sole or first inventor Tsuyoshi Hasegawa
発明者の署名 日付	Inventor's signature Date Tsuyoshi Hasegawa Feb.3.2004
住所	Residence Kawasaki, Japan
国籍	Citizenship Japanese
郵便の宛先	Post Office Address c/o FUJITSU LIMITED, 1-1, Kamikodanaka 4-chome,
	Nakahara-ku, Kawasaki-shi, Kanagawa 211-8588 Japan
第二共同発明者がいる場合、その氏名	Full name of second joint inventor, if any Takashi Dateki
第二共同発明者の署名 日付	Second inventor's signature Date Takashi Dateki Feb.3.2004
住所	Residence Kawasaki, Japan
国籍	Citizenship Japanese
郵便の宛先	Post Office Address c/o FUJITSU LIMITED, 1-1, Kamikodanaka 4-chome,
	Nakahara-ku, Kawasaki-shi, Kanagawa 211-8588 Japan

（第三以下の共同発明者についても同様に記載し、署名をすること）

(Supply similar information and signature for third and subsequent joint inventors.)

UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,515	03/02/2004	Tsuyoshi Hasegawa	FUSA 21.008	5387

26304 7590 01/19/2011

KATTEN MUCHIN ROSENMAN LLP
575 MADISON AVENUE
NEW YORK, NY 10022-2585

EXAMINER	
NGUYEN, HANH N	

ART UNIT	PAPER NUMBER
2473	

MAIL DATE	DELIVERY MODE
01/19/2011	PAPER

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

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20101215

DATE : December 15, 2010

TO SPE OF : ART UNIT 2473

SUBJECT : Request for Certificate of Correction on Patent No.: 7693035

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

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - ST (South Tower) 9A22
Palm location **7590** - Tel. No. (703) 305-8309

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

Thank You For Your Assistance **Certificates of Correction Branch**

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

Note your decision on the appropriated box.

☒ **Approved** All changes apply.

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

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

Comments:The mistyped serial number 11/792,515 on page 1 of certificate of correction is corrected as 10/792,515.

/KWANG B YAO/
Supervisory Patent Examiner.Art Unit 2473

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

MAILED

DEC 21 2010

OFFICE OF PETITIONS

In re Application of :
Paul M. Enquist, et al. :
Application No. 10/792,757 : DECISION GRANTING PETITION
Filed: March 5, 2004 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 245863US20 :

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, December 20, 2010, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on November 22, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 2894 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

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

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Brinks Hofer Gilson & Leone
PO Box 10395
Chicago IL 60610

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AUG 29 2011

OFFICE OF PETITIONS

In re Patent No. 7,574,387	:
Fanous et al.	: DECISION UPON REMAND AND
Issue Date: 8/11/2009	: RECONSIDERATION OF
Application No. 10/793,016	: PATENT TERM ADJUSTMENT
Filed: March 4, 2004	: AND NOTICE OF INTENT
Attorney Docket No. 12587-047001	: TO ISSUE CERTIFICATE OF : CORRECTION
Title: Performing Predictive Maintenance Based Upon a Predictive Maintenance Target	:

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

A telephone voice message was left for Joel Benson advising counsel for owner, that the determination of patent term adjustment was one day greater than the amount requested.

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 and thirty-eight (1038) 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 and thirty-eight (1038) 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 : 7,574,387

DATED : August 11, 2009 **DRAFT**

INVENTOR(S) : Fanous 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 847 days

Delete the phrase "by 847 days" and insert – by 1038 days--

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SEP 24 2010

OFFICE OF PETITIONS

In re Patent No. 7,438,905	:	DECISION ON REQUEST FOR
Seiichi Suzuki et al.	:	RECONSIDERATION OF
Issue Date: October 21, 2008	:	PATENT TERM ADJUSTMENT
Application No. 10/793,171	:	
Filed: March 4, 2004	:	
Attorney Docket No. 14539-015 001/JF-100US-C1	:	

This is in response to the "RESPONSE TO DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT" filed August 9, 2010. Patentees requests review of the Patent Term Adjustment (PTA) determined for the above-identified patent. Patentees request that the patent term adjustment for the subject be patent be indicated as one thousand, one hundred and thirty-five (1,135) days, rather than one thousand, one hundred (1,100) days.

The request is **DISMISSED**.

On October 21, 2008, the above-cited application matured into U.S. Patent No. 7,438,905 with a patent term adjustment of 597 days. On December 19, 2008, patentees filed a request for reconsideration of the patent term adjustment under 37 CFR 1.705(d). A decision on the request was mailed July 13, 2010, indicating the patent term adjustment would be changed from 597 days to 1,100 days. The instant request for reconsideration of the patent term adjustment was filed on August 9, 2010, wherein patentees assert that the patent term adjustment should be 1,135 days.

Patentees' argument has been considered, but is not persuasive. First, it is concluded that the period of "B" delay is 562 days, not 597 days as patentees assert. The "B" delay period, prior to any period excluded by 35 U.S.C. 154(b)(1)(B) is 597 days, with said period beginning March 5, 2007, and ending with issuance of the patent on October 21, 2008. From this period of "B" delay, the Office is required to exclude periods of appellate review. See 35 U.S.C. 154(b)(1)(B)(ii). The period of

appellate review that is excluded from the period of "B" delay is 35 days with said period beginning February 1, 2008, and ending March 6, 2008, with the mailing of the non-final Office action. Thus, the period of "B" delay is 562 days (597 days - 35 days).

It is further noted that the period of 47 days of examination delay, or "A" delay, overlaps with the period of "B" delay. This examination delay occurred between January 20, 2008, and March 6, 2008. Patentees appear to assert that only 12 days—January 20, 2008 through January 31, 2008--should be subtracted from the patent term adjustment because the adjustment for "B" delay was already reduced by 35 days pursuant to 35 U.S.C. 154(b)(1)(B)(ii) from the period of February 2, 2008, through March 6, 2008. In this case, where there is a period excluded from the "B" delay, the date on which the overlapping period begins is calculated as beginning on the day after the date that is three years after the application was filed under 35 U.S.C. 111(a) plus the number of the days of the excluded period. Thus, in this case, the overlapping period of "B" delay did not begin until April 9, 2007—35 days after the over three year period began. Consequently, the relevant period of "B" delay for determining overlap began April 9, 2007, and ended October 21, 2008. The period of examination delay of January 20, 2008, through March 6, 2008, entirely overlaps with the period of "B" delay. This determination is not affected by the fact that a portion of the "B" delay was a period of appellate review. Accordingly, the period of overlap of "A" and "B" periods of delay is 47 days.

The patent term adjustment is, therefore, 1,100 days (562 days of "B" delay + 585 days of "A" delay - 47 days of overlap - 0 days of applicant delay).

The file is being directed to the Certificates of Correction Branch for issuance of the certificate of correction indicating that the patent term adjustment is **one thousand, one hundred (1,100) days.**

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Senior Petitions Attorney
Office of Petitions

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FISH & RICHARDSON P.C. (BO)
P.O. BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No.7,438,905 :
Suzuki, et al. : DECISION FOR REQUEST
Issue Date : October 21, 2008 : FOR RECONSIDERATION
Application No. 10/793,171 : OF PATENT TERM
Filed: March 4, 2004 : ADJUSTMENT
Attorney Docket No. 14539-015001/JF-100US-C1

This is a decision on the "Petition under 37 CFR 1.181(a)(3) to Invoke the Supervisory Authority of the Director" filed on November 17, 2010, which is being treated as a renewed petition under 37 C.F.R. § 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand, one hundred and thirty-five (1,135) days.

The petition is dismissed.

Patentees dispute the period of time excluded from B-delay for appellate review. Patentees' 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 35 days, beginning on the date of filing of the notice of appeal, February 1, 2008, and ending on March 6, 2008, the subsequent date of the mailing of a non-final Office action. Thus, B-delay is 562 (597 - 35) days.

Further, patentees dispute the calculation of the period of overlap between the period of "B" delay and the period of "A" delay. Specifically, patentees' state:

> ...Patentee submits that if the USPTO were to exclude the "Notice of Appeal period" from the period of B Delay, such removal could only occur from February 1, 2008, to March 6, 2008 (i.e., on the dates that correspond to the "Notice of Appeal period"). If a B Delay exclusion is applied to this period, then the overlap of A Delay and B Delay must be revised downward from 47 days to 12 days (since there would have been no overlap of A Delay and B Delay from February 1, 2008, to March 6, 2008) and the total PTA must be revised upward from 1, 100 days to 1, 135 days.

Excerpt taken from "Petition under 37 CFR 1.181(a)(3) to Invoke the Supervisory Authority of the Director" filed on November 17, 2010, p. 4.

Patentees' argument has been considered, but is not persuasive. The Office holds that the 35-day period from February 1, 2008, to March 6, 2008 is excluded from the period of B-delay, and the 30-day period of A-delay from January 19, 2008, to March 6, 2008, overlaps with the period of B-delay. The Office further holds that it is proper to reduce the period of B delay by both the entire excluded period and the entire period of overlap, despite the fact that 35 days of the 47-day overlapping period fall on the same calendar days as the period excluded from B-delay. No further adjustment to the patent term is warranted.

It is noted that the Office issued a Notice of proposed rulemaking entitled *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review and Information Disclosure Statements*, 76 FR 18990 (April 6, 2011). To the extent that the final rule on *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review* revises the interpretation of appellate review applied in this decision, Patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the date of the final rule to file a request for reconsideration. No extensions of time will be granted under § 1.136.

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

Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries specific to this matter should be directed to Kenya A. McLaughlin, Petitions Attorney, at (571) 272-3222

Anthony Knight
Director
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)
7034340	2006-04-25	10793218	2004-03-05	ID 035411

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

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.

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)	2011-07-22
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.

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. 7034340
Issue Date: April 25,2006
Application No. 10793218
Filed: March 5,2004
Attorney Docket No. Q80183

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

This is a decision on the electronic petition, filed July 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 July 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

IBM Corporation (RHF)
c/o Robert H. Frantz
P.O. Box 23324
Oklahoma City, Oklahoma 73123

MAILED

JAN 13 2011

OFFICE OF PETITIONS

In re Application of
Rhonda CHILDRESS et al.
Application No. 10/793,458
Filed: 4 March 2004
Docket No. AUS920040019US1

: DECISION DISMISSING PETITION
: UNDER 37 CFR 1.181

This is a decision on the petition under 37 CFR 1.181, filed 11 August 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 mailing date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181". This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to reply in a timely manner to the Notification of Non-compliant Appeal Brief mailed 16 December 2009 ("Notice"), which set a reply period of one (1) month. The application became abandoned on 17 January 2010, with notification mailed 20 July 2010.

A grantable petition to withdraw holding of abandonment under 37 CFR 1.181 based on failure to receive an Office action requires: (1) a Statement from the Practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received, and (2) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed. This Petition lacks item (2).

Petitioner has provided information on the email system, Mozilla Thunderbird, and asserted the lack of evidence of the Office communication in the "sent" or "receipt" folder as evidence of it not being received by Petitioner. However Petitioner has failed to

include a copy of the "sent" folder or the "receipt" folder. Similarily, Petitioner has provided information for the electronic docketing folders, however he has not provided a copy of the docket record for the date one (1) month from the mailing date of the Notice. Thus, the Petition lacks the requisite evidence to allow it to be granted.

Petitioner is hereby encouraged to request a revival based upon 37 CFR 1.137(a) ("unavoidable") or 37 CFR 1.137 (b) ("unintentional"), if the requisite evidence is not available.

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

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

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

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

General inquiries relating to this decision should be directed to Robert DeWitty (571-272-6051), or, if unavailable, the undersigned at 571-272-7099.

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

IBM Corporation (RHF)
c/o Robert H. Frantz
P.O. Box 23324
Oklahoma City, Oklahoma 73123

MAILED

MAY 13 2011

OFFICE OF PETITIONS

In re Application of :
Rhonda CHILDRESS et al. : ON PETITION
Application No. 10/793,458 :
Filed: 4 March 2004 :
Docket No. AUS920040019US1

This is a decision on the renewed petition under 37 CFR 1.181, filed March 11, 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 mailing date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181". This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to reply in a timely manner to the Notification of Non-compliant Appeal Brief mailed 16 December 2009 ("Notice"), which set a reply period of one (1) month. The application became abandoned on 17 January 2010, with notification mailed 20 July 2010.

The showing required to establish non-receipt of an Office communication must include:

(1) a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

(2) Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received.

(3) A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required. A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the **master docket report** showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question. See MPEP §711.03(c)(I)(A).

The petition lacks item (3).

In regard to the docket report copy included with the petition, petitioner states,

> "Applicant's Agent's docket is periodically archived onto one of three portable hard drives on a rotating basis. The hard drives are stored in a secure location separate from the Agent's office between backups."

However, Petitioner has not set forth whether the docket report copy is that of a master docket report. If a master docket report is unavailable, Petitioner should state so.

Additionally, it is noted the provided docket report copy is illegible. Petitioner is requested to provided a legible copy of the docket report for review.

For the above reasons, the Petition lacks the requisite evidence to allow it to be granted.

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

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

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

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

Telephone inquiries relating to this decision should be directed to Robert DeWitty, Petitions Attorney, Office of Petitions (571-272-8427).

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

MAILED
SEP 23 2011
OFFICE OF PETITIONS

IBM Corporation (RHF)
c/o Robert H. Frantz
P.O. Box 23324
Oklahoma City, Oklahoma 73123

In re Application of :
Rhonda CHILDRESS et al. : ON PETITION
Application No. 10/793,458 :
Filed: 4 March 2004 :
Docket No. AUS920040019US1

This is a decision on the renewed petition under 37 CFR 1.181, filed July 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 Notification of Non-compliant Appeal Brief mailed 16 December 2009 ("Notice"), which set a reply period of one (1) month. The application became abandoned on 17 January 2010, with notification mailed 20 July 2010.

In the petition filed August 11, 2010, Petitioner asserts that the Notice mailed December 16, 2009 was not received. In the instant renewed petition, Petitioner has provided further evidence and assertion of the Notice not being received.

In the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not, in fact, received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner;

2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received ; and

3. a copy of the docket record where the non-received Office action would have been entered had it been received must be attached to and referenced in the practioner's

statement. *See*, MPEP §711.03(c) under subheading 'Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action' and 'Withdrawing the Holding of Abandonment When Office Actions are Not Received,' 1156 Official Gazette 53 (16 November 1993).

As the instant petition satisfies the indicated requirements, the holding of abandonment is withdrawn and the application is restored to pending status.

Telephone inquiries relating to this decision should be directed to Robert DeWitty, Petitions Examiner, Office of Petitions (571-272-8427).

The application will be referred to Technology Center Art Unit 2444 for consideration of the filed Response.

Ramesh Krishnamurthy

for 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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IBM CORPORATION
ROCHESTER IP LAW DEPT. 917
3605 HIGHWAY 52 NORTH
ROCHESTER MN 55901-7829

MAILED
APR 11 2011
OFFICE OF PETITIONS

In re Patent No. 7,266,540 :
Issue Date: March 4, 2004 :
Application No. 10/793,470 : NOTICE
Filed: September 4, 2007 :
Attorney Docket No. ROC920030222US1 :

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

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

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

Mail Date: 08/03/2010

Applicant	: Pamela Lee	: DECISION ON REQUEST FOR
Patent Number	: 7650636	: RECALCULATION of PATENT
Issue Date	: 01/19/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/793,535	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 03/03/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1673** 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

Paper No.

MUETING, RAASCH & GEBHARDT, P.A.
P.O. BOX 581336
MINNEAPOLIS MN 55458-1336

MAILED

DEC 13 2010

OFFICE OF PETITIONS

In re Application of :
Huo et al. :
Application No. 10/793,592 :
Filed: March 4, 2004 :
Atty Docket No. 255.00170101 :

DECISION ON PETITION

This is a decision on the PETITION UNDER 37 CFR §1.137(b) FOR REVIVAL OF ABANDONED APPLICATION filed September 21, 2010.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to file a reply to the non-final Office action mailed May 30, 2007. 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 considered filed and no extension of time obtained, the application became abandoned effective August 31, 2007. A courtesy Notice of Abandonment was mailed December 28, 2007.

The petition includes the required reply in the form of an amendment and payment of the petition fee. No terminal disclaimer is required. The required statement of unintentional delay was made by the assignee of record.

Technology Center AU 1794 has been advised of this decision. The application is, thereby, forwarded to the examiner for consideration of the reply submitted on petition filed September 21, 2010.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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AUG 3 0 2010

OFFICE OF PETITIONS

MEYERTONS HOOD KIVLIN KOWERT
& GOETZEL PC
PO BOX 398
AUSTIN TX 78767

In re Application of :
Mayhew, et al. :
Application No. 10/794,067 : ON REQUEST FOR
Filed: March 5, 2004 : RECONSIDERATION OF
Attorney Docket Number: 6257-14600 : PATENT TERM ADJUSTMENT

This is a decision on the petition under 37 CFR 1.705(b), filed July 6, 2010. Applicants believe that they should be accorded an additional PTA of 523 days. Applicant requests this correction solely on the basis that the Office will take in excess of three years to issue this patent.

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

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

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

Rather than file a request for reconsideration of patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a

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

Furthermore, it is noted that applicants point out that they should have been assessed 90 days of delay for filing a response to an August 5, 2008 Office action on February 4, 2009. However, a review of PALM reveals that applicants were assessed 91 days for this filing, and that pursuant to 37 CFR 1.704(b), 91 days was properly accorded.

Lastly, a review of the file also reveals that applicant should have been accorded additional days of delay pursuant to 37 CFR 1.704(c)(8). Applicants filed an RCE on July 27, 2009. Subsequently, applicants filed an IDS on August 11, 2009. Accordingly, pursuant to 37 CFR 1.704(c)(8), fifteen (15) days of Applicant delay should have been assessed for this supplemental filing.

In view thereof, the correct determination of PTA prior to issuance is **nine hundred fifteen (915) days** (1021 days of PTO delay, reduced by 106 (91+15) days of Applicant delay).

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

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

Telephone inquiries specific to this decision should be directed to Petitions Attorney Cliff Congo at (571) 272-3207.

Anthony Knight
Director
Office of Petitions

Enc: copy of PAIR screen

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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.

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

Application Number*: 10794067 Search | Explanation of PTA Calculation | Explanation of PTE Calculation

PTA Calculations for Application: 10794067

Application Filing Date	03/05/2004	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	1021
A Delays	1021	PTO Manual Adjustment	-15
B Delays	0	Applicant Delay (APPL)	91
C Delays	0	Total PTA (days)	915

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
90	08/28/2010		P028	Adjustment of PTA Calculation by PTO	15	0	
71	04/06/2010		MN/=.	Mail Notice of Allowance		0	
70	04/02/2010		IREV	Issue Revision Completed		0	
69	04/02/2010		EX.A	Examiner's Amendment Communication		0	
68	04/02/2010		N/=.	Notice of Allowance Data Verification Completed		0	

67	04/02/2010		DVER	Document Verification		0
66	03/29/2010		CNTA	Notice of Allowability		0
65	03/26/2010		EXIN	Examiner Interview Summary Record (PTOL - 413)		0
63	01/26/2010		FWDX	Date Forwarded to Examiner		0
62	12/28/2009		ELC.	Response to Election / Restriction Filed		0
61	11/25/2009		ELC_RVW	Electronic Review		0
60	11/25/2009		EML_NTF	Email Notification		0
59	11/25/2009		MCTRS	Mail Restriction Requirement		0
58	11/21/2009		CTRS	Requirement for Restriction / Election		0
55	10/06/2009		DOCK	Case Docketed to Examiner in GAU		0
53	09/18/2009		FWDX	Date Forwarded to Examiner		0
51	09/18/2009		FWDX	Date Forwarded to Examiner		0
49	09/18/2009		ABN9	Disposal for a RCE / CPA / R129		0
56	09/01/2009		LET.	Miscellaneous Incoming Letter		0
64	08/11/2009		IDSC	Information Disclosure Statement considered		0
54	08/11/2009		EIDS.	Electronic Information Disclosure Statement		0
48	08/11/2009		WIDS	Information Disclosure Statement (IDS) Filed		0
52	07/27/2009		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE		0
50	07/27/2009		RCEX	Request for Continued Examination (RCE)		0
47	07/27/2009		BRCE	Workflow - Request for RCE - Begin		0
57	06/15/2009		EXIN	Examiner Interview Summary Record (PTOL - 413)		0
46	04/27/2009		MCTFR	Mail Final Rejection (PTOL - 326)		0
45	04/26/2009		CTFR	Final Rejection		0
38	02/26/2009		FWDX	Date Forwarded to Examiner		0
37	02/04/2009	11/05/2008	A...	Response after Non-Final Action	91	32
36	02/04/2009		XT/G	Request for Extension of Time - Granted		0
35	01/16/2009		PA..	Change in Power of Attorney (May Include Associate POA)		0
34	01/14/2009		C.AD	Correspondence Address Change		0
33	10/06/2008		DOCK	Case Docketed to Examiner in GAU		0
32	08/05/2008		MCTNF	Mail Non-Final Rejection		0
31	08/04/2008		CTNF	Non-Final Rejection		0
28	05/28/2008		FWDX	Date Forwarded to Examiner		0
27	05/06/2008		A...	Response after Non-Final Action		0

26	02/20/2008	05/05/2005	MCTNF	Mail Non-Final Rejection	1021	-1
25	02/15/2008		CTNF	Non-Final Rejection		0
20	10/17/2007		W525	Withdraw Flagged for 5/25		0
19	10/15/2007		F525	Flagged for 5/25		0
18	09/18/2007		DOCK	Case Docketed to Examiner in GAU		0
17	06/26/2007		DOCK	Case Docketed to Examiner in GAU		0
16	06/14/2007		DOCK	Case Docketed to Examiner in GAU		0
15	11/16/2006		DOCK	Case Docketed to Examiner in GAU		0
14	07/28/2006		DOCK	Case Docketed to Examiner in GAU		0
13	03/21/2006		DOCK	Case Docketed to Examiner in GAU		0
11	11/29/2004		C.ADB	Correspondence Address Change		0
10	09/14/2004		DOCK	Case Docketed to Examiner in GAU		0
9	09/14/2004		TSSCOMP	IFW TSS Processing by Tech Center Complete		0
8	05/27/2004		WROIPE	Application Return from OIPE		0
7	05/27/2004		ROIPE	Application Return TO OIPE		0
6	05/27/2004		OIPE	Application Dispatched from OIPE		0
5	05/27/2004		COMP	Application Is Now Complete		0
4	04/05/2004		L194	Cleared by OIPE CSR		0
3	04/05/2004		CLSS	CASE CLASSIFIED BY OIPE		0
2	03/26/2004		SCAN	IFW Scan & PACR Auto Security Review		0
1	03/05/2004		IEXX	Initial Exam Team nn		0

Export to: Excel

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DONN K. HARMS
PATENT & TRADEMARK LAW CENTER
SUITE 100
12702 VIA CORTINA
DEL MAR CA 92014

MAILED

FEB 15 2011

OFFICE OF PETITIONS

In re Patent No. 7,131,592 :
Issued: November 7, 2006 :
Application No. 10/794,156 : ON PETITION
Filed: March 4, 2004 :
Attorney Docket No. 2920-CIP :

This is a decision on the petition under 37 CFR 1.378(c), filed January 7, 2011, 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 Commissioner.

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 items (2) and (3) listed above.

With regards to items (2) and (3), petitioner has failed to submit the required $490.00 small entity three and a half year maintenance fee and required $1,640.00 surcharge fee due to insufficient funds in the deposit account number given on the petition. Therefore,

as stated above a $400.00 petition fee is also required for any petition for reconsideration, bring the total to $2,530.00.

If this petition is not renewed or if renewed and not granted, then petitioner may request a refund of the maintenance and surcharge fees paid. The fee for requesting reconsideration is not refundable.

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 (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
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DONN K. HARMS
PATENT & TRADEMARK LAW CENTER
SUITE 100
12702 VIA CORTINA
DEL MAR CA 92014

MAILED
MAR 21 2012
OFFICE OF PETITIONS

In re Patent No. 7,131,592 :
Issued: November 7, 2006 :
Application No. 10/794,156 : ON PETITION
Filed: March 4, 2004 :
Attorney Docket No. 2920-CIP :

REQUIREMENT FOR INFORMATION

A renewed petition was filed on February 24, 2012 under 37 CFR 1.378 to accept the delayed payment of a maintenance fee for the above-identified patent.

A decision on this petition will be held in abeyance for a period of **TWO MONTHS** from the date of this communication to permit petitioner to address the following issues before a decision is rendered. **No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b).**

Petitioner has submitted $565.00 towards the required small entity three and one-half year maintenance fee and $1,640.00 towards the required surcharge fee. However, petitioner has failed to submit the required $400.00 reconsideration fee due to insufficient funds in the deposit account number given on the petition. Therefore, petitioner must now submit a total of $400.00 in order to satisfy the required reconsideration fee. Consequently, the renewed petition under 37 CFR 1.378(c), cannot be accepted at this time.

The response to this Requirement for Information should include a cover letter entitled "Response to Requirement for Information."

At the end of the two month period specified above, a decision will be rendered on the instant petition under 37 CFR 1.378 as supplemented by any information submitted in response to this Requirement for Information.

In order to expedite reinstatement of this patent, petitioner may wish to consider submitting the reply to the requirement for information by facsimile transmission to the telephone number indicated below and to the attention of the undersigned.

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

By Mail: Mail Stop PETITIONS
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 (571)-272-7751.

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

LEYDIG, VOIT & MAYER, LTD
(FOR HUAWEI TECHNOLOGIES CO., LTD)
TWO PRUDENTIAL PLAZA SUITE 4900
180 NORTH STETSON AVENUE
CHICAGO, IL 60601

MAILED
JUL 19 2011
OFFICE OF PETITIONS

In re Patent No. 7,869,708 :
Issue Date: January 11, 2011 :
Application No. 10/794,174 : ON PETITION
Filed: March 5, 2004 :
Attorney Docket No. HW706292 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28, filed June 17, 2011.

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

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

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

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

A. Kelley-Collier

Alicia Kelley-Collier
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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BOZICEVIC, FIELD & FRANCIS LLP
1900 UNIVERSITY AVENUE
SUITE 200
EAST PALO ALTO CA 94303

MAILED

JUN 16 2011

OFFICE OF PETITIONS

In re Application of	:	DECISION ON
Thomas T Yamashita	:	REQUEST FOR
Patent Number: 7,906,129	:	RECONSIDERATION OF
Issue Date: 06/01/2010	:	PATENT TERM ADJUSTMENT
Application No. 10/794187	:	and
Filing or 371(c) Date: 03/04/2004	:	NOTICE OF INTENT TO ISSUE
Attorney Docket Number: YAMA-010	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on May 3, 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 eight hundred twenty-eight (828) 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 twenty-eight (828) days is **GRANTED**.

Regarding the period of adjustment of 120 days in connection with the filing of the Miscellaneous Incoming Letter, filed July 29, 2010, a review of the application history confirms that the Miscellaneous Incoming Letter was a Request for Review of Patent Term Adjustment Determination, and was not filed under circumstances that constitute a failure to engage in reasonable efforts to conclude prosecution. The reduction of 120 days is in error and has been removed.

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 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 **eight hundred twenty-eight (828) 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 : **7,906,129** B2

DATED : **March 15, 2011**

INVENTOR(S) : Yamashita

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 708 days.

Delete the phrase "by 708 days" and insert – by 828 days --

10/794,228

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110725-AA

DATE : July 27, 2011

TO SPE OF : ART UNIT 3991

SUBJECT : Request for Certificate of Correction on Patent No.: 7,511,043

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:

During the prosecution of application 10/794,228, which issued as U.S. Patent 7,511,043, claim 6 was cancelled by the applicant in a preliminary amendment filed March 4, 2004, as being directed to non-elected subject matter. In addition, claim 6 was not included among the allowable claims. Therefore, claim 6 at column 34, lines 30 - 39 should be cancelled.

DEBORAH D. JONES
CRU SPE-AU 3991

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO.: 7,511,043
DATED: March 31, 2009
INVENTOR(S): Houze et al.

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

In column 34, lines 30 - 39, claim 6 is cancelled.

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

PTO/SB/131 (01-10)
Approved for use through 02/28/2011. OMB 0651-0020
U.S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

Attorney Docket Number: 040090/QUALP838US	Patent Number: 7,664,140
Filing Date (or 371(b) or (f) Date): 03-04-2004	Issue Date: 2-16-2010
First Named Inventor: AMOL RAJKOTIA	
Title: EARLY TERMINATION OF LOW DATA RATE TRAFFIC IN A WIRELESS NETWORK	

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 /Jeffrey Jacobs/	Date 08-23-2010
Name (Print/Typed) Jeffrey D. Jacobs	Registration Number 40029

***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.

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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TUROCY & WATSON, LLP
127 Public Square
57th Floor, Key Tower
Cleveland, OH 44114

Mail Date: 09/10/2010

Applicant	: Amol Rajkotia	: DECISION ON REQUEST FOR
Patent Number	: 7664140	: RECALCULATION of PATENT
Issue Date	: 02/16/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/794,259	: OF WYETH
Filed	: 03/04/2004	:
		:

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.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 9/30/10 **Paper No.:** —

TO SPE OF : ART UNIT 1627

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/794310 Patent No.: 7612282

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: _____

Padmanabhan
SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER 11/9/10

.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 09 2010

OFFICE OF PETITIONS

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

In re Patent No. 7,259,147
Issued: August 21, 2007
Application No. 10/794,344
Filed: March 5, 2004
Atty. Dkt. No.: 14539-004013

: 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 November 11, 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. 7,259,147 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 28, 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

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Paper No.

DIGIMARC CORPORATION
9405 SW GEMINI DRIVE
BEAVERTON OR 97008

MAILED

SEP 20 2010

OFFICE OF PETITIONS

In re Application of :
Brundage et al. : DECISION ON PETITION
Application No. 10/794,395 :
Filed: March 5, 2004 :
Attorney Docket No. P0936 :

This is in response to the PETITION FROM EXAMINER'S HOLDING OF ABANDONMENT filed March 9, 2010. This petition is properly treated as a (no-fee) petition to withdraw holding of abandonment.

A Notice of Appeal was filed in this application on November 10, 2009. By communication mailed February 26, 2010, applicant was advised that the appeal in this application was dismissed for failure to timely file a brief. Further, because of the dismissal of the appeal, the application because abandoned as there were no allowed claims.

In response, applicant timely filed the instant petition. Applicant argues that the communication incorrectly indicated that an appeal brief was not timely filed. Applicant points out that, as the Notice of Appeal was filed on November 10, 2009, an appeal brief or RCE was not ultimately past due until after June 10, 2010. With the petition filed March 9, 2010, applicant submitted a request for continued examination (RCE) and submission in the form of an amendment, made timely by an accompany petition (and fee) for extension of time for response within the second month.

Applicant is correct. Accordingly, withdrawal of the holding of abandonment is appropriate.

Accordingly, the Notice of Abandonment mailed February 26, 2010 and the holding of abandonment are hereby **WITHDRAWN**.

The petition under § 1.181 is **GRANTED**.

No fee is required on petition under § 1.181. The $130 petition fee submitted with the petition is unnecessary and is being refunded to petitioner's Deposit Account as authorized.

Technology Center AU 2624 has been advised of this decision. The application is, thereby, forwarded to the Technology Center's technical support staff to withdraw the holding of abandonment and for consideration by the examiner of the response (RCE and amendment) timely filed on March 9, 2010.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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PHILLIPPE C. NOBILEAU
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VILLEFRANCHE SUR MER F-062-30
FRANCE

MAILED
AUG 12 2011
OFFICE OF PETITIONS

In re Patent No. 7,219,746
Issue Date: May 22, 2007
Application No. 10/794,441
Filed: March 5, 2004
Title of Invention: **APPARATUS AND METHOD FOR INSTALLING A BRANCH JUNCTION FROM A MAIN WELL**

ON PETITION

This is a decision on the petition filed June 30, 2011, under 37 CFR 1.378(b), to accept the delayed payment of the 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 2-month time limit can be granted under 37 CFR 1.136(a) or (b). Any such petition for reconsideration must be accompanied by the petition fee of $400.00 as set forth in 37 CFR 1.17(h). The petition for reconsideration should include an exhaustive attempt to provide the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner.

The patent issued on May 22, 2007. The first maintenance fee due could have been paid during the period from May 22, 2010 to November 22, 2010 or, with a surcharge during the period from November 23, 2010 to May 22, 2011. Accordingly, this patent expired on May 22, 2011 for failure to timely remit the first maintenance fee.

A petition to accept the delayed maintenance fee under 35 U.S.C. § 41(c) and 37 CFR 1.378(b) must be accompanied by (1) an adequate, verified showing that the delay was unavoidable, since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent, (2) payment of the appropriate maintenance fee, unless previously submitted, and (3) payment of the surcharge set forth in 37 CFR 1.20(I)(1).

Petitioner argues that FORM PTO-2038 was faxed to (571) 273-8300 on May 23rd, 2011, that it was learned on May 26, 2011 that the facsimile transmission was not successful, that after further attempts, the transmission was successful on May 28, 2011. Additionally, FORM PTO/SB/65 was also mailed on May 28, 2011 to the Mail Stop Petition.

This petition lacks item (1) above.

A late maintenance fee is considered under the same standard as that for reviving an abandoned application under 35 U.S.C. § 133 because 35 U.S.C. § 41(c)(1) uses identical language (i.e. "unavoidable delay").[1] Decisions reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable.[2] In this regard:

> 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.[3]

As 35 U.S.C. § 41(c) requires the payment of fees at specified intervals to maintain a patent in force, rather than some response to a specific action by the Office under 35 U.S.C. § 133, a reasonably prudent person in the exercise of due care and diligence would have taken steps to ensure the timely payment of such maintenance fees.[4] That is, an adequate showing that the delay was "unavoidable" within the meaning of 35 U.S.C.

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[1] Ray v. Lehman, 55 F.3d 606, 608-09, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995) (quoting In re Patent No. 4,409,763, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1989)).

[2] Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887)(the term "unavoidable" "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used by prudent and careful men in relation to their most important business").

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

[4] Ray, 55 F.3d at 609, 34 USPQ2d at 1788.

§ 41(c) and 37 CFR 1.378(b)(3) requires a showing of the steps taken to ensure the timely payment of the maintenance fees for this patent.[5]

Petitioner's arguments have been considered but are not persuasive.

Based upon the arguments proffered, rather than unavoidable delay, the showing of record is that petitioner has not complied with the requirements under 37 CFR 1.8 as it relates to proof of facsimile transmission. Petitioner has not submitted proof that the maintenance fee was timely paid nor that in spite of diligent efforts to send the payment via facsimilie transmission, the delay was unavoidable. It was incumbent upon Petitioner to ensure that the method of transmission chosen was without errors. In this instance, petitioner should have confirmed that the facsimile transmission was successful.

Petitioner's lack of diligence in complying with the regulation does not constitute unavoidable delay.

In view thereof, no evidence has been provided to establish that the delay in payment of the maintenance fee was unavoidable.

For all the reasons listed above, petitioner has not carried the burden of proof to establish to the satisfaction of the Director that the delay was unavoidable. There is a distinct difference between an unavoidable delay which, had there been reasonable care exercised, could not have been prevented and one that was the result of a mistake. Since petitioner has not provided enough information for a determination that reasonable care was in fact exercised to ensure that the maintenance fee would be paid timely and that therein the delay was unavoidable, the argument fails.

As petitioner has not provided a showing of evidence to satisfy the requirements of a grantable petition under the unavoidable standard, the petition will be dismissed.

Petitioner may wish, in the alternative, to request reconsideration in the form of a petition under 37 CFR 1.378(c), requesting that the unintentionally delayed payment of a maintenance fee be accepted. The additional surcharge due in this instance would be $940.00.

A petition to accept the delayed payment of a maintenance fee under 35 U.S.C. 41(c) and 37 CFR 1.378(c) must be filed within twenty four months from the end of the six month grace period (e.g., the expiration date of the patent and be accompanied by (1) a verified statement that the delay was unintentional, (2) payment of the appropriate maintenance fee, unless previously submitted, (3) payment of the $1,640.00 surcharge (the $700.00

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[5] Id.

surcharge already paid may be credited thereto leaving a balance due of $940.00) set forth in 37 CFR 1.20(I)(2).

The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking reinstatement due to unintentional delay can not make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the patent was expired until the filing of the petition to reinstate under 37 CFR 1.378(c), 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 1.378(c).

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

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

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

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

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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PHILLIPPE C. NOBILEAU
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FRANCE

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OCT 24 2011

OFFICE OF PETITIONS

In re Patent No. 7,219,746
Issue Date: May 22, 2007
Application No. 10/794,441
Filed: March 5, 2004
Title of Invention: **APPARATUS AND METHOD FOR INSTALLING A BRANCH JUNCTION FROM A MAIN WELL**

ON PETITION

This is a decision on the petition filed September 21, 2011 under 37 CFR 1.378(c)[1], to accept the delayed payment of the maintenance fee for the above-identified patent.

The petition under 37 CFR 1.378 (c) 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** final agency action within the meaning of 5 U.S.C. § 704.

The patent issued on May 22, 2007. The first maintenance fee due could have been paid during the period from May 22, 2010 to November 22, 2010 or, with a surcharge during the period from November 23, 2010 to May 22, 2011. Accordingly, this patent expired on May 22, 2011 for failure to timely remit the first maintenance fee.

Petitioner previously argued that FORM PTO-2038 was faxed to (571) 273-8300 on May 23, 2011, that it was learned on May 26, 2011 that the facsimile transmission was not successful, that after further attempts, the transmission was successful on May 28, 2011. Additionally, FORM PTO/SB/65 was also mailed on May 28, 2011 to the Mail Stop Petition.

While the credit card form authorizing the payment of $940.00 for the petition under 37 CFR 1.378(c), requesting that the unintentionally delayed payment of a maintenance fee be accepted and for the additional surcharge due in this instance, unfortunately, the credit card form purportedly faxed on May 26, 2011 and subsequently mailed on May 28, 2011 is not of record in the file. As a result, the charges due in the amount of $1190.00 are still due.

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[1] 37 CFR 1.378(c) provides that a petition to accept an unintentionally delayed payment of a maintenance fee must be filed within twenty-four months of the six-month grace period provided in § 1.362(e) and must include:
(1) The required maintenance fee set forth in § 1.20(e) through (g);
(2) The surcharge set forth in § 1.20(I)(2); and
(3) A statement that the delay in payment of the maintenance fee was unintentional.

When the first decision was mailed on August 12, 2011, it was thought that the credit card form was resubmitted with the June 30, 2011 petition, authorizing the payment of the maintenance fee and surcharge, and was of record. This petition is otherwise grantable but the patent cannot be reinstated until such time as the fees are paid. Petitioner should submit a credit card form or other means of payment in the amount of $1190.00.

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

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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DEC 21 2011

OFFICE OF PETITIONS

In re Patent No. 7,219,746
Issue Date: May 22, 2007
Application No. 10/794,441
Filed: March 5, 2004
Title of Invention: **APPARATUS AND METHOD FOR INSTALLING A BRANCH JUNCTION FROM A MAIN WELL**

ON PETITION

This is a decision on the renewed petition filed November 7, 2011 under 37 CFR 1.378(c)[1], to accept the delayed payment of the 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** final agency action within the meaning of 5 U.S.C. § 704.

The patent issued on May 22, 2007. The first maintenance fee due could have been paid during the period from May 22, 2010 to November 22, 2010 or, with a surcharge during the period from November 23, 2010 to May 22, 2011. Accordingly, this patent expired on May 22, 2011 for failure to timely remit the first maintenance fee.

A facsimile transmission for the payment of the maintenance was successfully transmitted on May 26, 2011 and mailed May 28, 2011 with a petition under 3 CFR 1.3789(b), however the evidence presented failed to establish that the failure to pay the maintenance fee when it was due was unavoidable and was therefore dismissed in a decision mailed August 12, 2011. A petition under 37 CFR 1.378(c) was filed September 21, 2011 with a payment in the amount of $940 but was dismissed in a decision mailed October 24, 2011 because, a review of the record did not reveal that FORM PTO-2038, the credit card form, had been previously filed and thus, the fees included were deficient.

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[1] 37 CFR 1.378(c) provides that a petition to accept an unintentionally delayed payment of a maintenance fee must be filed within twenty-four months of the six-month grace period provided in § 1.362(e) and must include:
(1) The required maintenance fee set forth in § 1.20(e) through (g);
(2) The surcharge set forth in § 1.20(i)(2); and
(3) A statement that the delay in payment of the maintenance fee was unintentional.

Comes now, petitioner with the instant renewed petition in response to the October 24, 2011 decision. The November 7, 2011 transmittal indicates that a new credit card form PTO-2038 for the payment in the amount of $1,190.00 was included.

A review of the file reveals that the papers filed November 7, 2011 and intended as the FORM PTO-2038 for the payment of $1,190 for the maintenance fees and surcharge, are either illegible or have either been redacted and thus cannot be processed.

Considering the history of the attempts to have this patent reinstated, petitioner is advised not to use facsimile transmission and perhaps the best way to have this matter resolved is for petitioner to mail the papers directly to the Office of Petitions.

As previously indicated, this petition is otherwise grantable but the patent cannot be reinstated until such time as the fees are paid. Petitioner should submit a credit card form or other means of payment in the amount of $1190.00.

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

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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In re Patent No. 7,219,746
Issue Date: May 22, 2007
Application No. 10/794,441
Filed: March 5, 2004
Title of Invention: **APPARATUS AND METHOD FOR INSTALLING A BRANCH JUNCTION FROM A MAIN WELL**

ON PETITION

This is a decision on the renewed petition filed January 17, 2012 under 37 CFR 1.378(c)[1], to accept the delayed payment of the maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The patent issued on May 22, 2007. The first maintenance fee due could have been paid during the period from May 22, 2010 to November 22, 2010 or, with a surcharge during the period from November 23, 2010 to May 22, 2011. Accordingly, this patent expired on May 22, 2011 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 paid September 21, 2011 and $1,640.00 for the surcharge have been applied.

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

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

[1] 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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MINNEAPOLIS MN 55402

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OCT 13 2010

OFFICE OF PETITIONS

In re Application of :
Philip R. Lantz, et al. :
Application No. 10/794,469 : ON PETITION
Filed: March 5, 2004 :
Attorney Docket No. P18512 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 25, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of January 26, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(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 27, 2010. The Notice of Abandonment was mailed August 5, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810, and the submission required by 37 CFR 1.114; (2) the petition fee of $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.

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

This application is being referred to Technology Center AU 2196 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: **Glen Kellett**
11 S. Meridian Street
Indianapolis, IN 46204

UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Patent No. 7093331
Issue Date: August 22,2006
Application No. 10794554
Filed: March 5,2004
Attorney Docket No. 06075319

:
: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.

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)
7,093,331	2006-08-22	10/794,554	2004-03-05	645138011US

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

PTO/SB/66 (03-09)
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U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
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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	/Stephen E. Arnett/	Date (YYYY-MM-DD)	2010-10-19
Name	Stephen E. Arnett	Registration Number	47392

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.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 2/28/2011

TO SPE OF : ART UNIT 1776 Smith Duane (SPE)

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/794664 Patent No.: 7491338

CofC mailroom date: 2/18/2011

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Certificates of Correction Branch
703-756-1571

Thank You For Your Assistance

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

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

Comments: OK to ENTER

DUANE SMITH
SUPERVISORY PATENT EXAMINER

SPE

1776
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.

DIGIMARC CORPORATION
9405 SW GEMINI DRIVE
BEAVERTON OR 97008

MAILED

AUG 30 2010

OFFICE OF PETITIONS

In re Patent No. 7,606,790	:	DECISION ON REQUEST
Levy	:	FOR
Issue Date: October 20, 2009	:	RECONSIDERATION OF
Application No. 10/794,770	:	PATENT TERM ADJUSTMENT
Filed: March 3, 2004	:	and
Atty Docket No. P0945	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on May 21, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by nine hundred and fifty-nine (959) 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 and fifty-two (852) days is **GRANTED to the extent indicated herein.**

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

On October 20, 2009, this patent issued with a patent term adjustment of 474 days. On February 10, 2010, Patentee filed a Request for Recalculation of Patent Term Adjustment in view of Wyeth. On April 21, 2010, the Office mailed a decision granting the petition under 37 CFR 1.705(d) to the extent that a certificate of correction would be issued indicating that the term of the patent was extended or adjusted by 853 days. The Office notes that the decision of April 21, 2010 was issued in error as it accorded Patentee 1 more days of patent term adjustment than was warranted. The present decision supersedes the decision mailed on April 21, 2010. A discussion follows.

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 March 4, 2007 and ends on September 15, 2008, the day before the first RCE was filed, which amounts to 562 (not 563) days. See U.S.C. 154(b)(1)(B)(i).

Moreover, Patentee's calculation fails to take into account that an appeal was filed in this application. A notice of appeal was filed on June 20, 2007, and a non-final rejection was mailed on October 3, 2007. The 106 days of the over three year period consumed by appellate review, beginning on June 20, 2007 and ending on October 3, 2007 is not included in the B delay. See 35 U.S.C. § 154(b)(1)(B)(ii).

As such, the patent term adjustment is increased by 852 (485 days of examination delay plus 562 days of "B-delay" minus the aforementioned excluded 106 days minus 89 days of applicant delay) days, not 959 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 **eight hundred and fifty-two (852) days.**

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

Anthony Knight
Director
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,606,790 B2

DATED : **October 20, 2009** **DRAFT**

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 474 days

Delete the phrase "by 474 days" and insert – by 852 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

Paper No.

Foley & Lardner LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON WI 53701-1497

MAILED
JUL 21 2011
OFFICE OF PETITIONS

In re Patent No. 7,606,790 :
Levy :
Application No. 10/794,770 : LETTER REGARDING
Issue Date: October 20, 2009 : PATENT TERM ADJUSTMENT
Filed: March 3, 2004 :
Atty Docket No. 098888-1827 :

This is a decision on the "REQUEST FOR RECONSIDERATION OF August 30, 2010 DECISION by the Office of Petitions re APPLICATION FOR PATENT TERM ADJUSTMENT (Request for Reconsideration of PTO's Patent Term Adjustment Determination) (37 CFR 1.705(d)," filed September 28, 2010, requesting that the patent term adjustment determination for the above-identified patent be changed from eight hundred and fifty-two (852) days to nine hundred and fifty-eight (958) days.

The request for reconsideration of patent term adjustment is **DISMISSED**.

BACKGROUND

On October 20, 2009, this patent issued with a patent term adjustment of 474 days. On February 10, 2010, Patentee filed a Request for Recalculation of Patent Term Adjustment in view of Wyeth. On April 21, 2010, the Office mailed a decision granting the petition under 37 CFR 1.705(d) to the extent that a certificate of correction would be issued indicating that the term of the patent was extended or adjusted by 853 days. On May 21, 2010, a renewed petition was filed, and on August 30, 2010, a decision was mailed which indicated that the patent term adjustment was increased by 852 days and set a one-month non-extendable period for response. This submission was timely filed in response to the mailing of August 30, 2010.

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

Patentee was accorded 456 (562 - 106) days for B-delay. Patentee maintains entitlement to a period of adjustment due to the Three Year Delay by the Office, pursuant to 37 C.F.R. § 1.703(b), of 562 (562 - 0) days. In other words, Patentee argues 0 days, not 106 days, should have been excluded from B-delay for time consumed by appellate review.

RELEVANT STATUTE AND REGULATIONS

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including –

> (i) any time consumed by continued examination of the application requested by the applicant under section 132(b);
> (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or
> (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 C.F.R. § 1.702(b) provides that:

> Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:
> (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);
> (2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);
> (3) Any time consumed by the imposition of a secrecy order under

35 U.S.C. 181;
(4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or
(5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

At issue is the language "[a]ny time consumed by review by the Board of Patent Appeals and Interferences" of 37 C.F.R. § 1.702(b).

A notice of appeal was filed on June 20, 2007, and a non-final Office action was mailed on October 3, 2007. The 106 days of the over three year period consumed by appellate review, beginning on June 20, 2007 and ending on October 3, 2007, is not included in the B delay. See 35 U.S.C. § 154(b)(1)(B)(ii).

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 106 days, beginning on June 20, 2007, the date of filing of the notice of appeal and ending on October 3, 2007, the subsequent date of the mailing of a non-final Office action. Thus, B-delay is 456 (562 - 106) days.

It is noted that Patentee has submitted an alternative argument, requesting that if the 106-day period is considered to constitute "appellate review by the Board,' then applicant is believed entitled to extension of term under 'C' for such appellate review."[1] The Office holds that the period beginning with the filing of a notice of appeal and ending on the date of the mailing of a non-final action is not a successful appeal for which according of C-Delay is warranted.

[1] Petition, page 3.

It is noted that the Office issued a Notice of proposed rulemaking entitled *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review and Information Disclosure Statements*, 76 FR 18990 (April 6, 2011). To the extent that the final rule on *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review* revises the interpretation of appellate review applied in this decision, Patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the date of the final rule to file a request for reconsideration. No extensions of time will be granted under § 1.136.

Any subsequent filing pertaining to this matter should indicate that the attorney handling this matter is Paul Shanoski, and may be submitted by mail,[2] hand-delivery,[3] or facsimile.[4] Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web.[5]

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.

---

[2] Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
[3] Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.
[4] (571) 273-8300: please note this is a central facsimile number.
[5] https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3225.[6]

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

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

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

BULLIVANT HOUSER BAILEY PC
1415 L STREET
SUITE 1000
SACRAMENTO CA 95814

MAILED

NOV 19 2010

OFFICE OF PETITIONS

In re Application of :
Rice, et al. : DECISION ON PETITION
Application No. 10/794,854 :
Filed: March 5, 2004 :
Atty. Dkt. No.: 30331/00001 :

This decision is in response to the petition under 37 CFR 1.137(b), filed October 4, 2010.

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

The application became abandoned May 9, 2008 for failure to timely submit a proper reply to the restriction requirement mailed April 8, 2008. The restriction requirement set a one month shortened statutory period of time for reply. Notice of Abandonment was mailed November 10, 2008.

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 has been carefully reviewed and found in compliance with the requirements set forth above.

In view thereof, this application is being forwarded to Group Art Unit 3768 for further action.

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

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
425 MARKET STREET
SAN FRANCISCO CA 94105-2482

MAILED

SEP 13 2010

OFFICE OF PETITIONS

In re Patent No. 7,053,271	:	
Issue Date: May 30, 2006	:	
Application No. 10/795,001	:	ON PETITION
Filed: March 3, 2004	:	
Attorney Docket No. 500852000102	:	

This is a decision on the petition under 37 CFR 1.378(c), filed August 24, 2010, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on May 31, 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 Terri Johnson at (571) 272-2991.

The patent file is being forwarded to Files Repository.

/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

MAILED

AUG 27 2010

OFFICE OF PETITIONS

KATTEN MUCHIN ROSENMAN LLP
575 MADISON AVENUE
NEW YORK NY 10022-2585

In re Patent No. 7,738,910 : DECISION ON REQUEST FOR
Kobayashi : RECONSIDERATION OF
Issue Date: June 15, 2010 : PATENT TERM ADJUSTMENT
Application No. 10/796,232 :
Filed: March 9, 2004 :
Attorney Docket No. FUSA 21.043 :

This is a decision on the petition filed on June 3, 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 five hundred and seventy-nine (579) days.

The request for reconsideration of the patent term adjustment under 37 CFR 1.705(d) is **DISMISSED**.

On June 15, 2010, the above-identified application matured into U.S. Patent No. 7,738,910, with a revised patent term of 558 days. By the instant petition, patentees assert that the patent term should be adjusted by 21 days pursuant to 37 CFR 1.702(b) and 37 CFR 1.703(b). It is noted that patentees failed to account for the filing of the notice of appeal on January 10, 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 21 days, beginning on the date on which the notice of appeal to the Board of Patent Appeals and Interferences was filed, January 10, 2008, and ending on the day before the date the Request for Continued Examination was filed, January 30, 2008. Thus, the B delay is 306 days (327 – 21). Accordingly, the patent term adjustment is 558 days (588 days of A delay + 306 days of B delay – 0 days of overlap - 336 days of applicant delay).

In view thereof, the patent term adjustment of 558 days indicated in the patent is correct.

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 50-1290 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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:10/2011

DATE : October 17, 2011

TO SPE OF : ART UNIT 1634

SUBJECT : Request for Certificate of Correction on Patent No.: 7,745,180

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

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - PK 3-910
Palm location **7590** - Tel. No. 305-8201

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

Thank You For Your Assistance **Certificates of Correction Branch**

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

☒ **Approved** **All** changes apply.

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

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

Comments:

SPE: /Dave Nguyen/ **Art Unit** 1634

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:04/2012

DATE : April 10, 2012

TO SPE OF : ART UNIT 1634

SUBJECT : Request for Certificate of Correction on Patent No.: 7,745,180

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

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - PK 3-910
Palm location **7590** - Tel. No. 305-8201

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

Thank You For Your Assistance **Certificates of Correction Branch**

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

☒ **Approved** **All** changes apply.

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

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

Comments:

SPE: Dave Nguyen **Art Unit** 1634

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)
7020538	2006-03-28	10796337	2004-03-08	

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

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.

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	/###/ Archetype-Solutions, Inc./Ali Fenn/	Date (YYYY-MM-DD)	2011-11-22
Name	Ali Fenn		

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. 7020538
Issue Date: March 28,2006
Application No. 10796337
Filed: March 8,2004
Attorney Docket No. 36657-01201

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

This is a decision on the electronic petition, filed November 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 November 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

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.
10/796,485	03/09/2004	Steven M. Stone	940472.267909	2291

7590 01/25/2011

Moore & Van Allen, PLLC for Lowe's Companies, Inc.
430 Davis Drive, Suite 500
P.O. Box 13706
Research Triangle Park, NC 27709

EXAMINER	
RUDY, ANDREW J	

ART UNIT	PAPER NUMBER
3687	

MAIL DATE	DELIVERY MODE
01/25/2011	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

January 25, 2011

Moore & Van Allen, PLLC for Lowe's Companies, Inc.
430 Davis Drive, Suite 500
P.O. Box 13706
Research Triangle Park NC 27709

In re Application of	:	
Stone, Steven M,et. el	:	**DECISION ON PETITION**
Application No. 10/796,485	:	
Filed: 03/09/2004	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. 940472.267909	:	***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 24, 2010.

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 1/25/2010

TO SPE OF : ART UNIT 3772

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/796,875 Patent No. 7,836,881

CofC mailroom date 1/11/11

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Ernest C. White, LIE

Certificates of Correction Branch
703-756-1814 _____

Thank You For Your Assistance

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

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

Comments: _____

_____

_____

_____

3/14 3772

SPE Art Unit

PAGE 2/2 * RCVD AT 3/14/2012 12:01:44 PM [Eastern Daylight Time] * SVR:W-PTOFAX-001/42 * DNIS:2733385 * CSID:7033087768 * DURATION (mm-ss):01-07

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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MAILED
JUL 25 2011
OFFICE OF PETITIONS

GEORGE S. COLE, ESQ.
495 SEAPORT COURT, SUITE 101
REDWOOD CITY CA 94063

In re Application of

Roarty : ON PETITION

Application No. 10/797,255 :

Filing Date: March 10, 2004

This is in response to the petition to withdraw the holding of abandonment under 37 CFR 1.181(a), filed April 29, 2011. This is also a decision on the petitions under 37 CFR 1.137(a) and 37 CFR 1.137(b) filed in the alternative on April 29, 2011.

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

The petition under 37 CFR 1.137(a) is **dismissed as moot.**

The petition under 37 CFR 1.137(b) is **dismissed as moot.**

This application became abandoned for failure to respond in a timely manner to the Notice of Non-Compliant Amendment (the "Notice") mailed May 10, 2010. The notice allowed a period for reply of one month from its mailing date. Extensions of the time set for reply were available pursuant to 37 CFR 1.136. No reply was received within the allowable period, and the application became abandoned on June 11, 2010. A Notice of Abandonment was mailed April 6, 2011.

TREATMENT UNDER 37 CFR 1.181

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

> To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

> Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.
>
> A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner *should so state* and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

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

It is noted that petitioner makes some argument that the reply filed January 19, 2010, was complete and that the Notice of Non-Compliant Amendment was issued in error. No consideration is giving to this argument. Applicant is not a liberty to ignore a requirement made in the Notice of Non-Compliant Amendment regardless of whether applicant believes the requirement to be incorrect. Applicant was obligated to file a timely response to the Notice to the Notice of Non-Compliant Amendment or file a request to restart or reset the time period for responding to the Notice to the Notice of Non-Compliant Amendment because it was allegedly defective. See MPEP 710.06. Section 711.02 of the Manual of Patent Examining Procedure, citing 37 CFR 1.135(a) states, in pertinent part, that, "...an application becomes abandoned if applicant "fails to reply" to an office action within the fixed statutory period. This failure may result either from (A) failure to reply within the statutory period, or (B) insufficiency of reply, i.e., failure to file a "complete and proper reply, as the condition of the case may require" within the statutory period (37 CFR 1.135(b))." Thus, the petition to withdraw the holding of abandonment is being granted on the basis of applicant having established that the Notice of Non-Compliant Amendment was not received, not on the assertion of the applicant that the Notice of Non-Compliant Amendment was improper.

TREATMENT UNDER 37 CFR 1.137(a)

As the holding of abandonment is being withdrawn pursuant to 37 CFR 1.181, there is no relief that can be obtained pursuant to 37 CFR 1.137(a). The petition is dismissed as moot, accordingly. The amount of $270.00 will be refunded, in due course.

TREATMENT UNDER 37 CFR 1.137(b)

As the holding of abandonment is being withdrawn pursuant to 37 CFR 1.181, there is no relief that can be obtained pursuant to 37 CFR 1.137(b). The petition is dismissed as moot, accordingly. The amount of $810.00 will be refunded, in due course.

It is noted that marked-up claims listing was filed April 29, 2011.

The application is being directed to Technology Center GAU 3663 for further processing which may include processing of the response filed April 29, 2011, or re-mailing of the Notice of Non-Compliant Amendment in view of applicant's non-receipt of the same.

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

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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USDA-ARS-OFFICE OF TECHNOLOGY TRANSFER
PATENT ADVISORS OFFICE
WESTERN REGIONAL RESEARCH CENTER
800 BUCHANAN ST.
ALBANY CA. 94710

MAILED

SEP 13 2010

OFFICE OF PETITIONS

In re Application of :
Niu DONG et al :
Application No. 10/797,346 : ON PETITION
Filed: March 10, 2004 :
Attorney Docket No. 0109.03 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 30, 2009, to revive the above-identified application.

The petition is **DISMISSED**.

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

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of January 11, 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). 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).

For the above reason, the petition is dismissed.

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

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

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

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

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

Thurman K. Page
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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PATENT ADVISORS OFFICE
WESTERN REGIONAL RESEARCH CENTER
800 BUCHANNAN ST.
ALBANY CA. 94710

MAILED

JAN 03 2011

OFFICE OF PETITIONS

In re Application of :
Niu DONG et al :
Application No. 10/797,346 : ON PETITION
Filed: March 10, 2004 :
Attorney Docket No. 0109.03 :

This is a decision on the renewed 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 January 11, 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 April 12, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810.00, and the submission required by 37 CFR 1.114; (2) the petition fee of $1620.00; and (3) a proper statement of unintentional delay.

This application is being referred to Technology Center AU 1661 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

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

Thurman K. Page
Petitions Examiner
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	10797485
Filing Date	09-Mar-2004
First Named Inventor	Vahid Saadat
Art Unit	3779
Examiner Name	MATTHEW KASZTEJNA
Attorney Docket Number	USGINZ00130
Title	Endoluminal tool deployment system

◉ 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 : 10797485

Filed : 09-Mar-2004

Attorney Docket No : USGINZ00130

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

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)
7039996	2006-05-09	10797766	2004-03-10	4802

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	Fee	Code	Small Entity	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

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.

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 W. Goltry/	Date (YYYY-MM-DD)	2010-12-17
Name	Michael W. Goltry	Registration Number	39692

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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Alexandria, VA 22313-1450
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In re Patent No. 7039996
Issue Date: May 9,2006
Application No. 10797766
Filed: March 10,2004
Attorney Docket No. 1072-P-7

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

This is a decision on the electronic petition, filed December 17,2010 ,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 17,2010 . 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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PHILIPS INTELLECTUAL PROPERTY & STANDARDS
PO BOX 3001
BRIARCLIFF MANOR NY 10510

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DEC 12 2011
OFFICE OF PETITIONS

In re Application of :
Duerbaum, et al. :
Application No. 10/797,791 : DECISION ON PETITION
Filing Date: March 10, 2004 : TO REVIVE
Attorney Docket No. 2001P00056US01 :

This is in response to the petition to revive under 37 CFR 1.137(b), filed November 29, 2011.

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

The above application became abandoned for failure to timely file pay the issue fee in response to the Notice of Allowance, mailed March 4, 2011. This Notice set a statutory period for reply of three months. No issue fee having been received, the application became abandoned on June 5, 2011.

With the instant petition, applicants paid the petition fee, submitted the required reply in the form of the issue fee, and made the proper statement of unintentional delay.

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

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

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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OFFICE OF PETITIONS

FISH & RICHARDSON P.C. (SV)
PO BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 7,994,159 : DECISION ON APPLICATION FOR
Issued: August 9, 2011 : PATENT TERM ADJUSTMENT
Application No. 10/797,903 :
Filing or 371(c) Date: March 10, 2004 :
Dkt. No.: 25142-0002001 :

This is a decision on the application for patent term adjustment under 37 CFR 1.705(d) filed on October 7, 2011 requesting a decrease in patent term adjustment from 1,222 days to 1,188 days.

The petition for reconsideration of the patent term adjustment is **DISMISSED**.

The above-identified application matured into U.S. Patent No. 7,994,159 on August 9, 2011. The patent issued with a patent term adjustment of 1,222 days. The instant application for patent term adjustment was timely filed October 7, 2011.

Patentee assert that the patent is subject to an additional patent term reduction of 58 days in connection with the supplemental reply filed March 9, 2011 pursuant to 37 CFR 1.704(c)(8).

With respect to the request for a reduction of 58 days in connection with the supplemental reply filed March 9, 2011, patentees' arguments have been carefully considered, but are hereby DISMISSED AS UNTIMELY.

Patentees are advised that any request for reconsideration under 37 CFR 1.705(d) that raises issues that were raised, or could have been raised, in an application for patent term adjustment under 37 CFR 1.705(b) shall be dismissed as untimely as to those issues. As applicant delay contested by patentees could have been raised under 37 CFR 1.705(b), patentees' request for reconsideration of said reduction is dismissed as untimely. In this regard, while not required to do so, patentee is not precluded from filing a terminal disclaimer disclaiming any period considered in excess of the appropriate patent term adjustment.

Patentees also dispute the 684 days accorded pursuant to 37 CFR 1.703(b). Patentees assert that the period beginning on March 11, 2007 (the day after the date that is three years after the date on which the application was filed), and ending August 9, 2011 (the date the patent was issued), is 1,613 days in length. With respect to the request for continued examination filed on June 23, 2009, patentees assert that the Director erred in subtracting from "B Delay" a period of time that was not "consumed by continued examination of the application. Patentees argue that no continued examination took place during the 153 day period from March 10, 2011 (the mailing

date of the Notice of Allowance), until August 9, 2011 (the date the patent was issued). Accordingly, patentees assert that the patent is entitled to an additional 153 days of "B Delay."

Patentees' arguments have been considered, but not found persuasive.

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.

Thus, 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, No. 07-1492, 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 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)[1]. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. *Websters Collegiate Dictionary*, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

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

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

[1] 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.

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[2] 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).

Accordingly, in the instant matter, the period of adjustment under § 1.702(b) is 684 days, the period from June 23, 2009, the date that the RCE was filed, to August 9, 2011, the date that the patent issued, being excluded from the period of adjustment under 37 CFR 1.702(b).

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) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

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[2] 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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OFFICE OF PETITIONS

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

In re Patent No. 7,682,553 :
Wang et al. : DECISION ON REQUEST FOR
Issue Date: March 23, 2010 : RECONSIDERATION OF
Application No. 10/797,996 : PATENT TERM ADJUSTMENT
Filed: March 11, 2004 : AND NOTICE OF INTENT
Attorney Docket No. S63.2-1782-US02 : TO ISSUE CERTIFICATE OF CORRECTION
Title: BALLOON STRUCTURE WITH PTFE COMPONENT :

This is a decision on the petition filed on June 23, 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 eight (1,708) days. This petition was filed within one month of the decision by the Office mailed on June 2, 2010.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand seven hundred eight (1,708) days is **GRANTED.**

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand seven hundred eight (1,708)** days.

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

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,682,553 B2

DATED : **March 23, 2010** **DRAFT**

INVENTOR(S) : Wang 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 1533 days

Delete the phrase "by 1533 days" and insert – by 1708 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

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ROBERT C. CURFISS
JACKSON WALKER L.L.P.
SUITE 2100
112 E. PECAN
SAN ANTONIO TX 78205

MAILED
FEB 27 2012
OFFICE OF PETITIONS

In re Patent No. 7,279,196 :
Issue Date: October 9, 2007 :
Application No. 10/798,190 : ON PETITION
Filed: March 11, 2004 :
Attorney Docket No. P-121896.0002.032 :

This is a decision on the petition under 37 CFR 1.378(c), filed December 5, 2011, 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, 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:

ROBERT C. CURFISS
19826 SUNDANCE DRIVE
HUMBLE, TX 77346

UNITED STATES PATENT AND TRADEMARK OFFICE

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FISH & RICHARDSON P.C. (TC)
PO BOX 1022
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MAILED
JUL 29 2011
OFFICE OF PETITIONS

In re Patent No. 7,930,207	:
MERRIMAN et al.	: DECISION ON REQUEST FOR
Issue Date: April 19, 2011	: RECONSIDERATION OF
Application No. 10/798,340	: PATENT TERM ADJUSTMENT
Filed: March 12, 2004	: AND NOTICE OF INTENT TO
Attorney Docket No. 16113-1341007	: ISSUE CERTIFICATE OF CORRECTION
Title: METHOD OF DELIVERY, TARGETING, AND MEASURING ADVERTISING OVER NETWORKS	:

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 sixty-seven (367) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.** The term of the above-identified patent is extended or adjusted by **forty-three (43) days**.

BACKGROUND

On April 19, 2011, the above-identified application matured into U.S. Patent No. 7,930,207, with a revised patent term adjustment of 49 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 367.

Initially, Patentee discloses that a period of reduction of 6 days under 37 CFR 1.704(c)(8) should be entered for the filing of a supplemental reply in the form of an IDS on May 27, 2010 after the filing of a proper reply on May 21, 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 May 27, 2010, reveals that applicants did not include a statement under 37 CFR 1.704(d). Accordingly, a period of reduction of 6 days is merited and will be entered. The Office thanks Patentee for this disclosure.

Next, 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." Patentee argues that (after the filing of the request for continued examination) the Office mailed a Notice of Allowance on December 1, 2010, thereby closing examination of the application on that date. Thus, Patentee argues no continued examination took place during the 140 day period from December 1, 2010 (the mailing date of the Notice of Allowance) until April 19, 2011 (the date the patent was issued). Additionally, Patentee disputes the period of time excluded from "B delay" for appellate review. Patentee argues that no appellate review by the Board of Patent Appeals and Interference occurred after the filing of the notice of appeals on December 4, 2006 and March 3, 2009, and thus, no reduction of "B Delay" is provided for by 35 U.S.C. 154(b)(1)(B). Accordingly, Patentee maintains that the "B delay" should be increased from 530 to 861 days. Patentee concludes that the correct patent term adjustment is 367 days (the sum of 7 days of "A delay" and 861 days of "B delay" minus 7 days of overlap between "A delay" and "B delay" - 494 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) based on the application having been filed under 35 U.S.C. 111(a) on

March 12, 2004, and the patent not having issued as of the day after the three year date, March 13, 2007, and a request for continued examination under 132(b) having been filed on July 2, 2009. In other words, the 140-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." Furthermore, the 191-day period beginning on the date of the filing of the first notice of appeal on December 4, 2006 and ending on the date of the mailing of the nonfinal Office action on June 12, 2007, as well as the 121-day period beginning on the date of the filing of the second notice of appeal on March 3, 2009 and ending on July 1, 2009, the day before the filing of the RCE, were considered time consumed by appellate review and were also 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 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

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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.

international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

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

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)-

[2] Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

(ii), including any time consumed by the filing of a request for continued examination.

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

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

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is

rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application").

Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

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

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

has been mailed. In fact, the request for examination procedures[3] permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

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

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

In this instance, a request for continued examination was filed on July 2, 2009, 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 July 2, 2009, and ending on April 19, 2011, is not included in calculating Office delay.

Moreover, 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

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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.

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 312 days, beginning on December 4, 2006, the date of filing of first the notice of appeal and ending on June 12, 2007, the subsequent date of the mailing of a nonfinal Office action, as well as beginning on March 3, 2009, the date of filing of second the notice of appeal and ending on July 1, 2009, the day before the filing of the RCE. Thus, "B delay" is 530 (842 - 312) days.

CONCLUSION

Accordingly, the patent term adjustment is 43 days (7 days of "A delay" + 530 days of "B delay" - 0 days of overlap - 494 day of applicant delay).

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

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

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **forty-three (43) 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

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,930,207 B2

DATED : Apr. 19, 2011

INVENTOR(S) : Merriman 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 (49) days.

Delete the phrase "by 49 days" and insert – by 43 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

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OCT 06 2010

OFFICE OF PETITIONS

KRAMER & AMADO, P.C.
1725 Duke Street, Suite 240
Alexandria VA 22314

In re Patent No. 7,590,072	:	DECISION ON REQUEST FOR
Radi et al.	:	RECONSIDERATION OF
Issue Date: September 15, 2009	:	PATENT TERM ADJUSTMENT AND
Application No. 10/798,412	:	NOTICE OF INTENT TO ISSUE
Filed: March 12, 2004	:	CERTIFICATE OF CORRECTION
Attorney Docket No. ALC 3120	:	

This is in response to the Reply To Decision Dismissing Request for Recalculation of PTA in View of Wyeth, filed May 20, 2010, which is being treated as a petition 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 term of the above-identified patent is extended or adjusted by **one thousand one hundred forty-six (1146) days.**

After further review, the Office concludes that the A Delay is 812 days and applicant delay is 5 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 March 13, 2007, and ends on July 6, 2008, the day before the RCE was filed, and is 482 days. See 35 U.S.C. 154(b)(1)(B)(i). However, the A Delay and B Delay overlap by 143 days, beginning on March 13, 2007 and ending on August 2, 2007. See 35 USC 154(b)(2)(A).

Accordingly, the patent term adjustment is 1146 days (812 days of A delay + 482 days of B delay - 143 days of overlap - 5 applicant delay).

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

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

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand one hundred forty-six (1146) days.**

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

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT: 7,590,072 B2

DATED: Sep. 15, 2009 **DRAFT**

INVENTOR(S): Radi 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 807 days

Delete the phrase "by 807 days" and insert – by 1146 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

In re Patent No. 7047680
Issue Date: May 23,2006
Application No. 10798501
Filed: March 12,2004
Attorney Docket No. DFT 1932

:
: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)
7047680	2006-05-23	10/798,501	2004-03-12	DET1932

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	Fee	Code	Small Entity	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

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.

A Joint Patentee and I certify that I am authorized to sign this submission on behalf of all the other patentees			
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 Myles/	Date (YYYY-MM-DD)	2011-01-06
Name	David Myles		

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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COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
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CUMMINS-ALLISON CORP.
C/O NIXON PEABODY LLP
300 S. Riverside Plaza
16th Floor
CHICAGO IL 60606

MAILED

SEP 27 2010

OFFICE OF PETITIONS

In re Patent No. 7,743,902 :
Issued: June 29, 2010 :
Application No. 10/798,669 : PATENT TERM ADJUSTMENT
Filing or 371(c) Date: March 11, 2004 :
Dkt. No.: 47171-00426USP1 :

This is a decision on the petition filed August 27, 2010 requesting that the patent term adjustment for the above-identified patent be increased from 1284 days to 1754 days. This matter is being properly treated pursuant to 37 CFR 1.705(d).

The petition is hereby **DISMISSED**.

The above-identified application matured into U.S. Pat. No. 7,743,902 on June 29, 2010. The patent issued with 1284 days of patent term adjustment. The instant request under 37 CFR 1.705(d) is timely filed. Patentee argues that the adjustment pursuant to 37 CFR 1.703(b) is 984 days (1206 days – 222 overlapping days).

The petition has been carefully considered, but is not persuasive.

The period of adjustment pursuant to 37 CFR 1.703(b) totals 1206 days. However, pursuant to 37 CFR 1.703(b)(4), any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court is not included in the period of adjustment pursuant to 37 CFR 1.702(b). Thus, in accordance with 37 CFR 1.703(b)(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. 45, 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.

Accordingly, the period of adjustment pursuant to 37 CFR 1. 702(b) and 1.703(b) does not include the period of time that accrued during the appeal periods (August 15, 2007 to July 24, 2008 and March 6, 2009 to February17, 2010).

In view thereof, no adjustment to the patent term will be made.

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

Receipt is hereby acknowledged of the $200.00 fee required per 37 CFR 1.18(e).

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

/ALESIA M. BROWN/

Alesia M. Brown
Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 1/24/11

TO SPE OF : ART UNIT 2178

SUBJECT : Request for Certificate of Correction for Appl. No.: 10799740 Patent No.: 7373592

CofC mailroom date:
01/11/11

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Certificates of Correction Branch
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 error is not in Column 1. The examiner will make the necessary correction.

Doug Hutton
SPE, Art Unit 2176

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SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. BOX 2938
MINNEAPOLIS MN 55402

MAILED

MAY 27 2011

OFFICE OF PETITIONS

In re Application of	:	
Vipul V. Prakash	:	
Application No. 10/799,860	:	DECISION GRANTING PETITION
Filed: March 12, 2004	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 2710.007US1	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed May 26, 2011, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on April 21, 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 2445 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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HAVERSTOCK & OWENS LLP
162 NORTH WOLFE ROAD
SUNNYVALE CA 94086

MAILED

JAN 13 2011

OFFICE OF PETITIONS

In re Application of :
WAIGHT et al. :
Application No. 10/799,900 : DECISION GRANTING PETITION
Filed: 03/12/2004 : UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. MAXIM-01600 :

This is a decision on the renewed petition under 37 CFR 1.78(a)(6), filed November 30, 2010, to accept an unintentionally delayed claim under 35 U.S.C. 119(e) for the benefit of prior-filed provisional Application No. 60/460,495, filed April 3, 2003.

The petition is **GRANTED**.

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

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

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

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

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

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

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

The application is being forwarded to Technology Center AU 2618 for consideration by the examiner of the claim under 35 U.S.C. 119(e) for the benefit of priority to the prior-filed provisional application.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
10/799,900	03/12/2004	2618	1402	MAXIM-01600	36	7

CONFIRMATION NO. 8303

79206
HAVERSTOCK & OWENS LLP
162 NORTH WOLFE ROAD
SUNNYVALE, CA 94086

CORRECTED FILING RECEIPT

Date Mailed: 01/12/2011

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)

Matthew Waight, Pipersville, PA;
James Marsh, Sherwood, OR;
Howard Luong, Renton, WA;

Power of Attorney: The patent practitioners associated with Customer Number 79206

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/460,495 04/03/2003

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: 05/28/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/799,900**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Electronically tuned agile integrated bandpass filter

Preliminary Class

455

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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JONES, WALKER WAECHTER, POITEVENT CARRERE,
DENEGRE, LLP
5TH FLOOR, FOUR UNTIED PLAZA
8555 UNITED PLAZA BOULEVARD
BATON ROUGE, LA 70809

MAILED
AUG 24 2010
OFFICE OF PETITIONS

In re Patent No. 7,007,445
Issue Date: March 7, 2006
Application No. 10/799,968
Filed: March 10, 2004
Attorney Docket No. 43304/120007-04

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.182, filed June 22, 2010, requesting issuance of a duplicate Letters Patent for the above-identified patent.

The petition is **GRANTED**.

The Publishing Division is directed to issue a duplicate Letters Patent.

As authorized, the $400 fee for the petition under 37 CFR 1.182 has been assessed to petitioner's deposit account.

Telephone inquiries concerning this decision may be directed to April M. Wise at (571) 272-1642. Inquiries regarding the issuance of a duplicate Letters Patent may be directed to Niomi P. Farmer in the Office of Data Management (703) 756-1556.

A copy of this decision is being faxed to the Office of Data Management for issuance of a duplicate Letters Patent.

Carl Friedman
Petitions Examiner
Office of Petitions

cc: Niomi P Farmer, Randolph Square 9th Floor, Room D30-B (Fax No. (571) 270-9937)

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)
7083293	2006-08-01	10800194	2004-03-12	04-0033-02

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

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.

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	/George R. Reardon/	Date (YYYY-MM-DD)	2012-02-06
Name	George R. Reardon	Registration Number	53505

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. 7083293
Issue Date: August 1,2006
Application No. 10800194
Filed: March 12,2004
Attorney Docket No. 04-0033-02

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

This is a decision on the electronic petition, filed February 6,2012 ,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 6,2012 . 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.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11/1/10

TO SPE OF : ART UNIT 2156

SUBJECT : Request for Certificate of Correction for Appl. N 10/800315.-Pt. 7487149

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: _____

Pierre Vital/ 2156

SPE Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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PORTER WRIGHT MORRIS & ARTHUR, LLP
INTELLECTUAL PROPERTY GROUP
41 SOUTH HIGH STREET
28TH FLOOR
COLUMBUS OH 43215

MAILED

APR 18 2011

OFFICE OF
DATA MANAGEMENT

In re Application of :
Ting He, et al :
Application No. 10800553 :
Filed: 03/15/2004 :
Attorney Docket No. **3994994-149832** :

DECISION ON PETITION

This is a decision on the Renewed Petition to Withdraw Holding of Abandonment under 37 C.F.R 1.181 in Response to Decision mailed 7/19/2010, Request for Reconsideration, received in the United States Patent and Trademark Office (USPTO) August 31, 2010.

The petition is **DISMISSED**.

The application was held abandoned for failure to timely corrected drawings as required by the Notice of Allowability mailed June 10, 2009 which set forth a three (3) month statutory period for reply. The Notice of Abandonment was mailed on October 14, 2009.

Petitioner contends that drawings submitted on April 30, 2009, prior to the requirement made in the Notice of Allowability, met the sufficiency of reply for the corrected drawing requirement set out in the Notice of Allowablity, in that the drawings submitted on April 30, 2009 contained a number identifying the columnar structure maintaining substrate electrode 46. It appears that petitioner seems to be asserting that the requirement set in the Notice of Allowability was not responded to because petitioner deemed it to be an erroneous requirement.

If it was in fact an erroneous requirement the Office may be able to act favorably towards the applicant. Therefore, the examiner was asked to review the requirement made in the Notice of Allowability and state if the requirement was in error. Specifically, the examiner was asked if the drawings submitted on April 30, 2009 did contain the required number identifying the columnar structure maintaining substrate electrode 46. The examiner replied that the April 30, 2009 drawings did not contain the required correction and the requirement was not made in error.

In view of the foregoing, the holding of abandonment for failure to timely submit corrected drawings can not be withdrawn and the application remains in an abandoned status.

Applicant may seek relief by filing a petition for Revival of Abandoned Application under CFR § 1.137 (a) or (b). (Forms are available at USPTO website http://www.uspto.gov)

Under 37 CFR 1.137(a), a petition for the revival of an unavoidable abandoned application
Under 37 CFR 1.137(b), a petition for the revival of an unintentionally abandoned application

Further inquires with respect to filing a petition under 37 CFR § 1.137 may be directed to the Office of Petitions at 571-272-3282 or addressed as follows:

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

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

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

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

Kimberly Terrell, Manager
Office of Data Management
Publications Branch

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

PTO/SB/131 (02-10)
Approved for use through 07/31/2010. OMB 0651-0020
U.S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE
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REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

Attorney Docket Number: 32210.326.3	
Application Number: 10/800,577	Filing Date (or 371(b) or (f) Date): 03/15/2004
Patent Number: 7,713,571	Issue Date: 5/11/2010
First Named Inventor: Marc TILLIS	
Title: EGG NUGGETS	

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 F Dolan/	Date 08/20/2010
Name (Print/Typed) John F. Dolan	Registration Number 45382

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 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.

PTO/SB/131 (02-10)
Approved for use through 07/31/2010. OMB 0651-0020
U.S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE
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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
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
www.uspto.gov

INTELLECTUAL PROPERTY GROUP
FREDRIKSON & BYRON, P.A.
200 SOUTH SIXTH STREET, SUITE 4000
MINNEAPOLIS, MN 55402

Mail Date: 08/31/2010

Applicant	: Marc Tillis	: DECISION ON REQUEST FOR
Patent Number	: 7713571	: RECALCULATION of PATENT
Issue Date	: 05/11/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/800,577	: OF WYETH
Filed	: 03/15/2004	:
		:

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

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

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

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

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

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

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

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

or

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO PC
ONE FINANCIAL CENTER
BOSTON, MA 02111

MAILED

DEC 0 2 2010

OFFICE OF PETITIONS

In re Application of :
Aaron Q. Johnson, et al. :
Application No. 10/800,742 : ON PETITION
Filed: March 16, 2004 :
Attorney Docket No.: 27683-011 :

This is a decision in response to the Petition to Withdraw Erroneously-Issued Notice of Abandonment Under 37 CFR 1.181(a), filed October 12, 2010.

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.

The petition is **GRANTED**.

This application was held abandoned as a result of a 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). A Notice of Abandonment was mailed on September 28, 2010.

In response, on August 26, 2010, the present petition was filed, wherein petitioner requests that the abandonment be withdrawn. Petitioner explains that the Notice of Abandonment was mailed prematurely, since extensions of time were available through October 12, 2010.

A review of the written record discloses that petitioner is correct. A Notice of Appeal, with an appropriate 3-month extension of time, was filed on March 12, 2010 in response to a Final Office action mailed September 14, 2009. Accordingly, a response was due on or before May 12, 2010, with extensions of time available to the maximum period for response of October 12, 2010. Consequently, the Notice of Abandonment mailed September 28, 2010 was premature, and is hereby vacated.

The holding of abandonment is hereby withdrawn and the application is restored to pending status, in view of the timely response in the form of a Request for Continued Examination (RCE) under 37 CFR 1.114 on October 12, 2010.

Accordingly, the application is being referred to Technology Center AU 2445 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

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

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: BRAD P. HOPKINS
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.
CHRYSLER CENTER
666 THIRD AVENUE, 24TH FLOOR
NEW YORK, NY 10017

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P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

9/7/2010

Patent No. :7760891
Ser. No. :10/800848
Inventor(s) :David K. Biegelsen
Issued :7/20/10
Title :FOCUSED HYPERSONIC COMMUNICATION
Docket No. :

Re: Request for Certificate of Correction

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

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

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

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

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

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

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

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

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

By fax: (703) 872-9306
ATTN: Office of Petitions

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

A certificate of correction will be issued to correct the remaining errors noted in your request.

Henry Randall
Decisions & Certificates
of Correction Branch
(703) 756-1571

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

HR

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. BOX 320850
ALEXANDRIA VA 22320-4850

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OCT 25 2010

OFFICE OF PETITIONS

In re Patent No. 7,760,891 :
Issue Date: July 20, 2010 :
Application No. 10/800,848 : DECISION ON PETITION
Filed: March 16, 2004 :
Attorney Docket No. 117364 :

This is a decision on the Petition Under Of 37 C.F.R. §3.81 and Second Request For Certificate Of Correction Under Rule 323, filed September 14, 2010, requesting correction on the Title Page of the subject patent to identify the correct assignee's name and residence. A completed Certificate of Correction Form (PTO/SB/44) was submitted with Petition.

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

Petitioner urges that the present Petition was submitted to correct the assignee's name and residence 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:

"Xerox Corporation, Norwalk, CT (US)"

to:

--Palo Alto Research Center Incorporated, Palo Alto, CA (US) --

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter.

The requisite $100.00 fee (Fee Code 1811), as set forth under 37 CFR 1.20(a), and the requisite $130.00 processing fee (Fee Code 1464), as set forth under 37 CFR 1.17(i), have been submitted. Further, Office assignment records are consistent with the requested correction. Accordingly, since the Petition complies with the provisions of 37 CFR 3.81(b), it is appropriate for the Office to issue a Certificate of Correction in accordance with the content of the Form PTO/SB/44 submitted with the Petition.

Inquiries related this communication should be directed to the undersigned at (571)272-3213.

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (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. 7,760,891.

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
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BARNES & THORNBURG LLP
P.O. Box 2786
CHICAGO IL 60690-2786

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FEB 28 2011

OFFICE OF PETITIONS

In re Application of :
Jack K. Zhang et al. :
Application No. 10/800,884 : DECISION ON PETITION
Filed: March 15, 2004 :
Attorney Docket No. **52579-113195** :

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 reply in a timely manner to the non-final Office action mailed, February 09, 2009, which set a shortened statutory period for reply of three (3) months. Accordingly, the application became abandoned on May 10, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1620, and (3) a proper statement of unintentional delay. Accordingly, the reply to the non-final Office action of February 09, 2009 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at (571) 272-2783.

This application is being referred to Technology Center AU 2617 for appropriate action on the concurrently filed amendment.

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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Warsaw Orthopedic, Inc.
Noreen Johnson - IP Legal Department
2600 Sofamor Danek Drive
Memphis TN 38132

MAILED

AUG 30 2010

OFFICE OF PETITIONS

In re Application of :
William Sears, et al. :
Application No. 10/800,909 : DECISION ON PETITION
Filed: March 15, 2004 :
Attorney Docket No. 31132.240 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 21, 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 June 23, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed March 23, 2010. Accordingly, the date of abandonment of this application is June 24, 2010. The Notice of Abandonment was mailed July 12, 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 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 the Office of Data Management for processing into a patent.

Terri Johnson
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)
7,281,559	2007-10-16	10/800,951	2004-03-15	PRKR-4700

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

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.

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	/Philip A. Girard, Reg. No. 28,848//	Date (YYYY-MM-DD)	2011-12-27
Name	Philip A. Girard	Registration Number	28848

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. 7281559
Issue Date: October 16,2007
Application No. 10800951
Filed: March 15,2004
Attorney Docket No. PRKR-4700

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed December 27,2011 ,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 December 27,2011 . 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

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KILPATRICK STOCKTON LLP
1001 WEST FOURTH STREET
WINSTON-SALEM NC 27101

MAILED

AUG 27 2010

OFFICE OF PETITIONS

In re Application of :
DiFrancesco, et al. :
Application No. 10/801,140 : ON APPLICATION FOR
Filed: March 12, 2004 : PATENT TERM ADJUSTMENT
Atty Docket No. 54673-297873 :

This is in response to the Petition Regarding Patent Term Adjustment (PTA) Indicated in Notice of Allowance, filed July 1, 2010. The petition will be treated under 37 CFR 1.705(b). Applicants submit that the correct patent term adjustment to be indicated on the patent is one thousand one hundred two (1102) days, not four hundred ninety-four (494) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentees are entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). This is true even where a request for continued examination (RCE) was filed. The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As

such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent or even the filing date of the request for continued examination is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicants must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

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

---

[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110131

DATE : October 25, 2010

TO SPE OF : ART UNIT 1646

SUBJECT : Request for Certificate of Correction on Patent No.: 7790153

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:

/GARY B NICKOL/
Supervisory Patent Examiner.Art Unit 1646

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DINSMORE & SHOHL LLP
1900 CHEMED CENTER
255 EAST FIFTH STREET
CINCINNATI OH 45202

MAILED

AUG 10 2010

OFFICE OF PETITIONS

In re Application of :
Thomas TERWEE :
Application No. 10/801,353 : DECISION ON PETITION
Filed: March 16, 2004 :
Attorney Docket No. **24793-24** :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 18, 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, January 04, 2007, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on April 05, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1620, and (3) a proper statement of unintentional delay. Accordingly, the response to the non-final office action of January 04, 2007, 2007 is accepted as having been unintentionally delayed.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand 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 Tredelle Jackson at (571) 272-2783.

This application is being referred to Technology Center AU 3738 for appropriate action on the concurrently filed amendment.

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

cc: **DAVID WEBER**
ADVANCED MEDICAL OPTICS
1700 E. ST. ANDREW PLACE
SANTA ANA CA 92705

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JUN 14 2011

OFFICE OF PETITIONS

ABBOTT MEDICAL OPTICS, INC.
1700 E. ST. ANDREW PLACE
SANTA ANA CA 92705

In re Application of :
Thomas Terwee :
Application No. 10/801,353 : ON PETITION
Filed: March 16, 2004 :
Attorney Docket No. **52602** :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 2, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to submit formal drawings in a timely manner in reply to the Notice of Allowability, mailed February 7, 2011, which set a period for reply of three (3) months. Accordingly, this application became abandoned on May 8, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of corrected formal drawings , (2) the petition fee of $1,620; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to JoAnne Burke at 571-272-4584

This application is being referred to the Office of Data Management for appropriate action in the normal course of business on the reply received.

JoAnne Burke
Petitions Examiner
Office of Petitions

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AUG 25 2010

OFFICE OF PETITIONS

THE NATH LAW GROUP
112 SOUTH WEST STREET
ALEXANDRIA VA 22314

In re Patent No. 7,324,173 :
Application No. 10/801,688 :
Filed: March 17, 2004 : ON PETITION
Issued: January 29, 2008 :
Attorney Docket No. 82802 :

This is a decision on the petition filed March 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**.

This matter is being referred to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-7751. Inquiries regarding the certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

Joan Olszewski
Petitions Examiner
Office of Petitions

[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

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SEP 24 2010

OFFICE OF PETITIONS

Christopher C. Winslade
McAndrews, Held & Malloy
Suite 3400
500 W. Madison Street
Chicago IL 60661

In re Application of :
CATREUX et al. :
Application No. 10/801,930 : ON APPLICATION FOR
Filed: 03/16/2004 : PATENT TERM ADJUSTMENT
Attorney Docket No. 16136US02 :

This is in response to the petition under 37 CFR 1.705(b) filed August 12, 2010. Applicants submit that the correct patent term adjustment to be indicated on the patent is 1434 days, not 492 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants seek this correction solely on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within three years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentees are entitled to for Office failure to issue the patent within three years. See 37 CFR 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under 37 CFR 1.702(a)(4) or applicant delay under 37 CFR

1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office cannot make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss such a request as premature.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicants must timely file an application for patent term adjustment prior to the payment of the issue fee.[1]

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

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[1] For example, if applicants dispute both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed, and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicants must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the § 1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within two months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3211.

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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Christopher C. Winslade
McAndrews, Held & Malloy
Suite 3400
500 W. Madison Street
Chicago IL 60661

MAILED
APR 11 2011
OFFICE OF PETITIONS

In re Application of	:	
Catreau et al.	:	
Patent Number: 7,822,140	:	DECISION ON APPLICATION
Issue Date: 10/26/2010	:	FOR RECONSIDERATION OF
Application No. 10/801930	:	PATENT TERM ADJUSTMENT
Filing or 371(c) Date: 03/16/2004	:	
Attorney Docket Number: 16136US02	:	

This is a decision on the petition filed on December 22, 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 thirty-four (1434) 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-four (1434) days is **DISMISSED**.

Applicants request 1434 days 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), March 17, 2007, and ending on the day the date a Request for Continued Examination ("RCE"), was filed, November 30, 2009.

As to the "B" delay, the period is 866 days, not 989 days. This period begins 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), and ends on November 29, 2009, the day before the RCE was filed, and is 989 days, but does not include the number of days *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, July 30, 2009, and ending on the day before the RCE was filed, November 29, 2009, or 123 days. See, 35 U.S.C. 154(b)(1)(B)(ii)[1]. Thus, the "B" delay period is 866 days (989 days – 123 days), not 989 days[2].

[1] Petitioner avers that the subtraction from the three-year guarantee for an RCE, which is based upon 35 U.S.C. § 154(b)(1)(B)(i), and the subtraction from the three-year guarantee for an appeal, which is based upon 35 U.S.C. §

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) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

154(b)(1)(B)(ii), are not calculated using the same method of computation. However, as calculated *supra*, both the filing date of the RCE and the filing date of the Notice of Appeal are counted as day 1 of reduction of PTA.

[2] The Office notes that where a request for continued examination ("RCE"), has been filed, the period of appeal is only reduced if such appeal period occurred prior to the filing of the RCE. If no RCE has been filed, the period of appeal is reduced if it occurs at anytime during the pendency of application.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,951	03/17/2004	William F. DeGrado	1694.0630003	2895

26111 7590 05/20/2011
STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

EXAMINER	
CHONG, YONG SOO	
ART UNIT	PAPER NUMBER
1627	

MAIL DATE	DELIVERY MODE
05/20/2011	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

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM F. DEGRADO, GREGORY N. TEW, MICHAEL L. KLEIN, DAHUI LIU, JING YUAN, and SUNGWOOK CHOI

Appeal 2010-005832
Application 10/801,951
Technology Center 1600

Before JAMES T. MOORE, Vice Chief Administrative Patent Judge.

ORDER GRANTING PETITION

BACKGROUND

On May 9, 2011 the Board ordered further briefing under the provisions of 37 CFR § 41.50(d). On May 19, 2011, Appellants filed a petition to the Chief Judge requesting a two-week extension of time to file a response to the order.

DISCUSSION

Given the complexity of the issues raised in the Board's sua sponte order, the request for an extension of two weeks is deemed reasonable. Accordingly, the Petition is hereby GRANTED.

ORDER

On or before June 20, 2011, Appellants shall file a brief addressing the two issues discussed in the Board's order of May 9, 2011. See 37 CFR § 41.50(d).

PETITION GRANTED

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INTELLECTUAL PROPERTY DEPARTMENT
100 BOSCH BOULEVARD
NEW BERN NC 28562

MAILED

JUN 21 2011

OFFICE OF PETITIONS

In re Application of :
Rainer Brachert et al. :
Application No. 10/801,955 :
Filed: March 15, 2004 :
Attorney Docket No. 2001P14040WOUS :

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 8, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Office action under Ex parte Quayle, 1935 Dec. Comm'r Pat. 11 (1935), mailed July 14, 2005, which set a shortened statutory period for reply of two (2) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on September 15, 2005. A Notice of Abandonment was mailed on January 25, 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 $1,620 and (3) a proper statement of unintentional delay. Accordingly, the amendment is accepted as being unintentionally delayed.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

This application is being referred to Technology Center AU 3744 for appropriate action by the Examiner in the normal course of business on the reply received June 8, 2011.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,014	03/16/2004	Razieh Roufoogaran	BP3274	2733

51472 7590 11/22/2011
GARLICK HARRISON & MARKISON
P.O. BOX 160727
AUSTIN, TX 78716-0727

EXAMINER	
TRAN, PABLO N	

ART UNIT	PAPER NUMBER
2618	

NOTIFICATION DATE	DELIVERY MODE
11/22/2011	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):

MMURDOCK@TEXASPATENTS.COM
GHMDocketing@cpaglobal.com
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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

GARLICK HARRISON & MARKISON
P.O. BOX 160727
AUSTIN TX 78716-0727

In re Application of:
ROUFOOGARAN, RAZIEH, et al.
Application Serial No.: 10/802,014
Filed: March 16, 2004
For: **RADIO FRONT END AND APPLICATIONS THEREOF**

DECISION
ON PETITION

This is a decision on the petition from requirement for restriction filed April 12, 2007.

The restriction requirement was effectively withdrawn by the issuance of a new restriction requirement in the Office action mailed September 1, 2011. The new restriction requirement resulted in an election without traverse by applicant in the response of October 3, 2011.

Consequently, the petition is **DISMISSED AS MOOT.**

Any inconvenience caused petitioner do to the delay in treating the petition is regretted.

/Kenneth A. Wieder/

Kenneth A. Wieder
Quality Assurance Specialist
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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In re Patent No. 7015615
Issue Date: March 21,2006
Application No. 10802054
Filed: March 17,2004
Attorney Docket No. L1081.04102

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed January 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 January 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)
7,015,615	2006-03-21	10/802,054	2004-03-17	

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

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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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 Edward Ledbetter/	Date (YYYY-MM-DD)	2011-01-11
Name	James E. Ledbetter	Registration Number	28732

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.