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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7,038,049	2006-05-02	10/852,076	2004-05-24	379887

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

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The Assignee of record of the entire interest			
Under 37 CFR 3.71 an assignee becomes of record by filing a statement in compliance with 37 CFR 3.73(b). Signature requirements are set forth in 37 CFR 1.4(d), and the undersigned certifies that he / she is empowered to act on behalf of the assignee of the entire interest			
Signature	/ Fatih M. Uckun /	Date (YYYY-MM-DD)	2011-09-19
Name	Fatih M. Uckun		
Enter Reel and Frame Number		Remove	
Reel Number	022773	Frame Number	0477
Click ADD for additional Reel Number and Frame Number		Add	

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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In re Patent No. 7038049
Issue Date: May 2,2006
Application No. 10852076
Filed: May 24,2004
Attorney Docket No. 12152.0054USC4

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

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

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3M INNOVATIVE PROPERTIES COMPANY
PO BOX 33427
ST. PAUL, MN 55133-3427

MAILED

MAR 11 2011

OFFICE OF PETITIONS

In re Application of :
Ranjani V. Parthasarathy, et al. :
Application No. 10/852,085 : DECISION GRANTING PETITION
Filed: May 24, 2004 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 59801US002 :

This is a decision on the petition under 37 CFR 1.313(c)(2), filed March 9, 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 22, 2011 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 1637 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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Bingham McCutchen LLP
2020 K Street, NW
Washington DC 20006

MAILED

SEP 29 2010

OFFICE OF PETITIONS

In re Application of :
HAARALA et al. : DECISION ON PETITION
Application No. 10/852,247 :
Filed: 05/24/2004 :
Attorney Docket No. 706218-3001 :

This is a decision on the petition under 37 CFR 1.137(b), filed April 12, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to pay the issue and publication fees as required by the Notice of Allowance and Fee(s) Due mailed on August 28, 2009, which set a three (3) month statutory period for reply. A Notice of Abandonment was mailed on December 11, 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 and publication fee, (2) the petition fee, and (3) a proper statement of unintentional delay.

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

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

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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BACON & THOMAS, PLLC
625 SLATERS LANE
FOURTH FLOOR
ALEXANDRIA, VA 22314-1176

Mail Date: 08/02/2010

Applicant	: Jen-Shun Yang	: DECISION ON REQUEST FOR
Patent Number	: 7649896	: RECALCULATION of PATENT
Issue Date	: 01/19/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/852,269	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/25/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1639** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Matheson Keys Garsson &
Kordzik PLLC
7004 Bee Cave Rd.
Bldg. 1, Suite 110
Austin TX 78746

MAILED

JAN 11 2011

OFFICE OF PETITIONS

In re Application of :
Eastwood, et al. :
Application No. 10/852,336 : ON APPLICATION FOR
Filed: May 24, 2004 : PATENT TERM ADJUSTMENT
Atty Docket No. 21546-0027001 :

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT, filed September 22, 2010. The petition will be treated under 37 C.F.R. § 1.705(b). Applicants submit that the patent term adjustment to be indicated on the patent is one thousand four hundred seventy-six (1476) days, not one thousand one hundred eighty-six (1186) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment.

The request for reconsideration of patent term adjustment is **DISMISSED** because the petition was not accompanied by the $200.00 fee set forth in 37 CFR 1.18(e). The person who submitted the petition is not an authorized user of the deposit account. The merits of the petition will not be addressed until the $200.00 fee set forth in 37 CFR 1.18(e) is submitted.

Applicants are given THIRTY (30) DAYS or ONE (1) MONTH, whichever is longer, from the mail date of this decision to respond to this decision. No extensions of time will be granted under § 1.136.

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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Kordzik PLLC
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Bldg. 1, Suite 110
Austin TX 78746

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FEB 28 2011

OFFICE OF PETITIONS

In re Application of :
Eastwood et al. :
Application No. 10/852,336 : ON APPLICATION FOR
Filed: May 24, 2004 : PATENT TERM ADJUSTMENT
Atty Docket No. 21546-0027001 :

This is in response to the renewed REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT, filed January 14, 2011. The petition will be treated under 37 C.F.R. § 1.705(b). Applicants submit that the patent term adjustment to be indicated on the patent is one thousand four hundred seventy-six (1476) days, not one thousand one hundred eighty-six (1186) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment.

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

On June 29, 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 1186 days. Applicants dispute the adjustment of 1110 days associated with the mailing of the restriction requirement on August 7, 2008, and instead argue a 1400 day adjustment should have been entered, pursuant to 37 CFR 1.702(a)(1).

Applicants' argument has been considered, but not found persuasive. Applicant argue the calculation should begin on October 7, 2004, the date the application was deemed "complete", and end on August 7, 2008, the date the Office mailed a restriction requirement. However, pursuant to 37 CFR 1.703(a)(1), the period of adjustment is the number of days, if

any, in the period beginning on the day after the date that is fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first. Therefore, the period of adjustment begins on July 25, 2005, the day that is after the date that is 14 months after the application was filed, and ends on August 7, 2008, the date the restriction requirement was mailed, and is 1110 days. The Office properly entered 1110 days in connection with the delay in mailing the August 7, 2008 restriction requirement and no changes to the patent term calculation will be made.

In view thereof, the determination of patent term adjustment at the time of the mailing of the notice of allowance remains 1186 days.

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).

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

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

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Bldg. 1, Suite 110
Austin TX 78746

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FEB 28 2011

OFFICE OF PETITIONS

In re Application of :
Eastwood et al. :
Application No. 10/852,336 : ON APPLICATION FOR
Filed: May 24, 2004 : PATENT TERM ADJUSTMENT
Atty Docket No. 21546-0027001 :

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT, filed January 14, 2011. The petition will be treated under 37 C.F.R. § 1.705(b). Applicants submit that the patent term adjustment to be indicated on the patent is one thousand four hundred seventy-six (1476) days, not one thousand one hundred eighty-six (1186) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment.

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

On June 29, 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 1186 days. Applicants dispute the adjustment of 1110 days associated with the mailing of the restriction requirement on August 7, 2008, and instead argue a 1400 day adjustment should have been entered, pursuant to 37 CFR 1.702(a)(1).

Applicants' argument has been considered, but not found persuasive. Applicant argue the calculation should begin on October 7, 2004, the date the application was deemed "complete", and end on August 7, 2008, the date the Office mailed a restriction requirement. However, pursuant to 37 CFR 1.702(a)(1), the period of adjustment is the number of days, if

any, in the period beginning on the day after the date that is fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first. Therefore, the period of adjustment begins on July 25, 2005, the day that is after the date that is 14 months after the application was filed, and ends on August 7, 2008, the date the restriction requirement was mailed, and is 1110 days. The Office properly entered 1110 days in connection with the delay in mailing the August 7, 2008 restriction requirement and no changes to the patent term calculation will be made.

In view thereof, the determination of patent term adjustment at the time of the mailing of the notice of allowance remains 1186 days.

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).

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

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

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

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500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED

JUN 21 2011

OFFICE OF PETITIONS

In re Application of :
Sunil Marolia et al. :
Application No. 10/852,396 : DECISION ON PETITION
Filed: May 24, 2004 :
Attorney Docket No. 15639US02 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 9, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue fee on or before September 2, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed June 2, 2010. Accordingly, the date of abandonment of this application is September 3, 2010. A Notice of Abandonment was mailed on September 15, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,510, (2) the petition fee of $1,620, and (3) a proper statement of unintentional delay. Accordingly, the issue fee 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 the Office of Data Management for further processing into a patent.

/Kimberly A. Inabinet/

Kimberly A. Inabinet
Petitions Examiner
Office of Petitions

cc: Theodore C. McCullough
Hewlett Packard Company
IP-Corporate Legal Department
1501 Page Mill Road
M/S 1197
Palo Alto, CA 94304

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CHICAGO IL 60661

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NOV 22 2011

OFFICE OF PETITIONS

In re Patent No. 7,897,449
Issue Date: July 26, 2011
Application No. 10/852,396
Filed: May 24, 2004
Attorney Docket No. 15639US02

DECISION ON PETITION

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

The petition is dismissed as inappropriate.

The instant petition was filed to obtain 1.47 status for an unsigned assignment by inventors Chia and Dinh.

The above-identified application was filed May 24, 2004 and matured into U.S. Patent No. 7,987,449 on July 26, 2011. A review of the record shows that a fully executed declaration pursuant to 37 CFR 1.63 was filed on January 18, 2005.

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

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

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

Charlema Grant
Attorney Advisor
Office of Petitions

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

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. 7028607
Issue Date: April 18,2006
Application No. 10852542
Filed: May 24,2004
Attorney Docket No. PA4687US

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

This is a decision on the electronic petition, filed February 3,2012 ,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 3,2012 . 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)
7028607	2006-04-18	10852542	2004-05-24	

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

SMALL ENTITY

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

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

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

NOT Small Entity			Small Entity		
	Fee	Code		Fee	Code
○	3 ½ year	(1551)	◉	3 ½ year	(2551)
○	7 ½ year	(1552)	○	7 ½ year	(2552)
○	11 ½ year	(1553)	○	11 ½ year	(2553)

SURCHARGE

The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition.

STATEMENT

THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

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

○ An attorney or agent registered to practice before the Patent and Trademark Office

○ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

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

◉ The assignee of record of the entire interest

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.

The Assignee of record of the entire interest			
Under 37 CFR 3.71 an assignee becomes of record by filing a statement in compliance with 37 CFR 3.73(b). Signature requirements are set forth in 37 CFR 1.4(d), and the undersigned certifies that he / she is empowered to act on behalf of the assignee of the entire interest			
Signature	/Arnold P Zweben/	Date (YYYY-MM-DD)	2012-02-03
Name	Arnold P Zweben, President, Cool Frootz, LLC		
Enter Reel and Frame Number		Remove	
Reel Number	015382	Frame Number	0277
Click ADD for additional Reel Number and Frame Number		Add	

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED
MAY 27 2011
OFFICE OF PETITIONS

KING & SPALDING, LLP
1100 LOUISIANA ST., STE. 4000
ATTN.: IP Docketing
HOUSTON TX 77002-5213

In re Patent No. 7,140,507 :
Issue Date: November 28, 2006 :
Application No. 10/852,662 : ON PETITION
Filed: May 25, 2004 :
Attorney Docket No. 2766-11 :

This is a decision on the petition under 37 CFR 1.378(c), filed March 4, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on November 29, 2010 for failure to pay the 3 ½ maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

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

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. 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 relating to this decision should be directed to Robert DeWitty, Petitions Examiner, Office of Petitions (571-272-8427).

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

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

MAILED

SEP 30 2010

OFFICE OF PETITIONS

In re Patent No. 7,206,133	:	
Issue Date: April 17, 2007	:	
Application No. 10/852,669	:	NOTICE
Filed: May 24, 2004	:	
Attorney Docket No. OPTRES.022A3	:	

This is a notice regarding your request, August 19, 2010, 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.

Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
Alexandria, VA 22313-1450
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2040 MAIN STREET
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IRVINE CA 92614

MAILED

SEP 30 2010

OFFICE OF PETITIONS

In re Patent No. 7,196,849	:	
Issue Date: March 27, 2007	:	
Application No. 10/852,679	:	NOTICE
Filed: May 24, 2004	:	
Attorney Docket No. OPTRES.002A2	:	

This is a notice regarding your request, August 19, 2010, 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.

Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

WHITHAM, CURTIS & CHRISTOFFERSON & COOK, P.C.
11491 SUNSET HILLS ROAD
SUITE 340
RESTON VA 20190

MAILED

NOV 22 2010

OFFICE OF PETITIONS

In re Application of :
Ming Xu et al. :
Application No. 10/852,683 :
Filed: May 25, 2004 :
Attorney Docket No. **01640445AA** :

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) 272-2783.

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

MAILED

JAN 17 2012

OFFICE OF PETITIONS

In re Application of :
Ferber :
Application No. 10/852,994 : DECISION ON APPLICATION
Filed: May 24, 2004 : FOR PATENT TERM ADJUSTMENT
Attorney Docket No. 21415-501DIV :

This is in response to the "Application for Adjustment of Patent Term under 37 CFR 1.705(b)" filed December 29, 2011. Applicant requests that the initial Determination of Patent Term Adjustment under 35 U.S.C. 154(b) be corrected to include applicant delay of 580 days, rather than 610 days.

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

The Office has updated the PALM and PAIR screens to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is zero (0) days. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On September 29, 2011, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment is 0 days. On December 29, 2011, applicant submitted the instant petition. Applicant maintains that the patent term adjustment indicated on the Determination of Patent Term Adjustment is incorrect insofar has the applicant delay is inaccurate.

First, applicant asserts that the Supplemental Information Disclosure Statement filed January 8, 2009, contained a statement under 37 CFR 1.704(d), and is, therefore, no reduction to the patent term adjustment under 37 CFR 1.704(c)(8) is warranted for the filing thereof. A review of the application history and of applicant's statement reveals that on May 14,

2 008, a non-final Office action was mailed, to which applicant responded on November 14, 2008. On December 8, 2008, and again on January 8, 2009, applicant filed Supplemental Information Disclosure Statements (IDS). A review of the IDS filed January 8, 2009, reveals that it contained the following statement:

> Each item of the information contained in this Supplemental Information Disclosure Statement was first cited in the Office Action for counterpart Australian Patent Application No. 2Q04236573, which was communicated to Applicants' U.S. attorneys on December 10,2008. 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.

Excerpt taken from "Supplemental Information Disclosure Statement", filed January 8, 2009, p. 1.

37 CFR 1.704(c)(8) provides that:

> (c) Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:
>
> (8) Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date the supplemental reply or other such paper was filed.

The record does not support a conclusion that the Examiner expressly requested the filing of the IDS. However, further review of the Supplemental Information Disclosure Statement filed January 8, 2009, revealed a statement that can be construed as conveying the meaning of the statement under 37 CFR

1.704(d).[1] **Accordingly, pursuant to 37 CFR 1.704(c)(8), the period of reduction of 55 days will be removed.**

On December 8, 2008, applicants submitted a supplemental reply or paper in the form of an Information Disclosure Statement (IDS) after filing a reply to the non-final Office action on November 14, 2008. The record does not support a conclusion that the examiner expressly requested the filing of the IDS. Further, a review of the IDS, filed December 8, 2008, reveals that applicant did not include a statement under 37 CFR 1.704(d).[2] Thus, applicant failed to engage in reasonable efforts to conclude prosecution of the application. Accordingly, the period of adjustment should have been reduced by 24 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 15, 2008, and ending on the date that the IDS was filed, December 8, 2008. **Accordingly, a period of reduction of 24 days is being entered.**

---

[1] 37 CFR 1.704(d) provides that:

> (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.

[2] 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.

In view thereof, the determination of the patent term adjustment at the time of the mailing of the notice of allowance is 357 days.

Further, a review of applicant's argument and the application file history reveals that **entry of a reduction to the patent term adjustment of 1 day i**s warranted for a response filed February 12, 2008, which the Office incorrectly noted as being filed February 11, 2008.

The $200.00 fee set forth under 37 CFR 1.18(e) is acknowledged.

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.

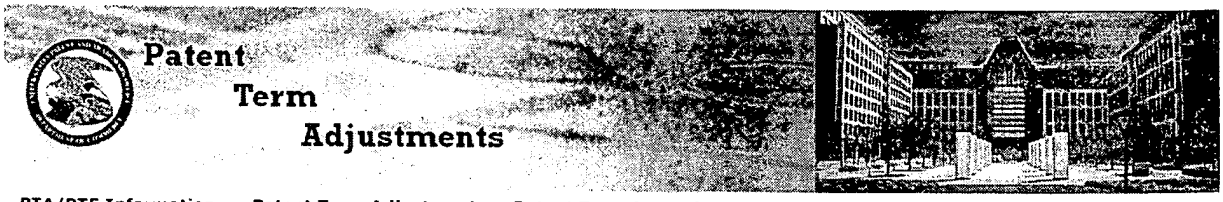
The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PALM screen



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

Application Number*: 10852994 Search | Explanation of PTA Calculation | Explanation of PTE Calculation

PTA Calculations for Application: 10852994

Application Filing Date	05/24/2004	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	541
A Delays	541	PTO Manual Adjustment	30
B Delays	0	Applicant Delay (APPL)	610
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
164	01/13/2012		P028	Adjustment of PTA Calculation by PTO	30		0
130	09/29/2011	08/15/2011	MN/=.	Mail Notice of Allowance			116
129	09/28/2011		OAR	Office Action Review			0
128	09/28/2011		OAR	Office Action Review			0
127	09/28/2011		OAR	Office Action Review			0
126	09/28/2011		IREV	Issue Revision Completed			0
125	09/28/2011		DVER	Document Verification			0
124	09/28/2011		N/=.	Notice of Allowance Data Verification Completed			0
123	09/28/2011		DOCK	Case Docketed to Examiner in GAU			0
122	09/27/2011		EX.R	Reasons for Allowance			0
121	09/27/2011		EX.A	Examiner's Amendment Communication			0
120	09/27/2011		CNTA	Allowability Notice			0
117	08/15/2011		AP.C	Request for Pre-Appeal Conference Filed			0
116	08/15/2011	05/15/2011	N/AP	Notice of Appeal Filed		92	112
115	08/15/2011		XT/G	Request for Extension of Time - Granted			0
119	04/21/2011		IDSC	Information Disclosure Statement considered			0
114	04/21/2011		M844	Information Disclosure Statement (IDS) Filed			0
113	04/21/2011		WIDS	Information Disclosure Statement (IDS) Filed			0
112	02/15/2011		MCTFR	Mail Final Rejection (PTOL - 326)			0
111	02/14/2011		CTFR	Final Rejection			0
105	11/30/2010		FWDX	Date Forwarded to Examiner			0
110	11/24/2010		IDSC	Information Disclosure Statement considered			0
107	11/24/2010	11/24/2010	M844	Information Disclosure Statement (IDS) Filed			104
106	11/24/2010		AF/D	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received			0
104	11/24/2010	11/18/2010	A...	Response after Non-Final Action		6	101
103	11/24/2010		XT/G	Request for Extension of Time - Granted			0
102	11/24/2010		WIDS	Information Disclosure Statement (IDS) Filed			0
101	08/18/2010		MCTNF	Mail Non-Final Rejection			0
109	08/16/2010		IDSC	Information Disclosure Statement considered			0
100	08/16/2010		M844	Information Disclosure Statement (IDS) Filed			0
99	08/16/2010		WIDS	Information Disclosure Statement (IDS) Filed			0
98	08/16/2010		CTNF	Non-Final Rejection			0
94	07/26/2010		FWDX	Date Forwarded to Examiner			0
91	07/26/2010		ABN9	Disposal for a RCE / CPA / R129			0
97	07/22/2010		IDSC	Information Disclosure Statement considered			0
95	07/22/2010		M844	Information Disclosure Statement (IDS) Filed			0
93	07/22/2010		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
92	07/22/2010	04/22/2010	RCEX	Request for Continued Examination (RCE)		91	84
90	07/22/2010		WIDS	Information Disclosure Statement (IDS) Filed			0
87	07/22/2010		BRCE	Workflow - Request for RCE - Begin			0
96	07/15/2010		IDSC	Information Disclosure Statement considered			0
89	07/15/2010		RCAP	Reference capture on IDS			0
88	07/15/2010		M844	Information Disclosure Statement (IDS) Filed			0
86	07/15/2010		WIDS	Information Disclosure Statement (IDS) Filed			0
84	01/22/2010		MCTFR	Mail Final Rejection (PTOL - 326)			0
83	01/19/2010		CTFR	Final Rejection			0
85	01/04/2010	10/29/2009	M844	Information Disclosure Statement (IDS) Filed		67	77
82	01/04/2010		IDSC	Information Disclosure Statement considered			0
80	01/04/2010		WIDS	Information Disclosure Statement (IDS) Filed			0
78	11/05/2009		FWDX	Date Forwarded to Examiner			0
81	10/29/2009		IDSC	Information Disclosure Statement considered			0
79	10/29/2009		M844	Information Disclosure Statement (IDS) Filed			0
77	10/29/2009	10/08/2009	A...	Response after Non-Final Action		21	73
76	10/29/2009		XT/G	Request for Extension of Time - Granted			0
75	10/29/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
74	10/29/2009		BRCE	Workflow - Request for RCE - Begin			0

73	07/08/2009		MCTNF	Mail Non-Final Rejection			0
72	07/06/2009		CTNF	Non-Final Rejection			0
48	04/27/2009		FWDX	Date Forwarded to Examiner			0
52	04/17/2009		IDSC	Information Disclosure Statement considered			0
51	04/17/2009		RCAP	Reference capture on IDS			0
50	04/17/2009	03/19/2009	M844	Information Disclosure Statement (IDS) Filed		29	47
49	04/17/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
47	03/19/2009		ELC.	Response to Election / Restriction Filed			0
41	02/19/2009		MCTRS	Mail Restriction Requirement			0
40	02/17/2009		CTRS	Restriction/Election Requirement			0
54	01/08/2009		IDSC	Information Disclosure Statement considered			0
43	01/08/2009	11/14/2008	M844	Information Disclosure Statement (IDS) Filed		55	35
39	01/08/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
36	12/12/2008		FWDX	Date Forwarded to Examiner			0
53	12/08/2008		IDSC	Information Disclosure Statement considered			0
38	12/08/2008		RCAP	Reference capture on IDS			0
37	12/08/2008		M844	Information Disclosure Statement (IDS) Filed			0
33	12/08/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
35	11/14/2008	08/14/2008	A...	Response after Non-Final Action		92	30
34	11/14/2008		XT/G	Request for Extension of Time - Granted			0
32	11/06/2008		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
31	10/28/2008		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
30	05/14/2008		MCTNF	Mail Non-Final Rejection			0
29	05/12/2008		CTNF	Non-Final Rejection			0
27	03/10/2008		FWDX	Date Forwarded to Examiner			0
28	02/11/2008		AF/D	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received			0
26	02/11/2008	12/07/2007	A...	Response after Non-Final Action		66	24
25	02/11/2008		XT/G	Request for Extension of Time - Granted			0
24	09/07/2007		MCTNF	Mail Non-Final Rejection			0
23	09/04/2007		CTNF	Non-Final Rejection			0
21	07/26/2007		FWDX	Date Forwarded to Examiner			0
20	07/16/2007	04/16/2007	ELC.	Response to Election / Restriction Filed		91	18
19	07/16/2007		XT/G	Request for Extension of Time - Granted			0
18	01/16/2007	07/24/2005	MCTRS	Mail Restriction Requirement	541		0.5
17	01/08/2007		CTRS	Restriction/Election Requirement			0
16	11/15/2006		DOCK	Case Docketed to Examiner in GAU			0
15	10/25/2004		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
12	10/25/2004		DOCK	Case Docketed to Examiner in GAU			0
11	07/20/2004		WROIPE	Application Return from OIPE			0
10	07/20/2004		ROIPE	Application Return TO OIPE			0
9	07/20/2004		OIPE	Application Dispatched from OIPE			0
8	07/20/2004		COMP	Application Is Now Complete			0
7	07/07/2004		L128	Cleared by L&R (LARS)			0
6	06/30/2004		L198	Referred to Level 2 (LARS) by OIPE CSR			0
5	06/30/2004		CLSS	CASE CLASSIFIED BY OIPE			0
4	06/09/2004		CRFE	CRF Is Good Technically / Entered into Database			0
3	06/08/2004		SCAN	IFW Scan & PACR Auto Security Review			0
22	05/24/2004		IDSC	Information Disclosure Statement considered			0
14	05/24/2004		RCAP	Reference capture on IDS			0
13.7	05/24/2004		M844	Information Disclosure Statement (IDS) Filed			0
13	05/24/2004		WIDS	Information Disclosure Statement (IDS) Filed			0
2	05/24/2004		CRFL	CRF Disk Has Been Received by Preexam / Group / PCT			0
1	05/24/2004		IEXX	Initial Exam Team nn			0
0.5	05/24/2004		EFILE	Filing date			0

Export to: Excel

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

MAILED
MAY 19 2011
OFFICE OF PETITIONS

In re Application of :
Gadgil et al. :
Application No. 10/853083 : DECISION ON REQUEST
Filing or 371(c) Date: 05/25/2004 : FOR RECONSIDERATION OF
Attorney Docket Number: 088245-7217 : PATENT TERM ADJUSTMENT

This decision is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FOR PATENT APPLICATION UNDER 37 C.F.R. § 1.705(b)," filed April 20, 2011. Applicant requests that the Patent Term Adjustment be changed to reflect 1081 days, not 595 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction solely on the basis that the Office will take in excess of three years to issue this patent. The application for patent term adjustment is properly treated under 37 C.F.R. § 1.705(b).

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

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

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected

issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

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

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

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

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

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

/DLW/

Derek L. Woods
Attorney
Office of Petitions

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

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NXP INTELLECTUAL
PROPERTY & LICENSING
M/S41-SJ
1109 MCKAY DRIVE
SAN JOSE CA 95131

MAILED

SEP 0 1 2010

OFFICE OF PETITIONS

In re Application of :
Razzell :
Application No. 10/853,436 : DECISION
Filed: 26 May, 2004 : ON PETITION
Attorney Docket No.: US03 0395 US :

This is a decision on the petition under 37 C.F.R. §1.78(a)(6), filed 2 November, 2009, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional application set forth in the concurrently filed amendment.

The petition is **GRANTED.**

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

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

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

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

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

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

Any questions concerning this decision on petition may be directed to John J. Gillon, Jr., attorney, at (571) 272-3214. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

Chris Bottorff
Supervisory 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
10/853,436	05/24/2004	2611	1200	US03 0395 US	14	2

CONFIRMATION NO. 5067

CORRECTED FILING RECEIPT

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

OC00000004324244 1

Date Mailed: 08/27/2010

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

Charles Razzell, Pleasanton, CA;

Power of Attorney: The patent practitioners associated with Customer Number 65913

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/507,753 10/01/2003

Foreign Applications

If Required, Foreign Filing License Granted: 07/26/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/853,436**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

MULTI-CARRIER OFDM UWB COMMUNICATIONS SYSTEMS

Preliminary Class

375

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

Paper No.: _____

DATE : 09/01/10

TO SPE OF : ART UNIT 3736

SUBJECT : Request for Certificate of Correction for Appl. No.: 10853469 Patent No.: 7758523

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

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

Lamonte Newsome

Certificates of Correction Branch

703-756-1574

Thank You For Your Assistance

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

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

Comments: Claim 35 in the issued patent should be written to depend from claim 34. It is currently incorrect in the issued patent as depending from claim 23. Therefore the applicant's request for reissue and correction of claim 35 to be written in dependent form from claim 34 is approved.

RAD

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

/Max Hindenburg/ 3736

SPE Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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Patent No. : 7,268,118 B2
Ser. No. : 10/853,505
Inventor(s) : Kleinman et al.
Issued : Sep. 11, 2007
Title : THYMOSIN β4 COMPOSITIONS
Docket No. : 2600-124
Re: Request for Certificate of Correction

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

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

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

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

A. **the processing fee set forth in 37 CFR 1. 17(i) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

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

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

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

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

By fax: (703) 872-9306
ATTN: Office of Petitions

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

Ennis Young
For Mary Diggs
Decisions & Certificates
of Correction Branch
(571) **272-3435** or (703) 756-1814

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

MAILED

JUN 01 2011

OFFICE OF PETITIONS

In re Application of :
William Brian Seymour :
Application No. 10/853,718 : DECISION ON PETITION
Filed: May 26, 2004 :
Attorney Docket No. 08728.0003-00000 :

This is a decision on the petition under 37 CFR 1.182, filed, April 14, 2011, to change the name of inventor "Brian Seymour" to – William Brian Seymour --.

The petition is **GRANTED**.

Office records have been updated to reflect the inventor's change of name. A corrected Filing Receipt, which reflects the inventor's change of name, accompanies this decision on petition.

Any questions concerning this matter may be directed to Terri Johnson at (571) 272-2991. Any questions concerning the examination procedures or status of the application should be directed to the Technology Center.

This application is being referred to the Office of Data Management to await payment of the issue fee.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
10/853,718	05/26/2004	2193	835	08728.0003-00000	5	3

CONFIRMATION NO. 6516

CORRECTED FILING RECEIPT

22852
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

Date Mailed: 05/26/2011

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)

William Brian Seymour, Merrimack, NH;

Power of Attorney: The patent practitioners associated with Customer Number 22852

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: 07/27/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/853,718**

Projected Publication Date: Request for Non-Publication Acknowledged

Non-Publication Request: Yes

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

Title

METHODS AND SYSTEMS FOR TESTING EVALUATION MODULES

Preliminary Class

717

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

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

MAILED
MAY 17 2011
OFFICE OF PETITIONS

BUCHANAN, INGERSOLL & ROONEY PC
POST OFFICE BOX 1404
ALEXANDRIA VA 22313-1404

In re Patent No. 7,059,234 :
Issue Date: June 13, 2006 :
Application No. 10/853,754 : ON PETITION
Filed: May 26, 2004 :
Attorney Docket No. 032391-006 :

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

The petition is **GRANTED**.

This patent expired on June 14, 2010 for failure to pay the 3 ½ 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 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

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

WALL & TONG, LLP/
ALCATEL-LUCENT USA INC.
25 James Way
Eatontown, NJ 07724

Mail Date: 08/04/2010

Applicant	: Jean G. Jennen	: DECISION ON REQUEST FOR
Patent Number	: 7650081	: RECALCULATION of PATENT
Issue Date	: 01/19/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/853,825	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/26/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1549** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

PATENT
ATTORNEY DOCKET NO. 50735/002001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Ponzoni et al.	Confirmation No.:	7313
Serial No.:	10/853,895	Art Unit:	1642
Filed:	May 26, 2004	Examiner:	Brandon J. Fetterolf
Patent No.:	7,479,483	Customer No.:	21559
Issued:	January 20, 2009		
Title:	DRUG DELIVERY SYSTEMS FOR TUMOR TARGETING NGR-MOLECULES AND USES THEREOF		

REQUEST FOR CERTIFICATE OF CORRECTION UNDER 37 C.F.R. § 1.323

Applicants hereby request that a Certificate of Correction be issued in the patent identified above. The errors to be corrected are described in detail on the enclosed PTO Form 1050.

The above-captioned patent, as issued, contains the incorrect Sequence Listing at column 43 to column 46. As detailed below, the Sequence Listing for U.S. Patent No. 7,479,483 should be the Sequence Listing filed on April 25, 2007.

Applicants' April 25, 2007 Reply to the Office Action mailed on October 25, 2006, included a Sequence Listing to replace the previous Sequence Listing on file (see Exhibit 1, Reply to Office Action filed April 25, 2007). Enclosed, as Exhibit 2, is a copy of the return postcard included with the April 25, 2007 Reply. The return postcard bears the U.S.P.T.O stamp indicating receipt of the items listed on the postcard by the U.S.P.T.O. on April 25, 2007.

Further, in accordance with the M.P.E.P. § 503, the postcard clearly identifies and itemizes the items for which a receipt was requested. As such, Applicants submit that this postcard receipt provides *prima facie* evidence that a Sequence Listing was filed with the U.S.P.T.O. on April 25, 2007.

Moreover, Applicants submit, as Exhibit 3, a printout image of the Image File Wrapper summary from PAIR for the present application. The Image File Wrapper includes the items listed on the return postcard and indicates that these items were received by the U.S.P.T.O. on

April 25, 2007. The Image File Wrapper also indicates that the Computer Readable Form of the Sequence Listing was entered on June 8, 2007. Applicants submit that the Sequence Listing received by the U.S.P.T.O. on April 25, 2007 is not present in U.S. Patent No. 7,479,483 and should replace the Sequence Listing found at columns 43 to 46 of U.S. Patent No. 7,479,483.

For all the above reasons, Applicants submit that the Sequence Listing at columns 43 to 46 of U.S. Patent No. 7,479,483 is incorrect. The enclosed Forms PTO 1050 set forth the correct Sequence Listing as filed on April 25, 2007.

Transmitted herewith is $100.00 in payment of the fee set forth in 37 C.F.R. § 1.20(a). If there are any charges or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

Date: December 16, 2010

James D. DeCamp, Ph.D.
Reg. No. 43,580

for Kimya F. Harris, Ph.D.
Reg. No. 57,172

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101 Federal Street
Boston, MA 02110
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Facsimile: 617-428-7045

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO. 7,479,483
DATED Jan. 20, 2009
INVENTORS Ponzoni 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:

Cover Page, under Item (73) (Assignees), replace "Monte (IT)" with --Monte Tabor (IT)--;

Under Item (73) (Assignees), replace "University of Alberta" with --The Governors of the University of Alberta--;

Under OTHER PUBLICATIONS, in Yvette et al., replace "doxorabicin" with --doxorubicin--.

Page 2, under OTHER PUBLICATIONS, in Huang X. et al., replace "targeteing" with --targeting--;

In Pastorino F. et al., replace "dissernination" with --dissemination--.

Column 3, Line 4, replace "0.5-2 folds" with --0.5-2 fold--;

Line 4, replace "2-5 folds" with --2-5 fold--;

Line 4, replace "5-10 folds" with --5-10 fold--;

Line 5, replace "10-15 folds" with --10-15 fold--;

Line 5, replace "15-20 folds" with --15-20 fold--;

Line 5, replace "20-30 folds" with --20-30 fold--;

Line 5, replace "30-40 folds" with --30-40 fold--;

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PATENT NO. 7,479,483
DATED Jan. 20, 2009
INVENTORS Ponzoni et al.

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

Column 3, Line 29, replace "comprises" with --comprise--;

Line 53, replace "0.5-2 folds" with --0.5-2 fold--;

Line 53, replace "2-5 folds" with --2-5 fold--;

Line 53, replace "5-10 folds" with --5-10 fold--;

Line 53, replace "10-15 folds" with --10-15 fold--;

Line 54, replace "15-20 folds" with --15-20 fold--;

Line 54, replace "20-30 folds" with --20-30 fold--;

Line 54, replace "30-40 folds" with --30-40 fold--;

Line 61, replace "theraputic" with --therapeutic--.

Column 4, Line 31, replace "contiguous 80" with --80 contiguous--;

Lines 31-32, replace "contiguous 90" with --90 contiguous--;

Line 32, replace "contiguous 100" with --100 contiguous--;

Line 33, replace "contiguous 125" with --125 contiguous--;

Line 34, replace "contiguous 175" with --175 contiguous--;

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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 4, Line 35, replace "contiguous 200" with --200 contiguous--;

Line 36, replace "contiguous 350" with --350 contiguous--;

Line 37, replace "NGR-containing" with --the NGR containing;

Line 52, replace "intracerebral, intracerebral" with --intracerebral--.

Column 5, Line 16, replace "bladder, flu-like symptoms" with --bladder,--;

Lines 17-18, replace "dry mouth, loss of appetite, hair loss" with --dry mouth, hair loss--;

Line 43, replace "and or" with --and/or--;

Lines 48-49, replace "autoiimmune" with --autoimmune--;

Line 63, replace "that are" with --that is--.

Column 6, Line 10, replace "contiguous 80" with --80 contiguous--;

Line 11, replace "contiguous 90" with --90 contiguous--;

Line 12, replace "contiguous 100" with --100 contiguous--;

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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 6, Lines 12-13, replace "contiguous 125" with --125 contiguous--;

Line 14, replace "contiguous 175" with --175 contiguous--;

Line 15, replace "contiguous 200" with --200 contiguous--;

Line 15, replace "contiguous 350" with --350 contiguous--;

Line 20, replace "24 hours" with --24 hour--.

Column 7, Line 8, replace "were" with --was--;

Line 41, replace "ortbotopieally" with --orthotopically".

Column 8, Lines 25-26, replace "inventors" with --invention--;

Line 31, replace "10-folds" with --10-fold--;

Line 41, replace "comprises a" with --comprises--;

Lines 43-44, replace "0.5-2 folds" with --0.5-2 fold--;

Line 44, replace "2-5 folds" with --2-5 fold--;

Line 44, replace "5-10 folds" with --5-10 fold--;

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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 8, Line 44, replace "15-20 folds" with --15-20 fold--;

Line 44, replace "20-30 folds" with --20-30 fold--;

Lines 44-45, replace "30-40 folds" with --30-40 fold--;

Line 51, replace "effect" with --effect.--;

Line 52, replace "cells" with --cell--.

Column 9, Line 4, replace "cells" with --cell--;

Line 8, replace "derivatives" with --derivative--;

Line 18, replace "comprise" with --comprises--;

Line 26, replace "sphinomyelin" with --sphingomyelin--;

Line 43, replace "molecule" with --molecules--.

Column 10, Line 4, replace "an" with --a--;

Lines 14-15, replace "derivatives" with --derivative--.

Column 11, Line 29, replace "add" with --acid--;

Line 30, replace "as" with --amino acid--;

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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 11, Line 58, replace "Neuropilia-1" with --Neuropilin-1--;

Line 60, replace "Neuropilitu-1" with --Neuropilin-1--.

Column 12, Line 5, replace "are" with --is--;

Line 11, replace "which cell" with --which are cell--.

Column 13, Line 40, replace "cancer-gives" with --cancer gives--;

Line 46, replace "have" with --has--;

Line 62, replace "angiogeneeas" with --angiogenesis--.

Column 14, Lines 5-6, replace "eollagenease-1" with --collagenase-1--;

Lines 52-53, replace "M-hydroxysuccinimide" with --N-hydroxysuccinimide--.

Column 15, Lines 41-42, replace "phosphalidylcholine" with --phsphatidylcholine--;

Line 42, replace "phophatidylethanolaamine" with --phosphatidylethanolamine--;

Line 63, replace "arc" with --are--.

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DATED Jan. 20, 2009
INVENTORS Ponzoni et al.

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

Column 16, Line 48, replace "polyhydroxypropyloxaz line" with --polyhydroxypropyloxazoline--;

Line 49, replace "polymehacrylamide" with --polymethacrylamide--;

Line 49, replace "polyduuctbylacrylamid" with --polydimethylacrylamide,--.

Column 17, Line 14, replace "N-hydroxycthylammonium" with --N-hydroxyethylammonium--;

Line 17, replace "trunethylanunonium" with --trimethylammonium--;

Line 18, replace "carbamolyl" with --carbamoyl--;

Line 22, replace "dioleoxylphosphatidyl" with --dioleoylphosphatidyl--;

Line 37, replace "diphytanoylphosphatidylethanolaamine" with --diphytanoylphosphatidylethanolamine--;

Line 46, replace "benzophorphrins" with --benzoporphyrin--;

Line 53, replace "ifospfamide" with --ifosfamide--;

Line 53, replace "ehlorambucil" with --chlorambucil--;

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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 17, Line 54, replace "chlormethhine" with --chlormethine--;

Line 61, replace "tioguaninc" with --tioguanine--;

Lines 63-64, replace "altetarmine" with --alretamine--.

Column 18, Line 2, replace "inotecan" with --irinotecan--;

Line 22, replace "compound" with --compounds--;

Line 28, replace "ctodolac" with --etodolac--;

Line 29, replace "acetaminocin" with --acetominophen--;

Line 29, replace "suliudac" with --sulindac--;

Line 30, replace "tiaprofenuie" with --tiaprofrenic--;

Line 46, replace "tumistatin" with --tumstatin--;

Line 47, replace "vasostalin" with --vasostatin--.

Column 20, Line 47, replace "liposomes," with --liposomes--.

Column 21, Line 45, replace "centrifugation" with --centrifugation.--;

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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 21, Line 64, replace "glucosoyl" with --glucosyl--.

Column 22, Line 6, replace "muein" with --murein--;

Line 29, replace "agent" with --agents--;

Line 39, replace "method" with --methods--;

Lines 43-44, replace "0.5-2 folds" with --0.5-2 fold--;

Line 44, replace "2-5 folds" with --2-5 fold--;

Line 44, replace "5-10 folds" with --5-10 fold--;

Line 44, replace "15-20 folds" with --15-20 fold--;

Line 44, replace "20-30 folds" with --20-30 fold--;

Lines 44-45, replace "30-40 folds" with --30-40 fold--;

Line 45, replace "40-50 folds" with --40-50 fold--;

Line 45, replace "50-100 folds" with --50-100 fold--;

Line 54, replace "system" with --systems--.

Column 23, Line 51, replace "insipius" with --insipidus--;

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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 23, Line 64, replace "cytic" with --cystic--.

Column 24, Line 7, replace "papillary" with --papillary--;

Line 28, replace "uterer" with --ureter--;

Line 37, replace "Berketts" with --Burkitt's--;

Line 40, replace "orignin" with --origin--;

Line 41, replace "rhabdomyoscarcoma" with --rhabdomyosarcoma--;

Line 42, replace "tetratocarcinoma" with --teratocarcinoma--;

Lines 45-46, replace "fibrosacoma" with --fibrosarcoma--;

Line 46, replace "rhabdomyoscarama" with --rhabdomyosarcoma--;

Line 47, replace "xenoderma pegmentosum" with --xeroderma pigmentosum--;

Line 48, replace "keratoactanthoma" with --keratoacanthoma--;

Line 57, replace "neoblastoma" with --neuroblastoma--.

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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 25, Line 26, replace "composition" with --compositions--;

Lines 32-33, replace "composition" with --compositions--.

Column 27, Line 6, replace "composition" with --compositions--;

Line 19, replace "sialastic" with --silastic--;

Line 58, replace "ambomycin" with --albomycin--;

Lines 61-62, replace "benzodepa" with --benzotepa--.

Column 28, Line 6, replace "eflonithine" with --eflornithine--.

Line 3, replace "chlorlns" with --chlorins--;

Column 29, Line 12, replace "didenmin B" with --didemnin B--;

Lines 30-31, replace "isohomohalicondrin B" with --isohomohalichondrin B--;

Line 59, replace "ondansetron; ondansetron" with --odansetron--.

Column 31, Line 52, replace "that" with --of--;

Line 63, replace "sodium" with --or sodium--.

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PATENT NO. 7,479,483
DATED Jan. 20, 2009
INVENTORS Ponzoni et al.

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

Column 33, Line 1, replace "drug" with --the drug--;

Line 38, replace "can" with --can be--.

Column 34, Line 5, replace "line" with --lines--;

Line 6, replace "line" with --lines--;

Line 7, replace "line" with --lines--;

Line 18, replace "alleviate of one" with --alleviate one--;

Line 29, replace "test to" with --the--;

Line 61, replace "human" with --humans--.

Column 35, Line 42, replace "a" with --an--;

Lines 61-62, replace "(Browder, supra); Klement, supra)" with --(Browder, supra; Klement, supra)--;

Line 64, replace "for" with --or--.

Column 36, Line 18, replace "Si 5-8" with --S15-8--;

Line 50, replace "DXR/gmol" with --DXR/μmol--.

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INVENTORS Ponzoni et al.

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

Column 38, Line 47, replace "microvessels" with --microvessel--.

Column 39, Line 64, replace "pervious" with --previous--.

Column 40, Line 10, replace "neurblastoma" with --neuroblastoma--;

Line 45, replace "requited" with --required--.

Column 43, Lines 8-9, replace "formulation" with --formulation--;

Line 37, replace "recognize" with --recognizes--.

Column 44, Line 24, replace "delivery" with --deliver--.

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

Please replace the Sequence Listing in the above-referenced patent, from Column 43, Line 61 to Column 46, Line 59, with the Sequence Listing provided below.

SEQUENCE LISTING

<160> NUMBER OF SEQ ID NOS: 8

<210> SEQ ID NO 1
<211> LENGTH: 6
<212> TYPE: PRT
<213> ORGANISM: Homo sapiens

<400> SEQUENCE: 1

Asn Gly Arg Ala His Ala
1 5

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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:

<210> SEQ ID NO 2
<211> LENGTH: 5
<212> TYPE: PRT
<213> ORGANISM: Homo sapiens

<400> SEQUENCE: 2

Gly Asn Gly Arg Gly
1 5

<210> SEQ ID NO 3
<211> LENGTH: 5
<212> TYPE: PRT
<213> ORGANISM: Homo sapiens

<400> SEQUENCE: 3

Cys Asn Gly Arg Cys
1 5

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PATENT NO. 7,479,483
DATED Jan. 20, 2009
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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:

<210> SEQ ID NO 4
<211> LENGTH: 13
<212> TYPE: PRT
<213> ORGANISM: Homo sapiens

<400> SEQUENCE: 4

Cys Asn Gly Arg Cys Val Ser Gly Cys Ala Gly Arg Cys
1 5 10

<210> SEQ ID NO 5
<211> LENGTH: 9
<212> TYPE: PRT
<213> ORGANISM: Homo sapiens

<400> SEQUENCE: 5

Cys Val Leu Asn Gly Arg Met Glu Cys
1 5

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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:

<210> SEQ ID NO 6
<211> LENGTH: 19
<212> TYPE: PRT
<213> ORGANISM: Homo sapiens

<400> SEQUENCE: 6

Gly Asn Gly Arg Gly Gly Val Arg Ser Ser Ser Arg Thr Pro Ser Asp
1 5 10 15

Lys Tyr Cys

<210> SEQ ID NO 7
<211> LENGTH: 10
<212> TYPE: PRT
<213> ORGANISM: Homo sapiens

<400> SEQUENCE: 7

Val Arg Ser Ser Ser Arg Thr Pro Ser Asp
1 5 10

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INVENTORS Ponzoni 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:

<210> SEQ ID NO 8
<211> LENGTH: 6
<212> TYPE: PRT
<213> ORGANISM: Homo sapiens

<400> SEQUENCE: 8

Gly Asn Gly Arg Gly Gly
1 5

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Exhibit 1

Express Mail No.: EV473970761US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of:	Mirco PONZONI et al.	Confirmation No.:	7313
Serial No.:	10/853,895	Art Unit:	1642
Filed:	May 26, 2004	Examiner:	Brandon J. Fetterolf
For:	TUMOR-TARGETED DRUG DELIVERY SYSTEMS AND USES THEREOF	Attorney Docket No: CAM No:	11464-006-999 569515-999004

AMENDMENT UNDER 37 C.F.R. §1.111

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the outstanding Office Action dated October 25, 2006, please enter the following amendments and remarks into the file of the above-identified application. Applicants submit herewith: (a) a Petition for Extension of Time for three months, from January 25, 2007 up to and including April 25, 2007; (b) an Amendment Fee Transmittal Sheet; (c) a certified copy of the priority document, United Kingdom Patent Application No. 0312309.8; (d) a Transmittal of Substitute Sequence Listing; (e) a Substitute Sequence Listing in paper and diskette form; and (f) a Written Assertion for Entitlement to Small Entity Status.

Amendments to the Claims are reflected in the listing of claims which begins on page 2 of this paper.

Remarks begin on page 7 of this paper.

Conclusion begins on page 15 of this paper.

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AMENDMENT TO THE CLAIMS

This listing of Claims will replace all prior versions of Claims in the application. Changes to the claims are indicated by strikethrough for deleted matter and by underlining for added matter.

Listing of Claims:

1. (Currently Amended) A tumor-targeted drug delivery system comprising a NGR-containing molecule, said NGR-containing molecule comprises an amino acid sequence NGR and an amino acid sequence of SEQ ID NO:7, linked to an encapsulating delivery vehicle, said encapsulating delivery vehicle comprises a therapeutic agent~~, wherein said delivery system is capable of delivering at least 0.5-2 folds, 2-5 folds, 5-10 folds, 10-15 folds, 15-20 folds, 20-30 folds, or 30-40 folds increase in amount of therapeutic agent to a tumor as compared to other parenteral drug delivery systems~~.

2. (Canceled)

3. (Currently Amended) The delivery system of claim 1~~ or 2~~, wherein the NGR-containing molecule comprises the amino acid sequence of SEQ ID NO:1, SEQ ID NO:2, SEQ ID NO:3, SEQ ID NO:4, SEQ ID NO:5, SEQ ID NO:6, or SEQ ID NO:8~~is NGRAHA, GNGRG, CNGRC, CNGRCVSGCAGRC, CVLNGRMEC, or GNGRGGVRSSSRTPSDKYC~~.

4. (Currently Amended) The delivery system of claim 1~~ or 2~~, wherein the tumor is a breast tumor, lung tumor, colon cancer, melanoma, neuroblastoma, Kaposi's sarcoma, kidney tumor, or ovarian tumor.

5. (Currently Amended) The delivery system of claim 1~~ or 2~~, wherein the delivery vehicle is a liposome~~, micelle, lipidic micelle, microsphere, nanosphere, chambered microdevice, emulsion, lipid disc, polymer, cell, viral particle or virus~~.

6. (Currently Amended) The delivery system of claim 5, wherein the liposome comprises ~~amino-polyethylene glycol phosphatidylethanolamine, methoxy-polyethylene glycol phosphatidylethanolamine, maleimido-polyethylene glycol phosphatidylethanolamine, N-methylpalmitoyloleoylphosphatidylcholine , phosphatidylserine,~~ hydrogenated soy phosphatidylcholine~~, sphingomyelin, phosphatidylglycerol, palmitoyloleoylphosphatidylcholine, dipalmitoylphosphatidylcholine, distearoylphosphatidylcholine, diphytanoylphosphatidylcholine, sphingomyelin, cholesterol,~~

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~~derivatives thereof, or a combination thereof~~.

7. (Currently Amended) The delivery system of claim 1 ~~or 2~~, wherein the NGR-containing molecule is linked to the encapsulating delivery vehicle through a linking agent.

8. (Currently Amended) The delivery system of claim 1 ~~or 2~~, wherein the therapeutic agent is an anti-inflammatory drug, an anti-angiogenic drug, a pro-angiogenic drug, or an angiolytic drug.

9. (Currently Amended) The delivery system of claim 1 ~~or 2~~, wherein the therapeutic agent is a cytotoxic agent.

10. (Currently Amended) The delivery system of claim 1 ~~or 2~~, wherein the therapeutic agent is a cancer chemotherapeutic agent.

11. (Currently Amended) The delivery system of claim 1 ~~or 2~~, wherein the therapeutic agent is a genetic ~~matieral~~material.

12. (Original) The delivery system of claim 10, wherein the cancer chemotherapeutic agent is a microtubule inhibitor.

13. (Original) The delivery system of claim 10, wherein the cancer chemotherapeutic agent is doxorubicin, vincristine, mitoxantrone, calicheamicin, Iressa or Gleevec.

14. (Currently Amended) A pharmaceutical composition comprising the delivery system of claim 1 ~~or 2~~, and optionally a pharmaceutically acceptable excipient.

15. (Withdrawn) A method of treating or preventing cancer in a subject comprising administering to said subject an effective amount of the delivery system of claim 1 or 2.

16. (Withdrawn) The method of claim 15 wherein the effective amount is at most 0.005-0.01mg/kg, 0.01-0.05mg/kg, 0.05-0.1mg/kg, 0.1-0.2mg/kg, 0.2-0.5mg/kg, 0.5-1mg/kg, 1-1.5mg/kg, 1.5-2mg/kg, at a frequency of at most once every week, 2-4 weeks, 4-6weeks, or 6-8 weeks.

17. (Withdrawn) The method of claim 15, wherein the cancer is breast cancer, lung cancer, colon cancer, melanoma cancer, neuroblastoma, kaposi's sarcoma, kidney cancer, or ovarian cancer.

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18. (Withdrawn) A method of delivering a therapeutic agent to a tumor wherein said method comprising administering to a subject a tumor-targeted drug delivery system comprising a NGR-containing molecule linked to an encapsulating delivery vehicle, said encapsulating delivery vehicle comprises a therapeutic agent, wherein said delivery system is capable of delivering at least 0.5-2 folds, 2-5 folds, 5-10 folds, 10-15 folds, 15-20 folds, 20-30 folds, or 30-40 folds increase in amount of therapeutic agent to a tumor as compared to other parenteral drug delivery systems.

19. (Withdrawn) A method of delivering a therapeutic agent to a tumor wherein said method comprising administering to a subject a tumor-targeted drug delivery system comprising a NGR-containing molecule linked to an encapsulating delivery vehicle, said encapsulating delivery vehicle comprises said therapeutic agent, wherein said tumor is exposed to an increased amount of therapeutic agent by at least 2-10%, 10-20%, 20-30%, 30-40%, 40-50%, 50-60%, 60-70%, 70-80%, 80-90%, or 90-99%, over a period of at least 2-5 hours, 5-10 hours, 10-12 hours, 12-24 hours, 24-36 hours, 36-48 hours, 3-5 days, 5-7 days, or 1-3 weeks as compared to other parenteral drug delivery systems.

20. (Withdrawn) The method of claim 18 or 19, wherein the NGR-containing molecule is NGRAHA, GNGRG, CNGRC, CNGRCVSGCAGRC, CVLNGRMEC, or GNGRGGVRSSSRTPSDKYC.

21. (Withdrawn) The method of claim 18 or 19, wherein the tumor is a breast tumor, lung tumor, colon cancer, melanoma, neuroblastoma, kidney tumor, or Kaposi's sarcoma.

22. (Withdrawn) The method of claim 18 or 19, wherein the delivery vehicle is a liposome, micelle, lipidic micelle, microsphere, nanosphere, chambered microdevice, emulsion, lipid disc, polymer, cell, viral particle or virus.

23. (Withdrawn) The method of claim 22, wherein the liposome comprises amino-polyethylene glycol phosphatidylethanolamine, methoxy-polyethylene glycol phosphatidylethanolamine, maleimido-polyethylene glycol phosphatidylethanolamine, N-methylpalmitoyloleoylphosphatidylcholine , phosphatidylserine, hydrogenated soy phosphatidylcholine, sphingomyelin, phosphatidylglycerol, palmitoyloleoylphosphatidylcholine, dipalmitoylphosphatidylcholine, distearoylphosphatidylcholine, diphytanoylphosphatidylcholine, sphingomyelin, cholesterol, derivatives thereof, or a combination thereof.

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24. (Withdrawn) The method of claim 18 or 19, wherein the NGR-containing molecules are linked to the encapsulating delivery vehicle through a linking agent.

25. (Withdrawn) The method of claim 18 or 19, wherein the therapeutic agent is a cytotoxic agent.

26. (Withdrawn) The method of claim 18 or 19, wherein the therapeutic agent is a cancer chemotherapeutic agent.

27. (Withdrawn) The method of claim 26, wherein the cancer chemotherapeutic agent is a microtubule inhibitor, an anti-inflammatory drug, an anti-angiogenic drug, a pro-angiogenic drug, or an angiolytic drug.

28. (Withdrawn) The method of claim 18 or 19, wherein the therapeutic agent is a genetic material.

29. (Withdrawn) The method of claim 26, wherein the cancer chemotherapeutic agent is doxorubicin, vincristine, mitoxantrone, calicheamicin, Iressa, or Gleevec.

30. (Currently Amended) The tumor-targeted drug delivery system of claim 1, wherein the NGR-containing molecule comprises the amino acid sequence of SEQ ID NO:6~~sequence GNGRGGVRSSSRTPSDKYC~~ linked to a liposome via a thiol to a maleimido moiety on the liposome, said therapeutic agent comprises doxorubicin.

31. (Withdrawn) A method of treating an inflammatory condition in a subject comprising administering to said subject an effective amount of a system comprising a NGR-containing molecule linked to an encapsulating delivery vehicle, said encapsulating delivery vehicle comprises a therapeutic agent, wherein said delivery system is capable of delivering at least 0.5-2 folds, 2-5 folds, 5-10 folds, 10-15 folds, 15-20 folds, 20-30 folds, or 30-40 folds increase in amount of therapeutic agent to a target cell as compared to other parenteral drug delivery systems.

32. (Withdrawn) A method of treating an angiogenic condition in a subject comprising administering to said subject an effective amount of a system comprising a NGR-containing molecule linked to an encapsulating delivery vehicle, said encapsulating delivery vehicle comprises a therapeutic agent, wherein said delivery system is capable of delivering at least 0.5-2 folds, 2-5 folds, 5-10 folds, 10-15 folds, 15-20 folds, 20-30 folds, or 30-40 folds

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increase in amount of therapeutic agent to a target cell as compared to other parenteral drug delivery systems.

33. (Withdrawn) A method of treating a cardiac condition in a subject comprising administering to said subject an effective amount of a system comprising a NGR-containing molecule linked to an encapsulating delivery vehicle, said encapsulating delivery vehicle comprises a therapeutic agent, wherein said delivery system is capable of delivering at least 0.5-2 folds, 2-5 folds, 5-10 folds, 10-15 folds, 15-20 folds, 20-30 folds, or 30-40 folds increase in amount of therapeutic agent to a target cell as compared to other parenteral drug delivery systems.

34. (New) The delivery system of claim 7, wherein the linking agent is polyethylene glycol (PEG).

35. (New) A tumor-targeted delivery system comprising a NGR-containing molecule linked to a delivery vehicle, said NGR-containing molecule consisting essentially of an amino acid sequence of SEQ ID NO:7 and a NGR motif, wherein said delivery vehicle comprises a therapeutic agent.

36. (New) The tumor-targeted delivery system of claim 35, wherein the NGR motif comprises the amino acid sequence of SEQ ID NO:1, SEQ ID NO:2, SEQ ID NO:3, SEQ ID NO:4, SEQ ID NO:5, SEQ ID NO:6, or SEQ ID NO:8.

37. (New) The tumor-targeted drug delivery system of claim 35 comprising a NGR-containing molecule linked to a delivery vehicle, said NGR-containing molecule consisting essentially of 10, 15, 20, 25, or 40 contiguous amino acid residues.

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REMARKS

Claims 1, 3-14, 30, and 34-37 are pending in the application after entry of the present amendment. Claim 2 has been canceled without prejudice and claims 15-29 and 31-33 have been withdrawn from consideration. Applicants reserve the right to prosecute the canceled and withdrawn subject matter in one or more related applications.

Claims 1, 3-11, 14, and 30 have been amended to more particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. In particular, claim 1 has been amended to recite that the NGR-containing molecule comprises an amino acid sequence NGR and an amino acid sequence VRSSRTPSD (SEQ ID NO:7). The respective dependencies of claims 3-5, 7-11, and 14 have been amended, in view of canceled claim 2. Claims 3 and 30 have also been amended to identify the particular amino acid sequences by the corresponding SEQ ID NOs. Pursuant to the restriction requirement, claim 5 has also been amended to recite a liposome as a delivery vehicle; and claim 6 has been amended to claim liposome comprising hydrogenated soy phosphatidylcholine. Claim 11 have been amended to correct a typographical error.

New claim 34 has been added to specify polyethylene glycol (PEG) as the linking agent. New claim 35 has been added to recite a tumor-targeted delivery system comprising a NGR-containing molecule linked to a delivery vehicle, said NGR-containing molecule consisting essentially of amino sequence of VRSSSRTPSD (SEQ ID NO:7) and a NGR motif, wherein said delivery vehicle comprises a therapeutic agent. New claim 36 has been added to recite that the NGR motif of claim 35 comprises the amino acid sequence of SEQ ID NOs:1-6 or 8. New claim 37 has been added to recite that the NGR-containing molecule consists essentially of 10, 15, 20, 25, or 40 contiguous amino acid residues.

Support for the amendments and new claims may be found in the specification, *inter alia*, at paragraphs [0019], [0050], [0058] [0062], [0063], [0091], [0092], [0210], and [0229] of the published application, U.S. Patent Publication No. 2004/0258747, as well as in the sequence listing. No new matter has been added.

I. CLAIM TO PRIORITY UNDER 35 U.S.C. § 119

The present application claims priority to United Kingdom Patent Application No. 0312309.8, filed May 29, 2003. The Examiner has acknowledged a claim for foreign priority under 35 U.S.C. § 119 but indicates that a certified copy of the priority documents have not been received. Enclosed please find a certified copy of the priority document, United

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Kingdom Patent Application No. 0312309.8. Accordingly, the present application is entitled to benefit of the priority date of the priority document, May 29, 2003.

II. OBJECTIONS TO INFORMALITIES

The Examiner has objected to claims 3 and 30 for improper disclosure of amino acid sequences without a respective sequence identifier, *i.e.*, SEQ ID NOs. Claims 3 and 30 have been amended to disclose the amino acid sequences with a respective sequence identifier. As such, objections to these claims have been overcome.

III. CLAIM REJECTIONS UNDER 35 U.S.C. § 112, SECOND PARAGRAPH

Claim 1-13 and 30 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. In particular, the Examiner alleges that the term "system" is a relative term which renders the claims indefinite.

According to the applicable case law, 35 U.S.C. § 112, second paragraph, requires that the claims must have a clear and definite meaning when construed in the light of complete patent document. *Standard Oil Co. v. Amer. Cyanamid Co.*, 744 F.2d 448, 2278 USPQ 293 (Fed. Cir. 1985). The test of definiteness is whether one skilled in the art would understand the bounds of the claim when read in light of the specification. *Orthokinetic Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1 USPQ2d 1081 (Fed. Cir. 1986).

The specification of the present application, as originally filed, uses the term "system" in the context of a tumor-targeted drug delivery system. This system is described as comprising a NGR-containing molecule linked to an encapsulating delivery vehicle, said encapsulating delivery vehicle comprises a therapeutic agent. The system further comprises the delivery of the therapeutic agent to tumor cells or tumor-supporting cells, thereby selectively inhibiting or destroying the endothelial cells of the tumor vasculature, triggering tumor growth inhibition, regression and/or a state of dormancy. The term "system" is used consistently throughout the specification and provides a clear and definite meaning of the term. Applicants respectfully submit that one skilled in the art would understand the definition and scope of the term "system" as claimed when read in light of the specification. Thus, the term "system" is definite and the rejection should be withdrawn. Applicants further submit that the rejection under 35 U.S.C. § 112, second paragraph, does not apply to new claims 34-39.

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IV. CLAIM REJECTIONS UNDER 35 U.S.C. § 102

A. Rejection Based On Pastorino Should Be Withdrawn

Claims 1-10, 12-14, and 30 are rejected under 35 U.S.C. § 102(b) as being anticipated by Pastorino *et al.*, 2003, Cancer Research, 63: 7400-7409) (2003) ("Pastorino"). Applicants submit that the rejection is in error.

As a threshold matter, Pastorino does not qualify as a reference under 35 U.S.C. § 102(b). Under 35 U.S.C. § 102(b), a person is entitled to a patent unless the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent. The date of publication of Pastorino is November 1, 2003. As required by 35 U.S.C. § 119(b), upon filing of a certified copy of the United Kingdom Patent Application No. 0312309.8 from which priority is claimed, the application of the present invention is entitled to a priority date of May 29, 2003. Thus, priority date of the application of the present invention predates the publication date of Pastorino. Accordingly, Pastorino does not qualify as a prior art reference under § 102(b) and does not anticipate claims 1-10, 12-14, and 30 of the application, and the rejection should be withdrawn.

B. Rejection Based On U.S. Patent No. 6,491,894 Should Be Withdrawn

Independent claims 1, and its dependent claims 2-5 and 7-14 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 6,491,894 to Ruoslahti *et al.* ("'894 patent"). Since claim 2 has been canceled, the rejection of claim 2 based on the '894 patent is rendered moot. Applicants submit that Ruoslahti '894 does not anticipate claims 1, 3-5, 7-14, or new claims 34-37.

Independent claim 1 has been amended to recite a tumor-targeted drug delivery system comprising a NGR-containing molecule comprising an amino acid sequence NGR and an amino acid sequence VRSSSRTPSD (SEQ ID NO:7) linked to an encapsulating liposome delivery vehicle comprising a therapeutic agent.

The '894 patent teaches therapeutic methods comprising targeting of liposomes containing chemotherapeutics using a NGR-containing peptide, such as CNGRCVSGCAGRC, NGRAHA, CVLNGRMEC, or CNGRC. Accordingly, the '894 patent does not teach or suggest a NGR-containing molecule comprising a NGR sequence an amino acid sequence VRSSSRTPSD (SEQ ID NO:7) linked to a liposome delivery vehicle. Therefore, this rejection of claim 1 and its dependent claims 2-5 and 7-14 based on the '894 patent should be withdrawn. Applicants further submit that the '894 patent does not anticipate new claims 34-37.

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C. **Rejection Based On Allen Should Be Withdrawn**

Independent claim 1 and its dependent claims 2 and 4-14 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent Publication No. US 2001/0038851 to Allen *et al.* ("Allen"). Since claim 2 has been canceled, the rejection of claim 2 based on Allen is rendered moot. Applicants submit that Allen does not anticipate claims 1, 4-14, or new claims 34-37.

As discussed above, independent claim 1 has been amended to recite a tumor-targeted drug delivery system comprising a NGR-containing molecule comprising an amino acid sequence NGR and an amino acid sequence VRSSSRTPSD (SEQ ID NO:7) linked to an encapsulating liposome delivery vehicle comprising a therapeutic agent.

Allen does not teach or suggest a tumor-targeted drug delivery system comprising a NGR-containing molecule comprising a NGR sequence and an amino acid sequence VRSSSRTPSD (SEQ ID NO:7) linked to a liposome delivery vehicle. Therefore, this rejection of claim 1 and its dependent claims 2 and 4-14 based on Allen should be withdrawn. Applicants further submit that Allen does not anticipate new claims 34-37.

D. **Rejection Based On Corti, As Evidenced By McLaughlin, Should Be Withdrawn**

Independent claim 1 and its dependent claims 2-5 and 8-9 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by WO 01/61017 to Corti *et al.* ("Corti") as evidenced by McLaughlin *et al.*, 2001, Blood, 98: 3332-3339 ("McLaughlin"). Since claim 2 has been canceled, the rejection of claim 2 based on Corti, as evidenced by McLaughlin, is rendered moot. Applicants submit that Corti, as evidenced by McLaughlin, does not anticipate claims 1, 3-5, 8-9 or new claims 34-37.

As discussed above, independent claim 1 has been amended to recite a tumor-targeted drug delivery system comprising a NGR-containing molecule comprising an amino acid sequence NGR and an amino acid sequence VRSSSRTPSD (SEQ ID NO:7) linked to an encapsulating liposome delivery vehicle comprising a therapeutic agent. Corti teaches modified cytokines for a method of cytokine-mediated treatment of cancer. In particular, Corti discloses a conjugation product of TNF and a NGR peptide wherein the biological activities of TNF are enhanced when TNF is conjugated to a NGR peptide. Corti teaches that modified cytokines may be in the form of liposomes. McLaughlin discloses that TNF-α has been shown to be proangiogenic *in vivo* in animal models.

Corti does not teach that the modified cytokines are linked to an encapsulating delivery vehicle, which delivery vehicle further comprises a therapeutic agent. In fact, one

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skilled in the art would understand that Corti teaches that the modified cytokines are encapsulated inside a liposome. Accordingly, Corti does not teach or suggest the present invention. Therefore, this rejection of claim 1 and its dependent claims 2-5 and 8-9 based on Corti, as evidenced by McLaughlin, should be withdrawn. Applicants further submit that Corti, as evidenced by McLaughlin, does not anticipate new claims 34-37.

E. Rejection Based On U.S. Patent No. 7,109,303, As Evidenced By McLaughlin, Should Be Withdrawn

Independent claim 1 and its dependent claims 2-5 and 8-9 are rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 7,109,303 ("'303 patent") as evidenced by McLaughlin. Since claim 2 has been canceled, the rejection of claim 2 based on the '303 patent, as evidenced by McLaughlin, is rendered moot. Applicants submit that the '303 patent, as evidenced by McLaughlin, does not anticipate claims 1, 3-5, 8-9 or new claims 34-37.

The '303 patent is a continuation-in-part of Corti, which was discussed previously. Similar to Corti, the '303 patent does not teach or suggest the present invention. Thus, for the same reasons based on Corti, as evidenced by McLaughlin, the rejection of claim 1 and its dependent claims 2-5 and 8-9 based on the '303 patent, as evidenced by McLaughlin, should be withdrawn. Applicants further submit that the '303 patent, as evidenced by McLaughlin, does not anticipate new claims 34-37.

V. CLAIM REJECTIONS UNDER 35 U.S.C. § 103

A. Rejection Based On Allen In View Of The '894 Patent Should Be Withdrawn

Claim 3 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Allen in view of the '894 patent. Applicants submit that the rejection is in error.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify references or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references when combined must teach or suggest all the claim limitations. MPEP § 2143.

Claim 3 has been amended to recite the corresponding SEQ ID NOs associated with the amino acid sequences originally disclosed and to depend from amended claim 1, which

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recites a tumor-targeted drug delivery system comprising a NGR-containing molecule comprising an amino acid sequence NGR and an amino acid sequence VRSSSRTPSD (SEQ ID NO:7) linked to an encapsulating liposome delivery vehicle comprising a therapeutic agent.

As discussed previously, the composition disclosed in Allen and the composition disclosed in the present application are structurally distinct. Neither Allen nor the '894 patent, alone or in combination, teach or suggest a tumor-targeted drug delivery system comprising a NGR-containing molecule comprising a NGR sequence and an amino acid sequence VRSSSRTPSD (SEQ ID NO:7) linked to a liposome delivery vehicle. Therefore, because neither Allen nor the '894 patent, alone or in combination, teach or suggest all of the claim limitations of the present application, the rejection of claim 3 based on Allen in view of Ruoslahti '894 should be withdrawn.

B. Rejection Based On The '894 Patent In View Of Allen Should Be Withdrawn

Claim 6 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over the '894 patent in view of Allen. Applicants submit that the rejection is in error.

Claim 6 has been amended to recite a liposome comprising hydrogenated soy phosphatidylcholine, which depends from amended claim 1, as discussed previously.

As discussed previously, neither Allen nor the '894 patent, alone or in combination, teach or suggest a tumor-targeted drug delivery system comprising a NGR-containing molecule comprising a NGR sequence and an amino acid sequence VRSSSRTPSD (SEQ ID NO:7), linked to a liposome delivery vehicle. Therefore, because neither the '894 patent nor Allen, alone or in combination, teach or suggest all of the claim limitations of the present application, the rejection of claim 6 based on the '894 patent in view of Allen should be withdrawn.

C. Rejection Based On Corti, As Evidenced By McLaughlin, In View Of Allen

Claim 6 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Corti, as evidenced McLaughlin, in view of Allen. Applicants submit that the rejection is in error.

Claim 6 has been amended to recite a liposome comprising hydrogenated soy phosphatidylcholine, which depends from amended claim 1, as discussed previously.

As discussed previously, Corti discloses modified cytokines for a method of cytokine-mediated treatment of cancer (*i.e.*, a conjugation product of TNF and a NGR peptide wherein

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the anti-tumor properties of TNF are enhanced). Corti does not teach or suggest a NGR-containing molecule used to target a liposome. Additionally, Corti does not teach or suggest linking a NGR-containing molecule to a liposome. Furthermore, Corti does not teach or suggest a therapeutic agent entrapped in a liposome linked to a NGR-containing molecule, which is linked to an encapsulating delivery vehicle, which delivery vehicle further comprises a therapeutic agent.

As discussed previously, neither Corti, as evidenced by McLaughlin, nor Allen, alone or in combination, teach or suggest a tumor-targeted drug delivery system comprising a NGR-containing molecule further comprising a NGR sequence and an amino acid sequence VRSSSRTPSD (SEQ ID NO:7), linked to a liposome delivery vehicle comprising a therapeutic agent. Therefore, because neither Corti, as evidenced by McLaughlin, nor Allen, alone or in combination, teach or suggest all of the claim limitations of the present application, the rejection of claim 6 based on Corti, as evidenced by McLaughlin, in view of Allen, should be withdrawn.

D. Rejection Based On The '303 Patent, As Evidenced By McLaughlin, In View Of Allen Should Be Withdrawn

Claim 6 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over the '303 patent, as evidenced by McLaughlin, in view of Allen. Applicants submit that the rejection is in error for the same reasons as discussed above. Thus, the rejection should be withdrawn.

VI. CLAIM REJECTIONS BASED ON NONSTATUTORY OBVIOUSNESS-TYPE DOUBLE PATENTING

Independent claim 1 and its dependent claims 2-5, 7-8, and 14 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 and 8 of the '303 patent. Since claim 2 has been canceled, the rejection of claim 2 on the ground of nonstatutory obviousness-type double patenting is rendered moot. The Examiner alleges that the conflicting claims, though not identical, are not patentably distinct from each other because a species anticipates a genus. Applicants submit that the rejection is in error.

As discussed previously, independent claim 1 of the present application has been amended to recite a tumor-targeted drug delivery system comprising a NGR-containing molecule comprising an amino acid sequence NGR and an amino acid sequence VRSSSRTPSD (SEQ ID NO:7) linked to an encapsulating liposome delivery vehicle comprising a therapeutic agent. Claim 3 recites amino acid sequences, identified by SEQ ID

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NOs, for which the NGR-containing molecule comprises. Claim 4 recites various types of tumors to which claim 1 pertains. Claim 5 recites liposome as a delivery vehicle. Claim 7 recites a linking agent that links the NGR-containing molecule to the encapsulating delivery vehicle. Claim 8 recites that the therapeutic agent is an anti-inflammatory drug, an anti-angiogenic drug, a pro-angiogenic drug, or an angiolytic drug. Claim 14 is a pharmaceutical composition and optionally a pharmaceutically acceptable carrier.

Independent claim 1 of the '303 patent recites a pharmaceutical composition comprising (a) an effective amount of a conjugation product of TNF and a NGR motif (or polynucleotide thereof), comprising an amino acid sequence of CNGRCVSGCAGRC, NGRAHA, GRGRG, cycloCVLNGRMEC, or cycloCNGRC; and (b) an effective amount of IFNγ (or polynucleotide thereof). Claim 2 recites a combination of claim 1 with pharmaceutically acceptable carriers and excipients. Claim 3 recites that TNF is TNFα or TNFβ. Claim 4 recites that the TNF is derivatized with polyethylene glycol or an acyl residue. Claim 8 recites the composition of claim 1 in the form of liposomes.

As discussed previously, the '303 patent, alone or combined with other cited references, does not teach or render the present invention obvious. Moreover, claims 1-4 and 8 of the '303 patent do not teach or suggest a tumor-targeted drug delivery system comprising a NGR-containing molecule comprising a NGR sequence and an amino acid sequence VRSSSRTPSD (SEQ ID NO:7) linked to an encapsulating liposome delivery vehicle comprising a therapeutic agent, as is claimed by claims 1, 3-5, 7-8, and 14 of the present application.

Therefore, the allegedly conflicting claims of Corti '303 and the present invention are patentably distinct and the rejection should be withdrawn.

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CONCLUSION

Entry of the foregoing amendments and consideration of the foregoing remarks are respectfully requested. No fee is believed to be due for this amendment. Should any fee be required, please charge such fee to Jones Day Deposit Account No. 50-3013. Applicants respectfully submit that all claims are now in condition for allowance. The Examiner is invited to call the undersigned attorney if a telephone call could help resolve any remaining issues.

Respectfully submitted,

Date: April 25, 2007

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of:	Mirco PONZONI *et al.*	Confirmation No.:	7313
Serial No.:	10/853,895	Art Unit:	1642
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TRANSMITTAL OF SUBSTITUTE SEQUENCE LISTING UNDER 37 C.F.R. §§ 1.821 AND 1.825

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P.O. Box 1450
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Sir:

In response to the Office Action mailed October 25, 2006, in connection with the captioned application, Applicants submit herewith a Substitute Sequence Listing in written form and in computer readable form (CRF) pursuant to 37 C.F.R. § 1.821(c) and (e).

In accordance with 37 C.F.R. § 1.821(f), the undersigned hereby states that the content of the Substitute Sequence Listing information recorded in computer readable form is identical to the written sequence listing. In accordance with 37 C.F.R. § 1.821(g), the undersigned further states that the written and the computer readable forms of the Sequence Listing do not include new matter.

Accordingly, Applicants respectfully request that the Substitute Sequence Listing replace the Sequence Listing filed on May 26, 2004 and that the Substitute Sequence Listing be entered into the present application file.

Respectfully submitted,

Date: April 25, 2007

Gidon D. Stern — 27,469 (Reg. No.)

By: Susie Cheng — 46,616 (Reg. No.)

JONES DAY
222 East 41st Street
New York, New York 10017
(212) 326-3939

Copied from 10853985 on 06/04/2007

OIPE
APR 25 2007
PATENT & TRADEMARK OFFICE

SEQUENCE LISTING

<110> Ponzoni, Mirco
Corti, Angelo
Allen, Theresa

<120> TUMOR TARGETED DRUG DELIVERY SYSTEMS AND USES THEREOF

<130> 11464-006-999 (108463-999004)

<140> 10/853,895
<141> 2004-05-26

<150> GB 0312309.8
<151> 2003-05-29

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Copied from 10853985 on 06/04/2007

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Copied from 10853985 on 06/04/2007

==========

Sequence Listing was accepted.

If you need help call the Patent Electronic Business Center at (866) 217-9197 (toll free).

Reviewer: Durreshwar Anjum

Timestamp: Fri Jun 08 10:46:06 EDT 2007

==========

Validated By CRFValidator v 1.0.2

Application No: 10853895 Version No: 2.0

Input Set:

Output Set:

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Finished:	2007-06-05 17:47:02.029
Elapsed:	0 hr(s) 0 min(s) 0 sec(s) 30 ms
Total Warnings:	0
Total Errors:	0
No. of SeqIDs Defined:	8
Actual SeqID Count:	8

SEQUENCE LISTING

<110> Ponzoni, Mirco
Corti, Angelo
Allen, Theresa

<120> TUMOR TARGETED DRUG DELIVERY
SYSTEMS AND USES THEREOF

<130> 11464-006-999 (108463-999004)

<140> 10853895
<141> 2004-05-26

<150> 10/853,895
<151> 2004-05-26

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Exhibit 2

Express Mail No EV 473 970 761 US
Date Mailed April 25, 2007
Serial No. 10/853,895 Filed May 26, 2004
Inventor Mirco PONZONI et al.
For TUMOR-TARGETED DRUG DELIVERY SYSTEMS AND USES THEREOF

- ☐ Affidavit/Declaration
- ☒ Amendment
- ☐ Application pages
- ☐ Claims Drawing Sheets
- ☐ Appeal, Notice of
- ☐ Assignment
- ☐ Brief (in Triplicate)
- ☐ Declaration & Power of Attorney
- ☐ Design Application
- ☐ Disclaimer
- ☐ Disclaimer
- ☐ Disclosure Statement ☐ Form PTO-1449
  - ☐ w.refs. ☐ w/o refs.
- ☐ Drawings, Formal
  Sheets Figures

OIPE IAP80 APR 25 2007 PATENT & TRADEMARK OFFICE

- ☐ Fee Address Indication Form
- ☒ Amendment Fee Transmittal Sheet (+ 1 copy)
- ☐ Issue Fee Transmittal
- ☐ Letter
- ☐ Oral Hearing Request/Confirm
- ☒ Petition to Extend Time for 3 months (+1 copy)
- ☐ Petition Under 37 C.F.R.
- ☐ Power of Attorney
  - ☐ Associate ☐ w/Revocation
- ☒ Substitute Sequence Listing w/ Computer Readable and Paper Copy
- ☒ Small Entity Statement
- ☐ Status Letter
- ☒ Transmittal of Substitute Sequence Listing
- ☐ Fee By Deposit Account 50-3013

Other: Certified copy of the priority document
File no.: 11464-006-999 (CAM 569515-999004)

Sender: G. Stern/S. Cheng/E. Lee

Exhibit 3

10/853,895	TUMOR-TARGETED DRUG DELIVERY SYSTEMS AND USES THEREOF	12-16-2010::15:58:21

This application is officially maintained in electronic form. To View: Click the desired Document Description. To Download and Print: Check the desired document(s) and click PDF.

Bibliographic Data

Mail Room Date	Document Code	Document Description	Document Category	Page Count
01-01-2009	**OA.EMAIL**	**Email Notification**	**PROSECUTION**	**1**
12-29-2008	ISSUE.NTF	Issue Notification	PROSECUTION	1
07-15-2008	BIB	Bibliographic Data Sheet	PROSECUTION	1
07-01-2008	BIB	Bibliographic Data Sheet	PROSECUTION	1
06-25-2008	PET.OP	Petition for review by the Office of Petitions.	PROSECUTION	2
06-25-2008	LET.	Miscellaneous Incoming Letter	PROSECUTION	4
06-25-2008	IFEE	Issue Fee Payment (PTO-85B)	PROSECUTION	1
06-25-2008	PET.DEC.PUBS	Petition decision routed to the Office of Publications to act on the decision or continue prosecution.	PROSECUTION	5
04-24-2008	OA.POSTCARD	A courtesy postcard sent by USPTO to users who opt-in for e-Office Action	PROSECUTION	1
04-16-2008	NOA	Notice of Allowance and Fees Due (PTOL-85)	PROSECUTION	6
04-16-2008	BIB	Bibliographic Data Sheet	PROSECUTION	1
04-16-2008	1449	List of References cited by applicant and considered by examiner	PROSECUTION	1
04-16-2008	IIFW	Issue Information including classification, examiner, name, claim, renumbering, etc.	PROSECUTION	1
04-16-2008	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1
04-16-2008	FWCLM	Index of Claims	PROSECUTION	2
04-16-2008	SRNT	Examiner's search strategy and results	PROSECUTION	21
04-16-2008	SRNT	Examiner's search strategy and results	PROSECUTION	1
04-16-2008	OA.EMAIL	Email Notification	PROSECUTION	1
03-10-2008	N570	Communication - Re: Power of Attorney (PTOL-308)	PROSECUTION	1
03-10-2008	N570	Communication - Re: Power of Attorney (PTOL-308)	PROSECUTION	1
03-10-2008	OA.EMAIL	Email Notification	PROSECUTION	1
02-19-2008	PA..	Power of Attorney	PROSECUTION	6
02-01-2008	TRAN.LET	Transmittal Letter	PROSECUTION	2
02-01-2008	RCEX	Request for Continued Examination (RCE)	PROSECUTION	2
02-01-2008	XT/	Extension of Time	PROSECUTION	2
02-01-2008	IDS	Information Disclosure Statement (IDS) Filed (SB/08)	PROSECUTION	1
02-01-2008	NPL	NPL Documents	PROSECUTION	4
02-01-2008	NPL	NPL Documents	PROSECUTION	12
02-01-2008	AMSB	Amendment Submitted/Entered with Filing of CPA/RCE	PROSECUTION	1
02-01-2008	CLM	Claims	PROSECUTION	4
02-01-2008	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	13
02-01-2008	WFEE	Fee Worksheet (PTO-875)	PROSECUTION	1

08-09-2007	CTFR	Final Rejection	PROSECUTION	13
08-09-2007	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1
07-30-2007	SRNT	Examiner's search strategy and results	PROSECUTION	1
06-08-2007	CRFE	CRF entered - partial listing printed by STIC	PROSECUTION	4
06-04-2007	SRNT	Examiner's search strategy and results	PROSECUTION	2
04-25-2007	SEQ.TXT	Sequence Listing (Text File)	PROSECUTION	1
04-25-2007	A...	Amendment/Req. Reconsideration-After Non-Final Reject	PROSECUTION	1
04-25-2007	CLM	Claims	PROSECUTION	5
04-25-2007	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	9
04-25-2007	CRFS	CRF Statement Paper and CRF are the same	PROSECUTION	1
04-25-2007	SEQLIST	Sequence Listing	PROSECUTION	2
04-25-2007	FRPR	Certified Copy of Foreign Priority Application	PROSECUTION	76
04-25-2007	XT/	Extension of Time	PROSECUTION	1
04-25-2007	LET.	Miscellaneous Incoming Letter	PROSECUTION	2
10-25-2006	CTNF	Non-Final Rejection	PROSECUTION	17
10-25-2006	1449	List of References cited by applicant and considered by examiner	PROSECUTION	2
10-25-2006	892	List of references cited by examiner	PROSECUTION	1
10-25-2006	NPL	NPL Documents	PROSECUTION	3
10-25-2006	NPL	NPL Documents	PROSECUTION	8
10-25-2006	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1
10-25-2006	BIB	Bibliographic Data Sheet	PROSECUTION	1
10-13-2006	SRNT	Examiner's search strategy and results	PROSECUTION	20
08-30-2006	ELC.	Response to Election / Restriction Filed	PROSECUTION	1
08-30-2006	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	2
08-30-2006	XT/	Extension of Time	PROSECUTION	1
05-30-2006	CTRS	Requirement for Restriction/Election	PROSECUTION	8
05-30-2006	FWCLM	Index of Claims	PROSECUTION	1
12-20-2005	IDS	Information Disclosure Statement (IDS) Filed (SB/08)	PROSECUTION	3
12-20-2005	FOR	Foreign Reference	PRIOR ART	47
12-20-2005	FOR	Foreign Reference	PRIOR ART	331
12-20-2005	NPL	NPL Documents	PRIOR ART	3
12-20-2005	NPL	NPL Documents	PRIOR ART	2
12-20-2005	NPL	NPL Documents	PRIOR ART	2
12-20-2005	NPL	NPL Documents	PRIOR ART	2
11-15-2004	IDS	Information Disclosure Statement (IDS) Filed (SB/08)	PROSECUTION	3
11-15-2004	FOR	Foreign Reference	PRIOR ART	117
11-15-2004	NPL	NPL Documents	PRIOR ART	4
11-15-2004	NPL	NPL Documents	PRIOR ART	8
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11-15-2004	NPL	NPL Documents	PRIOR ART	9
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11-15-2004	NPL	NPL Documents	PRIOR ART	2
11-15-2004	NPL	NPL Documents	PRIOR ART	4
11-15-2004	NPL	NPL Documents	PRIOR ART	11
11-15-2004	NPL	NPL Documents	PRIOR ART	7
11-15-2004	NPL	NPL Documents	PRIOR ART	4
11-15-2004	FOR	Foreign Reference	PRIOR ART	180
08-18-2004	PEFR	Applicant Response to Pre-Exam Formalities Notice	PROSECUTION	3
08-18-2004	A.PE	Preliminary Amendment	PROSECUTION	2
08-18-2004	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	1
08-18-2004	OATH	Oath or Declaration filed	PROSECUTION	15
08-18-2004	DRW	Drawings-only black and white line drawings	PROSECUTION	11
07-22-2004	PEFN	Pre-Exam Formalities Notice	PROSECUTION	2
05-26-2004	TRNA	Transmittal of New Application	PROSECUTION	2
05-26-2004	SPEC	Specification	PROSECUTION	61
05-26-2004	CLM	Claims	PROSECUTION	5
05-26-2004	ABST	Abstract	PROSECUTION	1
05-26-2004	DRW	Drawings-only black and white line drawings	PROSECUTION	5
05-26-2004	OATH	Oath or Declaration filed	PROSECUTION	2
05-26-2004	CRFS	CRF Statement Paper and CRF are the same	PROSECUTION	1
05-26-2004	SEQLIST	Sequence Listing	PROSECUTION	2
05-26-2004	WCLM	Claims Worksheet (PTO-2022)	PROSECUTION	1
05-26-2004	WFEE	Fee Worksheet (PTO-875)	PROSECUTION	1
05-26-2004	WFEE	Fee Worksheet (PTO-875)	PROSECUTION	1

Close Window

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.
10/853,895	05/26/2004	Mirco Ponzoni	50735/002001	7313

21559 7590 01/25/2011

CLARK & ELBING LLP
101 FEDERAL STREET
BOSTON, MA 02110

EXAMINER	
FETTEROLF, BRANDON J	
ART UNIT	PAPER NUMBER
1642	

NOTIFICATION DATE	DELIVERY MODE
01/25/2011	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):

patentadministrator@clarkelbing.com

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110119

DATE : December 20, 2010

TO SPE OF : ART UNIT 1642

SUBJECT : Request for Certificate of Correction on Patent No.: 7,479,483

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

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - ST (South Tower) 9A22
Palm location **7590** - Tel. No. (703) 305-8309

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

Thank You For Your Assistance **Certificates of Correction Branch**

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

Note your decision on the appropriated box.

☒ **Approved** All changes apply.

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

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

Comments:

/Misook Yu/
Supervisory Patent Examiner.Art Unit 1643

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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CLARK & ELBING LLP
101 FEDERAL STREET
BOSTON MA 02110

MAILED

MAY 20 2011

OFFICE OF PETITIONS

ON PETITION

In re Patent No. 7,479,483 :
Issue Date: January 20, 2009 :
Application No. 10/853,895 :
Filed: May 26, 2004 :
Attorney Docket No. 50735/002001 :

This is a decision on the petition filed April 6, 2011, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-2991. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

The Certificates of Correction Branch will be notified of this decision granting the petition under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

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

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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DARDI & HERBERT, PLLC
Moore Lake Plaza, Suite 205
1250 East Moore Lake Drive
Fridley MN 55432

MAILED

NOV 03 2011

OFFICE OF PETITIONS

In re Application of :
Bi et al. :
Application No. 10/854019 :
Filing or 371(c) Date: 05/26/2004 :
Attorney Docket Number: 3275.34US02 :

ON PETITION

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

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

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

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

This application is being referred to the Board of Patent Appeals and Interferences for further action consistent with the Board's Order of October 26, 2011, in the normal course of business.

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

/DLW/

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

AT&T LEGAL DEPARTMENT - SZ
ATTN: PATENT DOCKETING
ROOM 2A-207
ONE AT&T WAY
BEDMINSTER, NJ 07921

MAILED

NOV 10 2010

OFFICE OF PETITIONS

In re Application of :
Stephen Pancoast Norton, et al. :
Application No. 10/854,478 : ON PETITION
Filed: May 26, 2004 :
Attorney Docket No. 040201 :

This is in response to the renewed communication, filed August 20, 2010, to revive the above-identified application, which is being treated as a petition to withdraw the holding of abandonment.

The petition is **GRANTED**

A final rejection was mailed October 28, 2008.

Applicant responded with an after-final amendment on January 28, 2009.

An advisory action was mailed February 18, 2009. This advisory action contained a new rejection of the claims based on obvious double patenting. The introduction of a new rejection of the claims had the effect of withdrawing the finality of the rejection and reopening prosecution (although this was not stated in the advisory action).

Applicant responded with the filing of a terminal disclaimer on March 2, 2009.

An Office Communication mailed April 30, 2009 indicated that due to the new rejection set forth in the advisory action, the finality was withdrawn from the rejection mailed October 28, 2008 and the time period for responding to the double patenting rejection had been "reset for applicant to file a response..." Since the examiner failed to specify a shortened statutory period for response, applicant automatically was given six months to respond.

Applicant filed another terminal disclaimer on May 4, 2009.

The file record shows several internal memos in regard to the disapproval of the terminal disclaimers filed by applicant. A disapproved terminal disclaimer would not have overcome the

obvious double patenting rejection and the next step would have been for the examiner to issue a new Office action repeating the rejection. However, no such action was issued.

A notice of abandonment was mailed February 5, 2010 indicating the reason for abandonment was "no reply has been received from applicant."

There was no response due from applicant. Applicant timely filed several terminal disclaimers in response to the new obvious double patenting rejection mailed February 18, 2009 and thus clearly a response had been filed. Although the terminal disclaimers were not proper, the examiner never mailed an Office action to indicate this and no response we due by applicant.

The notice of abandonment was in error, accordingly, the application was not abandoned in fact.

In view of the above, the notice of abandonment is hereby vacated and the holding of abandonment withdrawn.

This application is being referred to Technology Center Art Unit 2434 for an action on the merits in view of the terminal disclaimers filed in response to the obvious double patenting rejection.

Telephone inquiries related to this decision may 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.

/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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DANN, DORFMAN, HERRELL & SKILLMAN
1601 MARKET STREET
SUITE 2400
PHILADELPHIA PA 19103-2307

MAILED
MAY 19 2011
OFFICE OF PETITIONS

In re Application of :
Kent W. Christopherson, II et al. :
Application No. 10/854,723 : ON PETITION
Filed: May 26, 2004 :
Attorney Docket No. 1857-ARTI.0338US :

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

The petition is **DISMISSED**.

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

The application became abandoned for failure to reply in a timely manner to the final Office action mailed, April 13, 2007, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on July 14, 2007. A Notice of Abandonment was mailed on October 26, 2007.

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

As to item (3) the necessary statement of unintentional delay, as indicated above was not provided on the petition.

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

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

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

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

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

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

DANN, DORFMAN, HERRELL & SKILLMAN
1601 MARKET STREET
SUITE 2400
PHILADELPHIA PA 19103-2307

MAILED
JUL 05 2011
OFFICE OF PETITIONS

In re Application of :
Kent W. Christopherson, II et al. :
Application No. 10/854,723 :
Filed: May 26, 2004 :
Attorney Docket No. 1857-ARTI.0338US

CORRECTED DECISION
ON PETITION

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

The petition is **GRANTED**.

The application became abandoned for failure to properly reply in a timely manner to the final Office action mailed, April 13, 2007, which set a shortened statutory period for reply of three (3) months. A one month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on August 14, 2007. A Notice of Abandonment was mailed on October 26, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application under 37 CFR 1.53(b), (2) the petition fee of $810, and (3) a proper statement of unintentional delay. Accordingly, the filing of a continuing application under 37 CFR 1.53(b) is accepted as being unintentionally delayed.

The 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 a continuing application under 37 CFR 1.53(b).

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

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

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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GOWLING LAFLEUR HENDERSON LLP
SUITE 1600, 1 FIRST CANADIAN PLACE
100 KING STREET WEST
TORONTO ON M5X 1G5 CA CANADA

MAILED
SEP 08 2011
OFFICE OF PETITIONS

In re Patent No. 7,748,313 :
Issued July 6, 2010 :
Application No. 10/854,788 : ON PETITION
Filed: May 27, 2004 :
Attorney Docket Number: T8472290US :

This is a decision on the petition, filed September 1, 2011, under 37 CFR 3.81(b)[1] to correct the assignee's name on the front of the Patent.

The petition is **GRANTED**.

The petition claims that assignment data was included in the PTOL-85B filed May 3, 2010 when in fact no assignment should have been supplied as the present application remained unassigned at the time. Accordingly, petitioner requests that a certificate of correction be issued to remove the assignment information on the front page of the Letters Patent.

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

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

Office assignment records reflect that at the time the issue fee was paid, there was no assignment recorded. Accordingly, as the request complies with the provisions of 37 CFR 3.81(b), it would be appropriate for a certificate of correction to issue.

---

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

The petition fee in the amount of $130.00 and the fee for the certificate of correction in the amount of $100.00 have been applied.

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

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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MERCHANT & GOULD
SCIENTIFIC ATLANTA, A CISCO COMPANY
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

MAILED

SEP 13 2010

OFFICE OF PETITIONS

In re Application of
Arturo A. RODRIGUEZ, et *al.*
Application No. 10/854,874
Filed: May 27, 2004
Attorney Docket No.
60374.0052USD1/CPOL968619

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

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

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on August 9, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 2621 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

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

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

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GLENN M. SEAGER
CROMPTON, SEAGER & TUFTE, LLC
SUITE 800
1221 NICOLLET AVENUE
MINNEAPOLIS MN 55403-2420

MAILED

DEC 30 2010

OFFICE OF PETITIONS

In re Application of :
Scott R. WELD, et al :
Application No. 10/855,069 : ON PETITION
Filed: May 27, 2004 :
Attorney Docket No. 1169.1103101 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 30, 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 25, 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 26, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application under 37 CFR 1.53(b); (2) the petition fee of $810; and (3) an adequate statement of unintentional delay.

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

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuing Application No. 12/956,907, filed November 30, 2010.

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

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WHITEFORD, TAYLOR & PRESTON, LLP
ATTN: GREGORY M STONE
SEVEN SAINT PAUL STREET
BALTIMORE MD 21202-1626

MAILED

SEP 30 2010

OFFICE OF PETITIONS

In re Application of :
MIR, Nazir :
Application No. 10/855,305 : DECISION ON PETITION
Filed: May 27, 2004 : TO WITHDRAW
Attorney Docket No. **079395/00002** : 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 09, 20010.

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 Gregory M. Stone on behalf of all attorneys of record who are associated with customer No. 25223. All attorneys/agents associated have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address indicated below.

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: **PERFTECH, INC.**
251 AIRPORT ROAD
NORTH AURORA, IL 60542

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PATTON BOGGS LLP
8484 WESTPARK DRIVE
SUITE 900
MCLEAN, VA 22102

MAILED

SEP 30 2010

OFFICE OF PETITIONS

In re Application of :
Alan N. Howard, et al. :
Application No. 10/855,317 : ON PETITION
Filed: May 28, 2004 :
Attorney Docket No.: 024305.0102PTUS :

This is a decision on the petition under 37 CFR 1.137(b), filed August 12, 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). Accordingly, the date of abandonment of this application is September 29, 2009. A Notice of Abandonment was mailed February 19, 2010. On August 12, 2010, the present petition was filed.

The petition is not signed by a patent practitioner currently of record. However, in accordance with 37 CFR 1.34(a), the signature of Perry E. Van Over appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that petitioner is authorized to represent the particular party on whose behalf he acts.

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

It is noted that fees for a 3-month petition for extension of time were submitted with the present petition on August 12, 2010. Since no extension of time fees are due on a petition for revival, the $1,110 extension fees are being refunded to counsel's credit card.

The application is being referred to Technology Center AU 1615 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

Doc code : PET.OP.AGE
Description : Petition to make special based on Age/Health

PTO/SB/130 (07-09)
Approved for use through 07/31/2012. OMB 0651- 0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number

PETITION TO MAKE SPECIAL BASED ON AGE FOR ADVANCEMENT OF EXAMINATION UNDER 37 CFR 1.102(c)(1)

Application Information

Application Number	10855317	Confirmation Number	8018	Filing Date	2004-05-28
Attorney Docket Number (optional)	024305.0102PTUS	Art Unit	1615	Examiner	J. T. Palenik
First Named Inventor	Alan N. Howard				
Title of Invention	FOOD COMPOSITIONS CONTAINING CREATINE				

Attention: Office of Petitions

An application may be made special for advancement of examination upon filing of a petition showing that the applicant is 65 years of age, or more. No fee is required with such a petition. See 37 CFR 1.102(c)(1) and MPEP 708.02 (IV).

APPLICANT HEREBY PETITIONS TO MAKE SPECIAL FOR ADVANCEMENT OF EXAMINATION IN THIS APPLICATION UNDER 37 CFR 1.102(c)(1) and MPEP 708.02 (IV) ON THE BASIS OF THE APPLICANT'S AGE.

A grantable petition requires one of the following items:
(1) Statement by one named inventor in the application that he/she is 65 years of age, or more; or
(2) Certification by a registered attorney/agent having evidence such as a birth certificate, passport, driver's license, etc. showing one named inventor in the application is 65 years of age, or more.

Name of Inventor who is 65 years of age, or older

Given Name	Middle Name	Family Name	Suffix
Alan	Norman	Howard	

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 format of the signature.

Select (1) or (2) :

○ (1) I am an inventor in this application and I am 65 years of age, or more.

● (2) I am an attorney or agent registered to practice before the Patent and Trademark Office, and I certify that I am in possession of evidence, and will retain such in the application file record, showing that the inventor listed above is 65 years of age, or more.

Signature	/Matthew J. Laskoski/	Date (YYYY-MM-DD)	2011-10-25
Name	Matthew J. Laskoski	Registration Number	55360

PTO/SB/130 (07-09)
Approved for use through 07/31/2012. OMB 0651- 0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number

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 Fr eedom 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 indivi duals.

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 Application of
Alan N. Howard

Application No. 10855317

Filed: May 28,2004

Attorney Docket No. 024305.0102PTUS

:
:
:DECISION ON PETITION TO MAKE SPECIAL
:UNDER 37 CFR 1.102(c)(1)
:

This is a decision on the electronic petition under 37 CFR 1.102 (c)(1), filed 25-OCT-2011 to make the above-identified application special based on applicant's age as set forth in MPEP § 708.02, Section IV.

The petition is **GRANTED**.

A grantable petition to make an application special under 37 CFR 1.102(c)(1), MPEP § 708.02, Section IV: Applicant's Age must include a statement by applicant or a registered practitioner having evidence that applicant is at least 65 years of age. No fee is required.

Accordingly, the above-identified application has been accorded "special" status and will be taken up for action by the examiner upon the completion of all pre-examination processing.

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

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

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FOLEY AND LARDNER LLP
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WASHINGTON, DC 20007

MAILED
SEP 20 2010
OFFICE OF PETITIONS

In re Application of :
Anderson et al. :
Patent No. 7,723,091 : DECISION ON APPLICATION
Issue Date: May 25, 2010 : FOR PATENT TERM ADJUSTMENT
Application No. 10/855,416 :
Filed: May 28, 2004 :
Attorney Docket No. 016754-0256 :

This is in response to the "Response to and Request for Reconsideration of Decision on Application for Patent Term Adjustment" filed June 9, 2010, which is being treated as a renewed petition under 37 C.F.R. § 1.705(b).

The petition is **dismissed**.

A petition under 37 C.F.R. § 1.705(b) was filed on September 25, 2009. The Office mailed a decision on April 15, 2010, dismissing the petition. The April 15, 2010 decision stated in part,

> A review of the record indicates a reduction of 75 days should have been entered under 37 C.F.R. § 1.704(c)(8) for papers filed July 2, 2007.... In view of the prior discussion, the Office has entered a reduction of 75 days for delay under 37 C.F.R. § 1.704(c)(8).

The petition asserts entry of the 75-day reduction in patent term adjustment was improper. Specifically, the petition asserts the papers filed July 2, 2007 were expressly requested by the examiner.

Facts

An Information Disclosure Statement ("IDS") was filed with the instant application on May 28, 2004. The IDS listed a total of 88 documents. The IDS stated,

> Applicants submit herewith on Form PTO-1449 a listing of all the documents cited by or submitted to the U.S. PTO in parent application Serial No. 09/731,971, filed 12/8/2000. As provided in 37 CFR §1.98(d), copies of the documents are not being provided since

> they were previously submitted to the United States Patent & Trademark Office in the above-identified parent application.

The examiner mailed a form PTO-1499 along with a non-final Office action on January 22, 2007. The PTO-1499 indicated the examiner had considered all of the citations in the May 28, 2004 IDS.

Patentees filed a reply to the non-final Office action on April 18, 2007.

On July 2, 2007, Attorney Courtenay C. Brinckerhoff filed a copy of References A74, A75, and A76 cited in the PTO-1449 by facsimile transmission. The papers were transmitted to the examiner's direct facsimile number instead of to the Office's general facsimile number. The facsimile cover sheet stated,

> PER OUR EARLIER TELEPHONE CONFERENCE, ATTACHED ARE THE THREE (3) MISSING REFERENCE NOS. A74, A75, and A76.

The examiner mailed a final Office action on July 12, 2007. Page 2 of the Office action stated,

> In the previous Office action, Examiner included a copy of Form 1449 in which the Examiner inadvertently considered all the references. However, he has now discovered that some references were not submitted by the applicant and some references in the IDS have incomplete information. Please see the attached reconsidered Form 1449.

The examiner initialed the entry for Reference A76 in the replacement PTO-1449. However, the examiner did not initial the entries for References A74 and A75. Instead, the examiner marked out the description portion of the entry for the two references and added the handwritten-notation "Date?" to the side of each entry.

The Office did not enter a reduction for the July 2, 2007 papers when determining the patent term adjustment mailed with the Notice of Allowance. However, when reviewing a petition under 37 C.F.R. § 1.705(b) filed September 25, 2009, the Office determined a 75-day reduction should have been entered under 37 C.F.R. § 1.704(c)(8) as a result of the July 2, 2007 papers. The April 10, 2007 decision stated,

> A review of the record indicates a reduction of 75 days should have been entered under 37 C.F.R. § 1.704(c)(8) for papers filed July 2, 2007.
>
> The Office mailed a non-final Office action on January 22, 2007. Applicants filed a reply on April 18, 2007, and subsequently filed copies of three references by facsimile transmission on July 2, 2007. The transmittal sheet indicates the sender was attorney Courtenay Brinckerhoff. The transmittal sheet states, "Per our earlier telephone conference, attached are the three (3) missing Reference nos. A74, A75, and A76."
>
> A reduction is appropriate under 37 C.F.R. § 1.704(c)(8) unless the papers were "expressly requested by the examiner." The transmittal sheet only indicates the examiner

and the attorney spoke about the references and does not indicate the examiner expressly requested the references. Therefore, a reduction is proper.

The number of days beginning on the day after April 18, 2007, the date the initial reply was filed, and ending on July 2, 2007, the date the IDS was filed, is 75 days.

In view of the prior discussion, the Office has entered a reduction of 75 days for delay under 37 C.F.R. § 1.704(c)(8).

Discussion

Per 37 C.F.R. § 1.704(c)(8), circumstances that will result in a reduction in the period of adjustment include:

> Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed.

The petition asserts a reduction in patent term adjustment for the papers filed July 2, 2007, is unwarranted because the papers were expressly requested by the examiner.

The record does not include any written request by the examiner for the submission of the references filed July 2, 2007.

Excluding the instant petition, the record does not include any written statement by Applicants asserting the July 2, 2007 references were expressly requested by the examiner.

The written statement indicating

The petition states,

> Applicants would have had no reason to submit the papers at issue on July 2, 2007 unless the Examiner had expressly requested them, because they already had been made of record and "considered" by the examiner.

As will be discussed, the petition fails to establish Applicants had already made References A74 and A75 filed July 2, 2007, of record and the petition fails to establish the examiner had already considered the references.

Although the May 24, 2004 IDS listed References A74 and A75, a copy of the non-patent literature documents was not provided with the IDS. The petition asserts Applicants were not legally required to submit a copy of the references because copies had been filed in the parent application. The Office concedes, *if* certain requirements are met, a party does not need to file a

copy of references previously filed in a parent application. However, the requirements were not satisfied for References A74 and A75.

Pursuant to 37 C.F.R. § 1.98(d), Applicants were required to submit a copy of References A74 and A75 unless:

1. The IDS filed May 28, 2004 properly identified the parent application; *and*
2. The IDS in the parent application complied with 37 C.F.R. §§ 1.98(a)-(c).

37 C.F.R. § 1.98(b)(5) requires an IDS provide the date for each reference. A review of the IDS filed in the parent application on June 7, 2002, indicates the IDS did *not* supply the date for References A74 and A75. The examiner did not initial the entries for References A74 and A75 in the PTO-1449 mailed July 24, 2002. Instead, the examiner marked out the description portion of each of the entries and added the hand-written notation "Pub Date" beside the entry for Reference No. A74. In view of the prior facts, the June 7, 2002 IDS failed to comply with 37 C.F.R. §§ 1.98(a)-(c).

Since the IDS in the parent application failed to satisfy the requirements set forth in 37 C.F.R. §§ 1.98(a)-(c), Applicants were legally required to submit copies of Reference Nos. A74 and A75 with the IDS filed May 28, 2004.

The petition states,

> On January 22, 2007, the Examiner issued an Office action including an initialed Form PTO/SB/08 indicating that all of the references had been considered. Thus, the papers that were submitted on July 2, 2007 already had been properly made of record.

The petition's argument based on the January 22, 2007 PTO-1449 ignores the fact the examiner subsequently recognized the PTO-1449 contained errors and mailed a replacement Form 1449 on July 12, 2007. The entries for References A74 and A75 on the replacement Form 1449 were *not* initialed. Instead, the examiner marked-out the description portion pertaining to each of the references and added the notation "Date?" to the entry for each of the references. In view of the issuance of the replacement PTO-1449, Applicants have failed to demonstrate all three references were properly recorded and considered by the examiner prior to July 2, 2007.

The petition is signed by the attorney who filed the references on July 2, 2007. The petition states, "To the best of the undersigned's recollection, the Examiner had requested copies of the references at issue because he was not able to locate them in the parent file." The petition is dated June 9, 2010, almost three years after the submission of the references on July 2, 2007.

37 C.F.R. § 1.2 states the Office's actions will be based exclusively on the written record and states, with emphasis added, "No attention will be paid to any alleged oral promise, stipulation, *or understanding* in relation to which there is disagreement *or doubt*." In this case, the passage of three years raises doubt concerning the accuracy of the attorney's recollection of the content of the telephone conversation with the examiner. Therefore, the attorney's recollection of the conversation does not establish the examiner expressly requested submission of the three references.

Conclusion

The record fails to establish the examiner expressly requested submission of the references filed July 2, 2007. In other words, the record fails to establish the Office acted improperly when the Office entered a reduction of 75 days under 37 C.F.R. § 1.704(c)(8) as a result of the papers filed July 2, 2007.

In view of the prior discussion, the 75-day reduction in patent of term adjustment will not be removed.

The patent term adjustment remains 535 days as set forth on the patent issued May 25, 2010.

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

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

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.

Anthony Knight
Director
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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MAILED

MAR 23 2011

OFFICE OF PETITIONS

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

In re Patent of David M. Anderson et al.	:	DECISION ON REQUEST
Patent No. 7,723,091	:	FOR RECONSIDERATION OF
Issue Date: May 25, 2010	:	PATENT TERM ADJUSTMENT
Application No. 10/855,416	:	AND NOTICE OF INTENT TO
Filing Date: May 28, 2004	:	ISSUE CERTIFICATE OF
Attorney Docket No. 016754-0256	:	CORRECTION

This is a decision on the petition filed November 18, 2010, which is being treated as a renewed petition under 37 C.F.R. § 1.705(b) requesting the patent term adjustment indicated on the patent be corrected to indicate the term of the patent is extended or adjusted by six hundred ten (610) 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 six hundred ten (610) days is **GRANTED**.

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 **six hundred ten (610) 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.	:	7,723,091 B2
APPLICATION NO.	:	10/855,416
DATED	:	May 25, 2010
INVENTOR(S)	:	David M. Anderson et al.

DRAFT

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

On the Title page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 535 days.

Delete the phrase "by 535 days" and insert -- by 610 days--

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AUG 3 0 2010

OFFICE OF PETITIONS

Paper No.

MCCARTER & ENGLISH, LLP BOSTON
265 Franklin Street
Boston MA 02110

In re Patent No. 7,601,505	:	DECISION ON REQUEST FOR
Monahan et al.	:	RECONSIDERATION OF
Issue Date: October 13, 2009	:	PATENT TERM ADJUSTMENT
Application No. 10/855,588	:	and
Filed: May 26, 2004	:	NOTICE OF INTENT TO ISSUE
Atty Docket No.: 117742-06401	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on May 20, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand, one hundred and thirty-one (1131) 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 thirty-one (1131) days is **GRANTED.**

The $200.00 fee set forth in 37 CFR 1.18(e) will be charged to Deposit Account No. 50-4876 in due course, as authorized on the third page of this petition. No additional fees are required.

On December 4, 2009, Patentee submitted a petition under 37 CFR 1.705(d) along with the $200.00 fee set forth in 37 CFR 1.18(e). On February 8, 2010, Patentee filed a Request for Recalculation of Patent Term Adjustment in view of Wyeth. On March 17, 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 1131 days. On April 21, 2010, the Office mailed a "DECISION ON REQUEST FOR RECALCULATION of PATENT TERM ADJUSTMENT IN VIEW OF WYETH AND NOTICE OF INTENT TO ISSUE CERTIFICATE OF

CORRECTION," indicating that the patent term adjustment had been determined to be 1509 days.

The Office notes that the decision of April 21, 2010 was issued in error as it accorded Patentee 378 more days of patent term adjustment than was warranted. The present decision supersedes the decision mailed on April 21, 2010.

The Office has determined that the patent term adjustment for the above-identified patent is **1131 days.** The 378 additional days of adjustment will be removed.

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 and thirty-one (1131) 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

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,601,505 B2

DATED : **October 13, 2009** **DRAFT**

INVENTOR(S) : **Monahan 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 1509 days

Delete the phrase "by 753 days" and insert – by 1131 days --

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JAMES R. THEIN
SUITE 105
2231 CRYSTAL DRIVE
ARLINGTON VA 22202

MAILED

JUL 18 2011

OFFICE OF PETITIONS

In re Patent No. 7,150,119
Issue Date: December 19, 2006
Application No. 10/855,637
Filed: May 28, 2004
For: HONEYCOMB SIGN BOARD

ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed May 10, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on December 20, 2010 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.

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) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

Cc:

PHILIP L. BATEMAN
P.O. BOX 1105
DECATUR, IL 62525

UNITED STATES PATENT AND TRADEMARK OFFICE

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BOZICEVIC FIELD & FRANCIS LLP
1900 UNIVERSITY AVENUE
SUITE 200
EAST PALO ALTO CA 94303

MAILED

DEC 13 2010

OFFICE OF PETITIONS

In re Patent No. 7,713,515
Englebienne, et al.
Application No. 10/855,879
Issue Date: May 11, 2010
Filed: May 26, 2004
Attorney Docket No. REDL-010

: 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 under 37 CFR 1.705(d), filed June 25, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the patent is extended or adjusted from one thousand three hundred ninety (1390) days to one thousand five hundred nine (1509) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand five hundred nine (1509) days is **GRANTED**.

Patentees are correct that the amount of days over 36 months from the filing date of the application until the issue date of the patent was not included in the "B" delay period. The over three year period began on May 27, 2007 and ended on May 11, 2010 (the patent issue date), and is 1080 days. See 35 U.S.C. 154(b)(1)(B)(i).

In view thereof, the correct number of days of patent term adjustment is one thousand five hundred and nine (1509) days (552 days of "A" delay and 1080 days of "B" delay, reduced by 123 days of Applicant delay).

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

The application is being forwarded to the 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 five hundred nine (1509)** days.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Cliff Congo, at (571) 272-3207.

Anthony Knight
Supervisor
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

DRAFT CERTIFICATE OF CORRECTION

PATENT : 7,713,515 B2

DATED : **May 11, 2010**

INVENTOR(S) : Englebienne 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 1390 days.

Delete the phrase "by 1390 days" and insert – by 1509 days--

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CENTRAL FAX CENTER
MAR 29 2011

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/22/11

TO SPE OF : ART UNIT 3761

SUBJECT : Request for Certificate of Correction for Appl. No.: 12/856087 Patent No.: 7846121

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 Director/SPE response to 571-270-9999

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: Tatyana Zalukaeva Tzaluka SPE AU 3761

PAGE 1/2 * RCVD AT 3/29/2011 9:23:21 AM [Eastern Daylight Time] * SVR:W-PTOFAX-002/38 * DNIS:2709990 * CSID: * DURATION (mm-ss):01-19

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

SPE

Art Unit 3761

PAGE 2/2 * RCVD AT 3/29/2011 9:23:21 AM [Eastern Daylight Time] * SVR:W-PTOFAX-002/38 * DNIS:2709990 * CSID: * DURATION (mm-ss):01-19

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/22/11

TO SPE OF : ART UNIT 3761

SUBJECT : Request for Certificate of Correction for Appl. No.: 12856087 Patent No.: 7846121

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

[redacted]

Lamonte Newsome

Certificates of Correction Branch

571-272-3421

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: _____

Tatyana Zalukaeva Tzaluka
SPE AU 3761

PAGE 1/2 * RCVD AT 3/29/2011 9:23:21 AM [Eastern Daylight Time] * SVR:W-PTOFAX-002/38 * DNIS:2709990 * CSID: * DURATION (mm-ss):01-19

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Kamikas 3761

SPE Art Unit

PAGE 2/2 * RCVD AT 3/29/2011 9:23:21 AM [Eastern Daylight Time] * SVR:W-PTOFAX-002/38 * DNIS:2709990 * CSID: * DURATION (mm-ss):01-19

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HOFFMANN & BARON, LLP
6900 JERICHO TURNPIKE
SYOSSET NY 11791

MAILED
DEC 19 2011
OFFICE OF PETITIONS

In re Patent No. 7,666,337 :
Issued: February 23, 2010 :
Application No.: 10/856,176 : NOTICE
Filed: May 28, 2004 :
Attorney Docket No: **1199-26** :

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

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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

MAILED
JUL 26 2011
OFFICE OF PETITIONS

In re Patent No. 7,125,397 :
Issue Date: October 24, 2006 :
Application No. 10/856,315 : DECISION ON PETITION
Filed: May 27, 2004 :
Attorney Docket No. **51000/THD/K163** :

This is a decision on the petition under 37 CFR 1.378(c), filed March 18, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired at midnight on October 24, 2010 for failure to pay the three and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

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

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of fee address (form PTO/SB/47) and a request for customer number (form PTO/SB/125) should be filed in accordance with Manual of Patent Examining Procedure, section 2540. A courtesy copy of this decision is being mailed to the address on the petition. However, the Office will mail all future correspondence solely to the address of record.

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

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

cc: **TOM H. DAO**
KLEIN, O'NEILL & SINGH, LLP
18200 VON KARMAN AVE.
SUITE 725
IRVINE CA 92612

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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KANG LIM
3494 CAMINO TASSAJARA ROAD #436
DANVILLE, CA 94506

Mail Date: 08/04/2010

Applicant	: Michael J. Albanese	: DECISION ON REQUEST FOR
Patent Number	: 7640198	: RECALCULATION of PATENT
Issue Date	: 12/29/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/856,335	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/28/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1023** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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www.uspto.gov

Ryan, Mason & Lewis, LLP,
90 Forest Avenue
Locust Valley, NY 11560

Mail Date: 08/04/2010

Applicant	: Harsha S. Nagesh	: DECISION ON REQUEST FOR
Patent Number	: 7652986	: RECALCULATION of PATENT
Issue Date	: 01/26/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/856,444	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/28/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1444** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7044215	2006-05-16	10856471	2004-05-28	14055.50

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	/jathomas/	Date (YYYY-MM-DD)	2010-08-23
Name	John A. Thomas	Registration Number	29980

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. 7044215
Issue Date: May 16,2006
Application No. 10856471
Filed: May 28,2004
Attorney Docket No. 14055.50

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

This is a decision on the electronic petition, filed September 9,2010 ,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 9,2010 . 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)
7172300	2007-02-06	10856484	2004-05-28	4457P3054

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	/Jeffrey D. Moy/	Date (YYYY-MM-DD)	2012-04-04
Name	Jeffrey D. Moy	Registration Number	39307

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.

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UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Patent No. 7172300
Issue Date: February 6,2007
Application No. 10856484
Filed: May 28,2004
Attorney Docket No. 82234A

: 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.

UNITED STATES 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. 6974213
Issue Date: December 13,2005
Application No. 10856605
Filed: May 28,2004
Attorney Docket No. 103731.010100

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

This is a decision on the electronic petition, filed October 5,2010 ,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 5,2010 .
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)
6974213	2005-12-13	10856605	2004-05-28	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			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	/Barry J. Schindler/	Date (YYYY-MM-DD)	2010-10-05
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.**

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

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

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

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

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

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

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

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

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

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Ingrid McTaggart
3021 S.E. 56th Avenue
Portland OR 97206

MAILED
NOV 19 2010
OFFICE OF PETITIONS

In re Application of :
Beal, et al. :
Application No. 10/856,919 : ON PETITION
Filed: May 28, 2004 :
Attorney Docket No. OIW606 :

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

The petition is GRANTED.

The application became abandoned October 29, 2005 for failure to timely submit a proper reply to the final Office action mailed July 28, 2005. No petition for extension of time for reply was filed. Notice of Abandonment was mailed August 29, 2006. A petition under 37 CFR 1.181 was filed March 6, 2006 and dismissed June 17, 2006. A petition under 37 CFR 1.137(b) was filed October 16, 2006 and dismissed December 4, 2006. A renewed petition was filed June 9, 2009 and dismissed July 6, 2010.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 C.F.R. § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee set forth in 37 C.F.R. § 1.20(d)) required pursuant to 37 C.F.R. § 1.137(c).

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

This application is being referred to Technology Center AU 3617 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) 272-3205.

/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
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Alexandria, VA 22313-1450
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OFFICE OF PETITIONS

In re Application of :
Mehrora, et al. :
Application No. 10/856,974 : DECISION
Filed/Deposited: 28 May, 2004 :
Attorney Docket No. H0005958 (002.1074) :

This is a decision on the petition filed on 19 February, 2010, considered as a petition under 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

NOTE:

This petition was received in the Office of Petitions for determination only at this writing.

Further, the record is silent as to an action by Petitioner (e.g., Status Inquiry) as to this matter since the submission of the instant petition.

The petition under 37 C.F.R. §1.181 is **GRANTED**.

As to the Request to Withdraw
the Holding of Abandonment

Petitioners always are directed to the Commentary at MPEP §711.03(c)(I) for guidance as to the proper showing and timeliness requirements for relief pursuant to 37 C.F.R. §1.181.

BACKGROUND

The record reflects as follows:

Applicant failed to reply timely and properly to the Notice of Non-Compliant Amendment mailed on 24 July, 2009, with reply due absent extension of time on or before 24 August, 2009.

The Office mailed the Notice of Abandonment on 17 February, 2010.

On 19 February, 2010, Petitioner filed a petition pursuant to 37 C.F.R. §1.181 and averred timely reply, with, *inter alia*, a copy of the 26 August, 2009, Interview Summary mailed by the Examiner stating therein:

> Agreement was reached that notice of non-compliance was in error. Examiner will consider amendment/arguments filed 4/14/09 and send out correspondence." (Emphasis the original.)

As noted above, the record is silent as to any action (e.g., Status Inquiry) by Petitioner thereafter

Petitioners always are directed with regard to a petition pursuant to the regulations at 37 C.F.R. §1.181 to the guidance in the Commentary at MPEP §711.03(c)(I).

With regard to Petitioner's request to withdraw the holding of abandonment pursuant to 37 C.F.R. §1.181 provides in pertinent part as to non-receipt:

***

> The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.
>
> Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.
>
> A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office

> action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.[1]
>
> ***

The guidance in the Commentary at MPEP §711.03(c)(I) also provides in pertinent part as to timely reply:

> ***
>
> 37 C.F.R. §1.10(c) through §1.10(e) and §1.10(g) set forth procedures for petitioning the Director of the USPTO to accord a filing date to correspondence as of the date of deposit of the correspondence as "Express Mail." A petition to withdraw the holding of abandonment relying upon a timely reply placed in "Express Mail" must include an appropriate petition under 37 C.F.R. §1.10(c), (d), (e), or (g) (see MPEP §513). When a paper is shown to have been mailed to the Office using the "Express Mail" procedures, the paper must be entered in PALM with the "Express Mail" date.
>
> Similarly, applicants may establish that a reply was filed with a postcard receipt that properly identifies the reply and provides *prima facie* evidence that the reply was timely filed. See MPEP §503. For example, if the application has been held abandoned for failure to file a reply to a first Office action, and applicant has a postcard receipt showing that an amendment was timely filed in response to the Office action, then the holding of abandonment should be withdrawn upon the filing of a petition to withdraw the holding of abandonment. When the reply is shown to have been timely filed based on a postcard receipt, the reply must be entered into PALM using the date of receipt of the reply as shown on the post card receipt.
>
> Where a certificate of mailing under 37 C.F.R. §1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 C.F.R. 1.8(b) and MPEP §512. As stated in 37 C.F.R. §1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application). When the correspondence is shown to have been timely filed based on a certificate of mailing, the correspondence is entered

[1] *See*: MPEP §711.03(c) (I)(A).

into PALM with the actual date of receipt (i.e., the date that the duplicate copy of the papers was filed with the statement under 37 C.F.R. §1.8).

37 C.F.R. §1.8(b) also permits applicant to notify the Office of a previous mailing or transmission of correspondence and submit a statement under 37 C.F.R. §1.8(b)(3) accompanied by a duplicate copy of the correspondence when a reasonable amount of time (e.g., more than one month) has elapsed from the time of mailing or transmitting of the correspondence. Applicant does not have to wait until the application becomes abandoned before notifying the Office of the previous mailing or transmission of the correspondence. Applicant should check the private Patent Application Information Retrieval (PAIR) system for the status of the correspondence before notifying the Office. See MPEP §512. [2]

***

Out of an abundance of caution, Petitioners always are reminded that the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (*see*: 37 C.F.R. §1.181(f)), and those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[3]

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994). And the regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application.[4],[5]

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[2] *See*: MPEP §711.03(c) (I)(B).

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

[4] See: Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. at 53158-59 (October 10, 1997), 1203 Off. Gaz. Pat. Office at 86-87 (October 21, 1997).

[5] The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition. (Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.) Delays in responding properly raise the question whether delays are

Moreover, the Office has set forth in the Commentary at MPEP §711.03(c)(I) the showing and timeliness requirements for a proper showing for relief under 37 C.F.R. §1.181 in these matters.

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

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[6]

Allegations as to the Request to Withdraw the Holding of Abandonment

The guidance in the Commentary at MPEP §711.03(c)(I) specifies the showing required and how and when it is to be made and supported.

Petitioner appears to have made the showing required.

CONCLUSION

Accordingly, the petition as considered under 37 C.F.R. §1.181 is **granted**, and the 17 February, 2010, Notice of Abandonment hereby is **vacated**.

The instant application is released to the Technology Center/AU 3624 for further processing in due course.

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unavoidable. Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) And the Petitioner must be diligent in attending to the matter. Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care. (By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.))

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

Petitioner may find it beneficial to view Private PAIR within a fortnight of the instant decision to ensure that the revival has been acknowledged by the TC/AU in response to this decision. It is noted that all inquiries with regard to that change in status need be directed to the TC/AU where that change of status must be effected—that does not occur in the Office of Petitions.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[7]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

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

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

§1.2 Business to be transacted in writing.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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SAP AG
3410 HILLVIEW AVENUE
PALO ALTO, CA 94304

Mail Date: 08/03/2010

Applicant	: Svetlana Stancheva	: DECISION ON REQUEST FOR
Patent Number	: 7650627	: RECALCULATION of PATENT
Issue Date	: 01/19/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/857,075	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 05/28/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **799** 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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Kilpatrick Townsend & Stockton LLP
Adobe Systems, Inc. 58083
1100 Peachtree Street
Suite 2800
Atlanta, GA 30309-4530

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FEB 03 2011

OFFICE OF PETITIONS

In re Patent of Jonathan Gay et al. :
Patent No. 7,734,802 :
Issue Date: June 8, 2010 :
Application No. 10/857,254 :
Filing Date: May 28, 2004 :
Attorney Docket No. 58083/374996 :

DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

This is a decision on the petition under 37 C.F.R. § 1.705(d) filed July 8, 2010, which requests the patent term adjustment indicated on the patent be corrected to indicate the term of the patent is extended or adjusted by one thousand six hundred eighty-three (1,683) 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 six hundred eighty-three (1,683) days is **dismissed**.

The patent sets forth a patent term adjustment determination of 1,309 days. The petition states the correct patent term adjustment is 1,683 days.

Patentees assert the total period of Office delay is 1,704 days which is the sum of 1,075 days of delay under 37 C.F.R. § 1.703(a) ("A Delay") and 629 days of delay under 37 C.F.R. § 1.703(b) ("B Delay").

The Office agrees the period of A Delay is 1,075 days. The Office also agrees the period of B Delay is 629 days. However, the Office does not agree the total period of Office delay is 1,704 days.

The total period of Office delay is the sum of A Delay and B Delay to the extent the periods of delay do not overlap. *See* 37 C.F.R. § 1.703(f). In this case, the periods of A Delay and B Delay overlap by 374 days, which is the number of days beginning May 29, 2004, the day after the date three years after the filing date, and ending June 4, 2008, the date the Office issued a non-final Office action.

The total period of Office delay is 1,330 days, which is the sum of the periods of A Delay and B Delay reduced by the 374 days of overlap.

The patent term adjustment is 1,309 days, which is 1,330 days of Office delay reduced by 21 days of Applicant Delay.

In view of the prior discussion, the patent term adjustment remains 1,309 days, as set forth on the issued patent.

Submission of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fee is required.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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SEP 27 2010

OFFICE OF PETITIONS

DIGIMARC CORPORATION
9405 SW GEMINI DRIVE
BEAVERTON OR 97008

In re Patent No. 7,760,902 :
Rhoads : DECISION ON REQUEST FOR
Issue Date: July 20, 2010 : RECONSIDERATION OF
Application No. 10/857,266 : PATENT TERM ADJUSTMENT
Filed: May 28, 2004 : AND NOTICE OF INTENT
Attorney Docket No. P0991 : TO ISSUE CERTIFICATE OF
Title: CONTENT OBJECTS WITH : CORRECTION
COMPUTER INSTRUCTIONS :
STEGANOGRAPHICALLY ENCODED :
THEREIN, AND ASSOCIATED METHODS :

This is a decision on the petition filed on August 4, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand seven hundred nineteen (1,719) days.

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

The period of adjustment to which the patent is entitled under 37 CFR 1.702(a) is 820 (685 + 135) days (July 29, 2005 to June 13, 2007) and February 24, 2009 to July 8, 2009.

The period of adjustment to which the patent is entitled under 37 CFR 1.702(b) is 1149 (May 29, 2007 to July 20, 2010) days the day of issuance of the patent.

The time taken up by the notice of appeal is excluded from the period of B-delay pursuant to 37 CFR 1.703(b)(4) in connection with the first Notice of Appeal filed November 6, 2009. The reduction of 125 days commenced November 6, 2009; the date that the Notice of Appeal was filed, and ended March 10, 2010, the day the notice of allowance was mailed. See, 37 CFR 1.703(b)(4).

There are 135 days that overlap (February 24, 2009 to July 8, 2009).

Patentee's delay totals 99 days.

In view thereof, the patent is entitled to an overall adjustment of 1610 days.

The application is being forwarded to the Certificate of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one thousand six hundred ten **(1,610)** days.

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

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

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

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

Anthony Knight
Director
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,760,902 B2

DATED : July 20, 2010

INVENTOR(S) : Rhoads

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 (1611) days

Delete the phrase "by 1611 days" and insert – by 1610 days--

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OFFICE OF PETITIONS

JONES DAY
222 EAST 41ST STREET
NEW YORK NY 10017

In re Application of	:	
Ternansky et al.	:	
Application Number: 10/857,321	:	ON APPLICATION FOR
Filing Date: 05/27/2004	:	PATENT TERM ADJUSTMENT
Attorney Docket Number	:	
9715-026-999	:	

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b), filed on August 13, 2010. Applicants request that the determination of patent term adjustment be increased from 772 days to 1101 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).

To the extent that the instant application for patent term adjustment requests reconsideration of the PTA at the time of

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

the 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 652 days. A copy of the updated PAIR screen, showing the revised determination, is enclosed.

On May 20, 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 772 days (791 days of PTO delay and 19 days of applicant delay).

The instant application for patent term adjustment was timely filed.[2]

Applicants aver that an additional period of reduction of 120 days for applicant delay should be entered for the filing of a response on March 23, 2006, three months and 120 days after the mailing of the Notice to File Missing Parts mailed on August 23, 2005.

Upon review, applicants are correct.

37 CFR 1.704(b) states:

> 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

[2] PALM Records indicate that the issue fee was paid on August 13, 2010.

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.

In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance is 652 days (791 days of Office delay less 139 (19 + 120) days of applicant delay).

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

Encl: Updated PAIR Calculation

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

Application Number*: 10857321 Search Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application: 10857321

Application Filing Date	05/27/2004	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	791
A Delays	791	PTO Manual Adjustment	-120
B Delays	0	Applicant Delay (APPL)	19
C Delays	0	Total PTA (days)	652

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
94	11/05/2010		P028	Adjustment of PTA Calculation by PTO		120	0
80	05/20/2010		MN/=.	Mail Notice of Allowance			0
79	05/10/2010		IREV	Issue Revision Completed			0
78	05/04/2010		ACRE	Allowed Case Returned to the Examiner for Clerical Processing			0
77	05/04/2010		DVER	Document Verification			0
76	05/04/2010		N/=.	Notice of Allowance Data Verification Completed			0
75	05/04/2010		DOCK	Case Docketed to Examiner in GAU			0
74	05/04/2010		EX.A	Examiner's Amendment Communication			0
73	05/04/2010		CNTA	Notice of Allowability			0
72	05/04/2010		FWDX	Date Forwarded to Examiner			0
71	05/04/2010		W/AC	Letter Withdrawing /,Vacating Office Action			0
70	11/27/2009		NINA	Mail Notice of Informal or Non-Responsive Amendment			0
69	09/10/2009		FWDX	Date Forwarded to Examiner			0
68.1	07/14/2009		A.I.	Informal or Non-Responsive Amendment after Examiner Action			0
68	07/14/2009		A.QU	Response after Ex Parte Quayle Action			0
67	05/15/2009		MCTEQ	Mail Ex Parte Quayle Action (PTOL - 326)			0
66	05/11/2009		CTEQ	Ex Parte Quayle Action			0
62	03/09/2009		FWDX	Date Forwarded to Examiner			0
60	03/09/2009		FWDX	Date Forwarded to Examiner			0
58	03/09/2009		ABN9	Disposal for a RCE / CPA / R129			0
65	02/18/2009		IDSC	Information Disclosure Statement considered			0
64	02/18/2009		RCAP	Reference capture on IDS			0
63	02/18/2009		M844	Information Disclosure Statement (IDS) Filed			0
61	02/18/2009		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
59	02/18/2009	01/30/2009	RCEX	Request for Continued Examination (RCE)		19	54
57	02/18/2009		XT/G	Request for Extension of Time - Granted			0
56	02/18/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
55	02/18/2009		BRCE	Workflow - Request for RCE - Begin			0
54	10/30/2008	09/05/2008	MCTEQ	Mail Ex Parte Quayle Action (PTOL - 326)	55		51
53	10/27/2008		CTEQ	Ex Parte Quayle Action			0
52	06/18/2008		FWDX	Date Forwarded to Examiner			0
51	05/05/2008		A...	Response after Non-Final Action			0
50	02/05/2008	09/29/2007	MCTNF	Mail Non-Final Rejection	129		42
49	02/04/2008		CTNF	Non-Final Rejection			0
47	01/03/2008		MPTDI	Mail-Petition Decision - Dismissed			0
46	01/03/2008		PTDI	Petition Decision - Dismissed			0
43	06/14/2007		FWDX	Date Forwarded to Examiner			0
48	05/29/2007		IDSC	Information Disclosure Statement considered			0
45	05/29/2007		RCAP	Reference capture on IDS			0
44	05/29/2007	05/29/2007	M844	Information Disclosure Statement (IDS) Filed			42
42	05/29/2007		ELC	Response to Election / Restriction Filed			0
41	05/29/2007		XT/G	Request for Extension of Time - Granted			0
40	05/29/2007		WIDS	Information Disclosure Statement (IDS) Filed			0
38	03/26/2007	07/27/2005	MCTRS	Mail Restriction Requirement	697		-1
37	10/16/2006		CTRS	Requirement for Restriction / Election			0
36	08/12/2006		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
35	07/25/2006		DOCK	Case Docketed to Examiner in GAU			0
33	04/10/2006		WROIPE	Application Return from OIPE			0
32	04/10/2006		COMP	Application Is Now Complete			0
31	04/10/2006		ROIPE	Application Return TO OIPE			0
30	04/10/2006		WROIPE	Application Return from OIPE			0
29	04/10/2006		COMP	Application Is Now Complete			0
28	04/10/2006		ROIPE	Application Return TO OIPE			0
27	04/07/2006		WROIPE	Application Return from OIPE			0
26	04/07/2006		COMP	Application Is Now Complete			0
25	04/07/2006		ROIPE	Application Return TO OIPE			0
24	04/07/2006		WROIPE	Application Return from OIPE			0
23	04/07/2006		COMP	Application Is Now Complete			0
39	03/28/2006		PET.	Petition Entered			0
22	03/23/2006		ADDFLFEE	Additional Application Filing Fees			0
21	03/23/2006		OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic			0
20	08/23/2005		INCD	Notice Mailed--Application Incomplete--Filing Date Assigned			0
17	08/19/2005		ROIPE	Application Return TO OIPE			0
16	08/19/2005		OIPE	Application Dispatched from OIPE			0
15	08/19/2005		COMP	Application Is Now Complete			0
11	12/14/2004		WAMD	Workflow incoming amendment IFW			0
18	10/26/2004		OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic			0
10	10/26/2004		MP010	Mail-Record Petition Decision of Granted Related to Filing Date			0
9	10/01/2004		PET.	Petition Entered			0
8	07/29/2004		INC/	Notice of Incomplete Application - Filing Date Not Assigned			0
5	07/15/2004		L128	Cleared by LBR (LARS)			0
4	07/06/2004		L198	Referred to Level 2 (LARS) by OIPE CSR			0
3	07/06/2004		CLSS	CASE CLASSIFIED BY OIPE			0
2	06/18/2004		SCAN	IFW Scan & PACR Auto Security Review			0
14	05/27/2004		DRAWING	Drawing Preliminary Amendment			0
1	05/27/2004		IEXX	Initial Exam Team nn			0

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OFFICE OF PETITIONS

In re Patent No. 7,622,564	:	DECISION ON REQUEST FOR
Ge et al.	:	RECONSIDERATION OF
Issue Date: November 24, 2009	:	PATENT TERM ADJUSTMENT
Application No. 10/857,484	:	AND
Filed: May 28, 2004	:	NOTICE OF INTENT TO ISSUE
Attorney Docket No. 511582008800	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on January 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 three hundred thirty (1330) 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 three hundred thirty (1330) days is **GRANTED**.

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

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand three hundred thirty (1330) 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 : 7,622,564 B2

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

INVENTOR(S) : Ge 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 872 days

Delete the phrase "by 872 days" and insert -- by 1330 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

DENNIS J. DUPRAY
% SHERIDAN AND ROSS,
#1200
1560 BROADWAY
DENVER CO 80202

MAILED
FEB 04 2011
OFFICE OF PETITIONS

In re Application of :
Dennis J. Dupray, et al. :
Application No.: 10/857,565 : ON PETITION
Filed: May 28, 2004 :
Attorney Docket No.: 3367-8-CON :

This is a decision on the petition, filed November 22, 2010, which is being treated under 37 CFR 1.78(a)(6) to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of prior-filed provisional application. The requisite $1,410 petition fee is being charged to counsel's deposit account as authorized.

The petition is **DISMISSED**.

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

(1) the reference required by 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5)(i) and (iii) 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 present petition does not comply with item (1) because petitioner failed to include a proper Application Data Sheet (ADS) or an amendment to the first sentence of the specification following the title to include a proper reference under 37 CFR 1.78(a)(2)(i).

A review of the chain of prior application cited in the ADS filed November 22, 2010 indicates that this application is a continuation of non-provisional Application No. 09/669,225 which claims priority to provisional Application No. 60/156,066. However, the record of Application No. 09/669,225 discloses that this application does not name as an inventor at least one inventor named in the later-filed application nor does it disclose the named inventor's invention claimed in at least one claim of the later filed application in the manner provided by the first paragraph of 35 U.S.C. 112. Each application in the chain of applications must contain a proper benefit claim to the prior applications.

In view of the above, an ADS or amendment in compliance with the aforementioned rules, along with a renewed petition under 37 CFR 1.78(a)(6), must be submitted.

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

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

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

Sherry D. Brinkley
Petition Examiner
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

DENNIS J. DUPRAY
% SHERIDAN AND ROSS
#1200
1560 BROADWAY
DENVER, CO 80202

MAILED
MAR 28 2011
OFFICE OF PETITIONS

In re Application of :
Dennis J. Dupray, et al. :
Application No. 10/857,565 : DECISION ON PETITION
Filed: May 28, 2004 : UNDER 37 CFR 1.78(a)(6)
Attorney Docket No.: 3367-8-CON :

This is a decision on the renewed petition, filed February 16, 2011, under 37 CFR 1.78(a)(6) to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional application set forth in the concurrently filed Application Data Sheet.

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

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

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

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

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

The application is being forwarded to Technology Center AU 2617 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.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

Attachment: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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
10/857,565	05/28/2004	2617	450	3367-8-CON	2	1

CONFIRMATION NO. 3082

CORRECTED FILING RECEIPT

Dennis J. Dupray
% Sheridan and Ross
#1200
1560 Broadway
Denver, CO 80202

OC000000046611254

Date Mailed: 03/16/2011

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)

Dennis J. Dupray, Golden, CO;
Sheldon Goldberg, Henderson, NV;

Power of Attorney: None

Domestic Priority data as claimed by applicant

This application is a CON of 09/669,255 09/25/2000 ABN
which claims benefit of 60/156,066 09/24/1999

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: 07/23/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/857,565**

Projected Publication Date: Not Applicable

Non-Publication Request: No

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

Title

Geographically constrained network services

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).

UNITED STATES 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. : 7,223,735 B2
Ser. No. : 10/857619
Inventor(s) : Mickle et al.
Issued : May 29, 2007
Title : ABUSE RESISTANT LYSINE AMPHETAMINE COMPOUNDS
Docket No. : 085199-0133
Re: Request for Certificate of Correction

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

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

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

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

A. **the processing fee set forth in 37 CFR 1. 17(i) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

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

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

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

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

By fax: (703) 872-9306
ATTN: Office of Petitions

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

Ennis Young
For Mary Diggs
Decisions & Certificates
of Correction Branch
(571) **272-3435** or (703) 756-1814

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/857,642	05/28/2004	Louis McDonagh	1690.1033	3746

21171 7590 02/01/2012

STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

EXAMINER	
GOLUB-MILLER, MARCIA A	

ART UNIT	PAPER NUMBER
2828	

MAIL DATE	DELIVERY MODE
02/01/2012	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE NW
WASHINGTON DC 20005

Paper No. 1

FEB 2 2012

In re Application of McDonagh
Appl. No. 10/857,642
Filed: May 28, 2004
For: ENHANCED OPTICAL PUMPING OF OF MATERIALS EXHIBITING POLARIZATION; DEPENDENT ABSORPTION

DECISION ON PETITION TO WITHDRAW FINALITY UNDER 37 CFR 1.181

This is a decision on Applicant's Petition under 37 CFR 1.181(a) (3) filed on November 30, 2009 to withdraw the finality of the Final Rejection mailed March 11, 2009 in response to the Pre-appeal Brief Review mailed on August 13, 2009 and the Non-Final Office action mailed August 28, 2009.

The Petition is dismissed as **MOOT.**

Applicant alleges that the new Non-Final office action mailed August 28, 2009 repeats the previous rejections without answering the Applicant's arguments in the Pre-Appeal Brief Request filed June 10, 2009.

A review of the record shows that a Final office action was mailed March 11, 2009 and in response applicant filed a pre-appeal conference Request on June 10, 2009. A pre-appeal decision was mailed on August 13, 2009 informing the applicant that prosecution is being reopened and a new office action will be mailed. The new Non-Final Office Action mailed on August 28, 2009 included the same rejections and similar remarks to the office action mailed March 11, 2009 and acted to withdraw the finality of the office action mailed March 11, 2009 by replacing the action with a Non-Final action.

It should also be noted that no statement or concession was made by the examiner with respect to the art or the rejection under 35 U.S.C. § 112 on the Notice of Panel Decision of August 13, 2009. Item Box 2 on the Notice of Panel Decision was not checked and is only checked when the application has been determined that it should be properly forwarded to the Board of Patent Appeals. Should there be a determination by the panel of a problem with the appropriateness of the finality of the rejection whether procedural or technical, Item Box 4 is checked and the application is reopened as was done in the present application.

Furthermore, an appeal brief was filed on March 1, 2010 and an Examiner's Answer was filed on April 13, 2010. Therefore, the Applicant's arguments were addressed in the Examiner's Answer on April 13, 2010 and the finality of the office action mailed March 11, 2009 was withdrawn by the mailing of the Non-Final office action mailed August 28, 2009.

No further action is required by the applicant.

SUMMARY: The Petition is dismissed as being **MOOT** since the finality of the March 11, 2009 action was withdrawn by the mailing of the Non-final office action mailed August 28, 2009.

Matthew S. Smith, Acting Director
Technology Center 2800
571-272-1907

JS: 1/27/12

UNITED STATES 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.

MARSHA BETH BREWER
P.O. Box 655
Appleton WI 54912-0655

MAILED
OCT 01 2010
OFFICE OF PETITIONS

In re Application of :
Marsha Beth Brewer :
Application No. 10/857,753 : ON PETITION
Filed: May 29, 2004 :
Title: ANIMAL FLUSH TOILET :
AND ASSEMBLY SYSTEM :

This is in response to the "PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)," filed April 19, 2010, to revive the above-identified application. This also responds to the request to withdraw the holding of abandonment filed March 29, 2010.

The request to withdraw the holding of abandonment is **DISMISSED**.

For the reasons set forth below, the petition under §1.137(a) must be **DISMISSED** without consideration on the merits.

Any renewed petition 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 37 CFR § 1.136(a) are permitted.

The above-identified application became abandoned for failure to timely file a proper reply to the Office letter mailed on January 29, 2009. Applicant did not file a reply to the Notice of Non-compliant Amendment (37 CFR 1.121) mailed February 1, 2010. A courtesy Notice of Abandonment was mailed on February 26, 2010.

Applicant has submitted the form, PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a). However, the typeset on the form is so little that it is rendered illegible to the undersigned on scanning of the petition in the image file wrapper of the application. Moreover, the petition does not include payment of the petition fee, which is currently $270 for a small entity.

35 U.S.C. 41(a) (7) provides that a petition for the revival of an unintentionally abandoned application or for the unintentionally delayed payment of the issue fee must be accompanied by the petition fee set forth in 37 CFR 1.17(m), unless the petition is filed under 35 U.S.C. 133 or 151 (on the basis of unavoidable delay), in which case the fee is set forth in 37 CFR 1.17(l). Thus, unless the circumstances warrant the withdrawal of the holding of abandonment (i.e., it is determined that the application is not properly held abandoned), the payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of the abandoned application, and cannot be waived.

In addition, the phrase "[o]n filing" in 35 U.S.C. 41(a)(7) means that the petition fee is required for the filing (and not merely the grant) of a petition under 37 CFR 1.137. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6 (1982), reprinted in 1982 U.S.C.C.A.N. 770 ("[t]he fees set forth in this section are due on filing the petition"). Therefore, the Office: (A) will not refund the petition fee required by 37 CFR 1.17(l) or 1.17(m), regardless of whether the petition under 37 CFR 1.137 is dismissed or denied; and (B) will not reach the merits of any petition under 37 CFR 1.137 lacking the requisite petition fee.

The phrase "unless the petition is filed under [35 U.S.C.] 133 or 151" signifies that petitions to revive filed on the basis of "unavoidable" delay (under 35 U.S.C. 133 or 151) are a subset of petitions to revive filed on the basis of unintentional delay. That is, "unavoidable" delay and "unintentional" delay are not alternatives; "unavoidable" delay is the epitome of "unintentional" delay. Any petition to revive an abandoned application or lapsed patent must meet the minimal "unintentional" delay threshold, and an applicant need only pay the fee specified in 37 CFR 1.17(l) (rather than the fee specified in 37 CFR 1.17(m)) if the petition is also accompanied by an adequate showing 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.

It is noted that withdrawal of the holding of abandonment is not warranted. The amendment submitted was not in compliance. Further, applicant acknowledges that the notice of non-compliant amendment was not reviewed upon receipt by the applicant.

As payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of an abandoned application and petitioner has not made such a payment, the petition must be dismissed.

Alternatively, applicant may seek to revive the application based on unintentional delay. This standard is less stringent. However, the petition fee is currently $810 for a small entity.

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

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

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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

MAILED
MAR 16 2012
OFFICE OF PETITIONS

In re Application of :
DUERKSEN et al. : DECISION ON PETITION
Application No. 10/857,935 :
Filed: June 2, 2004 :
Attorney Docket No. 253462US-6YA :

This is a decision on the petition under 37 CFR 1.181, filed February 3, 2012, to withdraw the holding of abandonment in the above-identified application.

On November 2, 2011, the Board of Patent Appeals and Interferences rendered a decision, affirming the Examiner's decision rejecting the appealed claims. Petitioners had two months from the date of the decision of the Board to take appropriate action. On January 27, 2012, the Office mailed a Notice of Abandonment, indicating that the above-identified application was abandoned in view of the decision by the Board of Patent Appeals and Interference rendered on November 2, 2011, and because the period for seeking court review of the decision had expired and there were no allowed claims.

In the present petition, petitioners aver that they submitted a timely request for rehearing on January 3, 2012, as evidence by the attached copy of the returned, date-stamped postcard receipt.[1] Additionally, petitioners assert that the request for rehearing is located in the Image File Wrapper for the present application. Accordingly, petitioners request that the Office withdraws the holding of abandonment, and the appeal be reheard.

Upon further review of the record, the Office has located the request for rehearing, which was timely filed in the USPTO on January 3, 2012[2]. Accordingly, the Office mailed the Notice of Abandonment in error. The petition to withdraw the holding of abandonment is **granted**. The application is restored to pending status in view of the fact that petitioners filed a timely response on January 3, 2012.

[1] Section 503 of the MPEP states, "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO."

[2] The Office notes that January 2, 2012, New Year's Day, was a federal holiday.

This matter is being forwarded to the Board of Patent Appeals and Interferences for consideration of the request for rehearing.

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

/Christina Tartera Donnell/

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
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NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON VA 22203

MAILED

SEP 03 2010

OFFICE OF PETITIONS

In re Patent No. 7,093,577 :
Issue Date: August 22, 2006 :
Application No. 10/857,961 : NOTICE
Filed: June 2, 2004 :
Attorney Docket No. 249-349 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed July 30, 2010. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

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

Your fee deficiency submission under 37 CFR 1.28 is hereby accepted. The petition is **GRANTED**.

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

This file is being forwarded to Files Repository.

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

Carl Friedman
Petitions Examiner
Office of Petitions

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POLSTER LIEDER WOODRUFF & LUCCHESI, L.C.
12412 POWERSCOURT DR.
SUITE 200
ST. LOUIS, MO 63131-3615

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SEP 03 2010

OFFICE OF PETITIONS

In re Patent No. 7,765,116 :
Issue Date: July 27, 2010 :
Application No. 10/858,230 : LETTER
Filed: June 1, 2004 :
Attorney Docket No. AI 7391 C4

This is in response to the paper filed August 18, 2010 under 37 CFR 1.28(b) requesting that status as a Small Entity be removed.

In accordance with the August 18, 2010 request, status as a Small Entity has been removed.

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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SEP 23 2010

OFFICE OF PETITIONS

McDonnell Boehnen Hulbert & Berghoff LLP
300 South Wacker Drive
Chicago IL 60606

In re Patent No. 7,060,827 :
Issue Date: June 13, 2006 :
Application No. 10/858,343 : DECISION ON PETITION
Filed: June 1, 2004 :
Inventor: Rajinder Singh et al :

This is a decision on the petition for expungement of information, filed April 29, 2010, which is being treated as petitions under 37 CFR 1.182 to invalidate an assignment previously recorded against the above-identified application.

The petition is **dismissed**. This is not a final agency action.

Petitioner indicates an assignment recorded on August 15, 2005 was erroneously filed for the above identified application and requests this assignment record be expunged from the file.

As discussed in section 323.01(d) of the Manual of Patent Examining Procedure (MPEP), petitions to correct, modify or "expunge" assignment records are granted only if the petitioner can prove that:

(A) the normal corrective procedures outlined in MPEP § 323.01(a) through §323.01(c) will not provide the petitioner with adequate relief; and
(B) the integrity of the assignment records will not be affected by granting the petition.

In regard to B, petitioner has not sufficiently explained how the removal of a document in its entirety will not affect the assignment records. The removal of a document in its entirety will affect the assignment records. The integrity of the records is recognized as separate from the chain of title, and the USPTO endeavors to maintain a complete history of claimed interests in a given property to permit, among other things, the review of matters like chain of title by a competent authority.

Moreover, petitioner seeks an extraordinary remedy, properly addressed under 37 CFR 1.182. The USPTO will not normally resort to an extraordinary remedy under 37 CFR 1.182 if the rules of practice and the procedures before the USPTO already provide an avenue for the requested relief. See Cantello v. Rasmussen, 220 USPQ 664, (Comm'r Pats. 1982).

As set forth in MPEP 323, an error in a recorded assignment is not corrected by invalidating the previous document, but by simply submitting a "corrective document". The "corrective document" must include 1) a copy of the original assignment document with the corrections made therein. The corrections must be initialed and dated by the party conveying the interest; and 2) a new Recordation Form Cover Sheet (form PTO-1595). The new recordation form cover sheet must identify the submission as a "corrective document" submission and indicate the reel and frame number where the incorrectly recorded assignment document appears. The person signing the new recordation form cover sheet must state that the information provided on the new cover sheet is true and correct and that any copy submitted is a true copy of the original document. The original cover sheet should be submitted with the corrective document. The corrective document will be recorded and given a new reel and frame number and recording date. The recording fee set forth in 37 CFR 1.21(h) is required for each patent application and patent against which the corrective document is being recorded. See MPEP § 302.06. Corrections may be made on the original assignment document, for example, by lining out an incorrect patent or application number in a merger or change of name (see MPEP §314). As a request for the Office to invalidate an assignment is both extraordinary and contrary to USPTO policy, this petition must be dismissed.

As background, the USPTO simply acts in a ministerial capacity in recording documents that have been submitted for recordation. See 35 USC 261 and 37 CFR 3.11. However, the recording of a document pursuant to 37 CFR 3.11 is **not** a determination by the USPTO of the validity of the document *per se* or the effect that document has on the title to a patent or application. See 37 CFR 3.54. Moreover, it is USPTO policy to maintain a complete history of claimed interests in a given property, and, as such, a recorded assignment document will be retained, even if it is subsequently found to be invalid. In re Raney, 24 USPQ2d 1713 (Comm'r Pat. 1992).

In addition, only $200.00 was paid due to the erroneous assumption that the petition was properly filed under 37 CFR 1.59. A petition under 37 CFR 1.59 applies to application files, not assignment records. Thus, a petition to expunge assignment documents is properly addressed under 37 CFR 1.182 and a fee of $400.00 is required. An additional $200.00 has been charged to petitioner's deposit account.

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

David Bucci
Petitions Examiner
Office of Petitions

Cc: Gillian Gardner
One World Trade Center, Suite 1600
121 S.W. Salmon Street
Portland Oregon 97204

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McDonnell Boehnen Hulbert & Berghoff LLP
300 South Wacker Drive
Chicago IL 60606

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OFFICE OF PETITIONS

In re Patent No. 7,060,827 :
Issue Date: June 13, 2006 :
Application No. 10/858,343 : DECISION ON PETITION
Filed: June 1, 2004 :
Attorney Docket No. 09-570-US-CON :

This is a decision on the renewed petition for expungement of information, filed November 24, 2010, which is being treated as petitions under 37 CFR 1.182 to invalidate an assignment previously recorded against the above-identified application.

The renewed petition is **dismissed**. This is not a final agency action.

Petitioner indicates an assignment recorded on August 15, 2005 was erroneously filed for the above identified application and requests this assignment record be expunged from the file. Petitioner argues that expungement of the noted assignment would not affect the integrity of the assignment records because the erroneously recorded assignment was in fact a license agreement and license agreements are not assignments.

Petitioner's argument is not convincing as it based on the assumption that assignment and assignment records are one and the same. Assignment records are the records of assignment documents recorded. MPEP 313 states in part:

> **313 [R-3] Recording of Licenses, Security Interests, and Other Documents Other Than Assignments**
>
> In addition to assignments and documents required to be recorded by Executive Order 9424, documents affecting title to a patent or application will be recorded in the Assignment Division of the United States Patent and Trademark Office (Office). Other documents not affecting title may be recorded at the discretion of the Director. 37 CFR 3.11(a).
>
> Thus, some documents which relate to patents or applications will be recorded, although they do not constitute a transfer or change of title. Typical of these documents which are accepted for recording are license agreements and agreements which convey a security interest. Such documents are recorded in the public interest in order to give third parties

notification of equitable interests or other matters relevant to the ownership of a patent or application.

The recordation of a document is not a determination of the effect of the document on the chain of title. The determination of what, if any, effect a document has on title will be made by the Office at such times as ownership must be established to permit action to be taken by the Office in connection with a patent or an application. See MPEP § 324.

Clearly, documents which are not assignments per se and do not transfer or change title may be recorded as an assignment document. Specifically identified as a type of such document is a license agreement. Therefore, expunging a license agreement that was recorded and became part of the assignment record would affect the integrity of the assignment record. Such an expungement is not allowed.

Petitioner argues that allowing the license agreement to remain in the assignment record would not allow third parties to determine title to pending applications and issued patents. However, as noted in MPEP 313 above, such documents are recorded in the public interest in order to give third parties notification of **equitable interests or other matters relevant to ownership**. This goes beyond petitioner's limited scope of concern over **title** to applications and patent.

For the reasons presented, the petition is dismissed.

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

David Bucci
Petitions Examiner
Office of Petitions

cc: Klarquist Sparkman, LLP
One World Trade Center, Suite 1600
121S.W. Salmon Street
Portland, Oregon 97204

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Patent No. : 7,105,486 B2
Ser. No. : 10/858,526
Inventor(s) : Mickle et al.
Issued : Sep. 12, 2006
Title : ABUSE-RESISTANT AMPHETAMINE COMPOUNDS
Docket No. : 085199-0395
Re: Request for Certificate of Correction

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

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

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

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

A. **the processing fee set forth in 37 CFR 1. 17(i) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

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

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

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

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

By fax: (703) 872-9306
ATTN: Office of Petitions

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

Ennis Young
For Mary Diggs
Decisions & Certificates
of Correction Branch
(571) **272-3435** or (703) 756-1814

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OFFICE OF PETITIONS

In re Patent No. 7,081,626 :
Issued: July 25, 2006 :
Application No. 10/858,620 : ON PETITION
Filed: June 2, 2004 :
Attorney Docket No. S-102,322 :

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

The petition is **GRANTED**.

This patent expired on July 26, 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.

Further, 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
Petitions Examiner
Office of Petitions

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In re Application of :
Lerner et al. :
Application No. 10/858,709 : DECISION ON PETITION
Filed: June 1, 2004 :
Attorney Docket No.201US :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 6, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This above-identified application became abandoned for failure to timely file a reply to a non-final Office action mailed April 27, 2011. The Office Action set a three (3) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on July 28, 2011. A Notice of Abandonment was mailed on November 25, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment (2) the petition fee of $930.00, and (3) a 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). 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 address provided on petition differs from the correspondence address of record. A courtesy copy of the petition is being provided. However, all future correspondence will be mailed solely to the correspondence address of record.

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

This application is being referred to Technology Center AU 2434 for appropriate action by the Examiner in the normal course of business on the reply received

Charlema Grant

Charlema Grant
Attorney Advisor
Office of Petitions

Cc: Daryl C. Josephson
54 Chilton Avenue
San Carlos, CA 94070

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CHARLOTTE NC 28280-4000

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OFFICE OF PETITIONS

In re Application of :
Basi, et al. :
Application No. 10/858,855 : ON APPLICATION FOR
Filed: June 1, 2004 : PATENT TERM ADJUSTMENT
Atty Docket No. 057436-392312 :

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT DETERMINATION UNDER 37 C.F.R. § 1.705(b), filed October 12, 2010. Applicants submit that the patent term adjustment to be indicated on the patent is at a minimum one hundred fifty-four (154) days, not zero (0) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction partly on the basis that the Office will take in excess of three years to issue this patent.

In addition, applicants dispute the length of the period of reduction assessed for the delay associated with the filing of a response to the November 23, 2007 final Office action.

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

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentees are entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). This is true even in this instance where a request for continued examination (RCE) was filed. The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay

under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office cannot make a determination on the correctness of the patent term adjustment until the patent has issued.

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

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

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

On July 12, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified

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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.

application. The Notice stated that the patent term adjustment is 0 days. On October 12, 2010, applicants timely submitted the instant request for reconsideration of patent term. Applicants argue that the Office erred in calculating the reduction associated with filing of a reply to the November 23, 2007 final Office action because an incorrect receipt date was accorded to the reply.

The Office concurs with applicants.

37 CFR 1.704(b) provides that an applicant shall be deemed to have failed to engage in reasonable efforts to conclude prosecution 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.

A Notice of Appeal was filed on February 25, 2008, not February 26, 2008. Therefore, the reduction begins on February 24, 2008, the day after three months after the final Office action was mailed, and ends on February 25, 2008, the date the Notice of Appeal was filed. Accordingly the period of reduction of 3 days is being removed and a period of reduction of 2 days is being entered.

A review of PTA calculations of the application reveals another instance of Applicant delay.

37 CFR 1.704(c)(7) establishes submission of a reply having an omission (37 CFR 1.135(c)) as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. Submitting a reply having an omission requires the Office to issue an action under 37 CFR 1.135(c) and await and process the applicant's reply to the action under 37 CFR 1.135(c) before the initial reply (as corrected) can be treated on its merits. In addition, 37 CFR 1.704(c)(7) provides that in such a case the period of adjustment set forth in 37 CFR 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed. The reference to 37 CFR 1.135(c) is parenthetical because 37 CFR 1.704(c)(7) is not limited to Office actions under 37 CFR 1.135(c) but applies when the Office issues any action or notice indicating that a reply has an omission which must be corrected.

On April 13, 2009, applicants filed a reply to a non-final Office action. On July 29, 2009, the Office informed applicants that the reply/amendment was non-compliant. On August 28, 2009, applicants filed an amendment correcting the errors in the April 13, 2009 amendment.

Entry of a period of reduction of 137 days pursuant to 37 CFR 1.704(c)(7) is warranted. The period of reduction begins on April 14, 2009, the day after the date the reply having an omission was filed, and ends on August 28, 2009, the date that the reply or other paper correcting the omission was filed. A period of reduction of 137 days is being entered.

In view of the above discussion, the determination of patent term adjustment at the time of the mailing of the notice of allowance remains zero (0) days. However, PTA calculations have been updated to reflect the changes (325 days of Office delay, reduced by **576** (92+90+1+91+**2**+29+32+**137**+31+71) days of Applicant delay)(changes in bold). Please find enclosed an updated PTA PAIR screen for the application.

Receipt of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required for the petition under 37 CFR 1.705(b).

The application is being forwarded to the Office of Data Management for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent.

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: updated PTA PAIR screen for Application No. 10/858,855

Patent eBusiness

- Electronic Filing
- Patent Application Information (PAIR)
- Patent Ownership
- Fees
- Supplemental Resources & Support

Patent Information

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- Employee & Office Directories
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10/858,855 HUMANIZED ANTIBODIES THAT RECOGNIZE BETA AMYLOID PEPTIDE

Select New Case | Application Data | Transaction History | Image File Wrapper | Patent Term Adjustments | Continuity Data | Published Documents | Address & Attorney/Agent | Supplemental Content

Patent Term Adjustment

Filing or 371(c) Date:	06-01-2004	Overlapping Days Between {A and B} or {A and C}:	0
Issue Date of Patent:	-	Non-Overlapping USPTO Delays:	325
A Delays:	325	PTO Manual Adjustments:	-139
B Delays:	0	Applicant Delays:	440
C Delays:	0	Total PTA Adjustments:	0

Patent Term Adjustment History **Explanation Of Calculations**

Number	Date	Contents Description	PTO (Days)	APPL (Days)	Start
144	12-14-2010	Adjustment of PTA Calculation by PTO		139	0
134	07-12-2010	Mail Notice of Allowance			0
133	07-09-2010	Issue Revision Completed			0
132	07-09-2010	Document Verification			0
131	07-09-2010	Notice of Allowance Data Verification Completed			0
130	06-25-2010	Information Disclosure Statement (IDS) Filed		71	107
129	06-25-2010	Information Disclosure Statement (IDS) Filed			0
128	06-25-2010	Information Disclosure Statement (IDS) Filed			0
127	06-25-2010	Information Disclosure Statement (IDS) Filed			0
126	06-25-2010	Information Disclosure Statement (IDS) Filed			0
125	06-30-2010	Notice of Allowability			0
124	06-28-2010	Examiner Interview Summary Record (PTOL - 413)			0
123	06-25-2010	Information Disclosure Statement considered			0
122	06-25-2010	Information Disclosure Statement considered			0
121	06-25-2010	Information Disclosure Statement considered			0
120	06-25-2010	Information Disclosure Statement considered			0
119	06-25-2010	Information Disclosure Statement considered			0
118	06-25-2010	Information Disclosure Statement (IDS) Filed			0
117	06-25-2010	Information Disclosure Statement (IDS) Filed			0
116	06-25-2010	Information Disclosure Statement (IDS) Filed			0
115	06-25-2010	Information Disclosure Statement (IDS) Filed			0
114	06-25-2010	Information Disclosure Statement (IDS) Filed			0
108	04-29-2010	Date Forwarded to Examiner			0

107	04-15-2010	Response after Non-Final Action	31	105
106	04-15-2010	Request for Extension of Time - Granted		0
105	12-15-2009	Mail Non-Final Rejection		0
104	12-11-2009	Non-Final Rejection		0
101	10-16-2009	Date Forwarded to Examiner		0
100	08-28-2009	Response after Non-Final Action		0
99	07-29-2009	Mail Miscellaneous Communication to Applicant		0
98	07-28-2009	Miscellaneous Action with SSP		0
97	05-30-2009	Date Forwarded to Examiner		0
96	04-13-2009	Response after Non-Final Action	32	92
95	04-13-2009	Request for Extension of Time - Granted		0
93	10-24-2008	Information Disclosure Statement (IDS) Filed	29	66
92	12-12-2008	Mail Non-Final Rejection		0
91	12-08-2008	Non-Final Rejection		0
90	10-24-2008	Information Disclosure Statement considered		0
89	10-24-2008	Information Disclosure Statement considered		0
88	10-24-2008	Information Disclosure Statement considered		0
87	10-24-2008	Information Disclosure Statement considered		0
86	10-24-2008	Information Disclosure Statement considered		0
85	09-25-2008	Information Disclosure Statement considered		0
78	10-24-2008	Information Disclosure Statement (IDS) Filed		0
77	10-24-2008	Information Disclosure Statement (IDS) Filed		0
76	10-24-2008	Information Disclosure Statement (IDS) Filed		0
75	10-24-2008	Information Disclosure Statement (IDS) Filed		0
74	10-24-2008	Information Disclosure Statement (IDS) Filed		0
73	10-14-2008	Change in Power of Attorney (May Include Associate POA)		0
72	10-08-2008	Correspondence Address Change		0
71	09-26-2008	Date Forwarded to Examiner		0
70	02-25-2008	Amendment Submitted/Entered with Filing of CPA/RCE		0
69	09-25-2008	Reference capture on IDS		0
68	09-25-2008	Information Disclosure Statement (IDS) Filed		0
67	09-26-2008	Date Forwarded to Examiner		0
65	09-26-2008	Disposal for a RCE / CPA / R129		0
64	09-25-2008	Request for Extension of Time - Granted		0

63	09-25-2008	Information Disclosure Statement (IDS) Filed		0
62	09-25-2008	Workflow - Request for RCE - Begin		0
61	09-22-2008	Mail-Petition Decision - Granted		0
60	09-22-2008	Petition Decision - Granted		0
59	04-21-2008	Petition Entered		0
57	04-07-2008	Mail Advisory Action (PTOL - 303)		0
56	03-31-2008	Advisory Action (PTOL-303)		0
52	03-06-2008	Date Forwarded to Examiner		0
51	02-26-2008	Amendment/Argument after Notice of Appeal		0
50	02-26-2008	Notice of Appeal Filed	3	49
49	11-23-2007	Mail Final Rejection (PTOL - 326)		0
48	11-21-2007	Final Rejection		0
46	03-09-2007	Information Disclosure Statement considered		0
45	09-06-2007	Miscellaneous Incoming Letter		0
44	09-06-2007	Substitute Specification Filed		0
43	09-24-2007	Date Forwarded to Examiner		0
42	09-06-2007	Response after Non-Final Action	91	38
41	09-06-2007	Request for Extension of Time - Granted		0
40	09-05-2007	Correspondence Address Change		0
39	03-09-2007	Information Disclosure Statement (IDS) Filed		0
38	03-07-2007	Mail Non-Final Rejection		0
37	03-05-2007	Non-Final Rejection		0
36	11-28-2005	Information Disclosure Statement considered		0
35	12-22-2006	Information Disclosure Statement considered		0
34	12-21-2006	Information Disclosure Statement considered		0
33.7	12-21-2006	Information Disclosure Statement (IDS) Filed		0
33	12-21-2006	Information Disclosure Statement (IDS) Filed		0
32	12-22-2006	Reference capture on IDS		0
31.7	12-22-2006	Information Disclosure Statement (IDS) Filed	1	29
31	12-22-2006	Information Disclosure Statement (IDS) Filed		0
30	01-16-2007	Date Forwarded to Examiner		0
29	12-21-2006	Response to Election / Restriction Filed	90	25
28	12-21-2006	Request for Extension of Time - Granted		0
27	11-28-2005	Reference capture on IDS		0

26.7	11-28-2005	Information Disclosure Statement (IDS) Filed			0
26	11-28-2005	Information Disclosure Statement (IDS) Filed			0
25	06-22-2006	Mail Restriction Requirement	325		-1
24	06-21-2006	Requirement for Restriction / Election			0
23	06-15-2006	Case Docketed to Examiner in GAU			0
22	07-26-2005	Case Docketed to Examiner in GAU			0
21	07-15-2005	IFW TSS Processing by Tech Center Complete			0
20	07-15-2005	Case Docketed to Examiner in GAU			0
19	02-24-2005	Application Return from OIPE			0
18	02-24-2005	Application Return TO OIPE			0
17	02-24-2005	Application Return from OIPE			0
16	02-24-2005	Application Is Now Complete			0
15	01-21-2005	Payment of additional filing fee/Preexam		92	7
14	02-17-2005	Application Return TO OIPE			0
13	02-17-2005	Application Return from OIPE			0
12	02-17-2005	Application Is Now Complete			0
11	02-17-2005	Application Return TO OIPE			0
10	02-16-2005	Application Dispatched from OIPE			0
9	02-16-2005	Application Is Now Complete			0
8	01-21-2005	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic			0
7	07-21-2004	Notice Mailed--Application Incomplete--Filing Date Assigned			0
6	07-09-2004	Cleared by OIPE CSR			0
5	07-09-2004	CASE CLASSIFIED BY OIPE			0
4	06-17-2004	IFW Scan & PACR Auto Security Review			0
3	06-16-2004	CRF Is Good Technically / Entered into Database			0
2	06-01-2004	CRF Disk Has Been Received by Preexam / Group / PCT			0
1	06-01-2004	Initial Exam Team nn			0

If you need help:

- *Call the Patent Electronic Business Center at (866) 217-9197 (toll free) or e-mail EBC@uspto.gov for specific questions about Patent Application Information Retrieval (PAIR).*
- *Send general questions about USPTO programs to the USPTO Contact Center (UCC).*
- *If you experience technical difficulties or problems with this application, please report them via e-mail to Electronic Business Support or call 1 800-786-9199.*

You can suggest USPTO webpages or material you would like featured on this section by E-mail to the webmaster@uspto.gov. While we cannot promise to accommodate all requests, your suggestions will be considered and may lead to other improvements on the website.

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

MAILED
JUN 16 2011
OFFICE OF PETITIONS

In re Patent of Basi et al	:	ON APPLICATION FOR
Patent No. 7,871,615	:	PATENT TERM ADJUSTMENT
Issued: January 18, 2011	:	AND NOTICE OF INTENT
Application No. 10/858,855	:	TO ISSUE CERTIFICATE
Filed: June 1, 2004	:	OF CORRECTION
Atty Docket No. 057436-392312	:	

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT DETERMINATION UNDER 37 C.F.R. § 1.705(d), filed February 15, 2011. Patentees request that the patent term adjustment determination for the above-identified patent be changed from fifteen (15) days to eighteen (18) days.

The request for reconsideration of patent term adjustment is **GRANTED**.

On January 18, 2011, the above-identified application matured into U.S. Patent No. 7,871,615 with a revised patent term adjustment of 15 days. This request for reconsideration of patent term adjustment was timely filed within two months of the issue date of the patent. See 1.705(d).

Patentees assert the Office failed to remove a three (3) day reduction for the Notice of Appeal, which was filed on February 25, 2008, not February 26, 2008. As pointed out in the decision on petition, mailed December 14, 2010, the reduction begins on February 24, 2008, the day after three months after the final Office action was mailed, and ends on February 25, 2008, the date the Notice of Appeal was filed and is 2 days. Accordingly the period of reduction of 3 days should have been removed and a period of 2 days should have been entered. However, due to a data entry error in processing the December 14, 2010 decision on petition, the 3 day period of reduction was retained and the correct 2 day period of reduction was entered, as well.

The 3 day reduction is being removed.

As such, patentees are entitled to a patent term adjustment of 18 days (325 days of delay under 35 U.S.C. § 154(b)(1)(A) ("A Delay") and 269 days of delay under 35 U.S.C. § 154(b)(1)(B) ("B Delay"), reduced by 576 days of Applicant delay.

Accordingly, 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 eighteen (18) days.

Receipt of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required for the petition under 37 CFR 1.705(d).

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 adjusted by **eighteen (18)** days.

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: copy of draft Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,871,615 B2

DATED : **January 18, 2011** **DRAFT**

INVENTOR(S) : Basi 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 15 days

Delete the phrase "by 15 days" and insert – by 18 days--

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QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO CA 92121

MAILED

MAR 25 2011

OFFICE OF PETITIONS

In re Application of :
Tingfang Ji et al. :
Application No. 10/858,870 : DECISION ON PETITION
Filed: June 1, 2004 :
Attorney Docket No. **040058** :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 2, 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 June 28, 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). A one (1) month extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is October 29, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of 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) 272-4584.

This application is being referred to Technology Center AU 2617 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.

JoAnne Burke
Petitions Examiner
Office of Petitions

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AUG 04 2011

OFFICE OF PETITIONS

KELLY LOWRY & KELLEY, LLP
6320 CANOGA AVENUE
SUITE 1650
WOODLAND HILLS CA 91367

In re Patent No. 7,320,194 :
Issued: January 22, 2008 :
Application No.: 10/859,030 : NOTICE
Filed: June 1, 2004 :
Attorney Docket No: **PREDYN-45069** :

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

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Dennemeyer & Co. LTD
Regent House, Heaton Lane
Stockport Cheshire
England SK41BB

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MAR 25 2011

OFFICE OF PETITIONS

Silicon Valley Patent Group LLP
18805 Cox Avenue
Suite 220
Saratoga CA 95070

In re Patent No. 7,202,958 :
Issued: April 10, 2007 :
Application No.: 10/859,330 : NOTICE
Filed: June 1, 2004 :
Attorney Docket No: **NAN072 US** :

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

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20120419

DATE : April 19, 2012

TO SPE OF : ART UNIT 1622

SUBJECT : Request for Certificate of Correction on Patent No.: 8105570

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

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - ST (South Tower) 9A22
Palm location **7590** - Tel. No. (703) 305-8309

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

Thank You For Your Assistance **Certificates of Correction Branch**

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

Note your decision on the appropriated box.

☒ **Approved** All changes apply.

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

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

Comments:

/ANDREW D KOSAR/
Supervisory Patent Examiner.Art Unit 1622

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OCT 2 1 2010

OFFICE OF PETITIONS

In re Application of :
Joost J. Fierens, et al. :
Application No. 10/859,636 : DECISION GRANTING PETITION
Filed: June 3, 2004 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 17601.41A.1.1.1.2.1 :

This is a decision on the petition under 37 CFR 1.313(c)(2), filed October 21, 2010, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on August 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 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 3734 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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Matthew J. Booth & Associates, PLLC
c/o CPA Global
P.O. Box 52050
900 Second Avenue South, Suite 1560
Minneapolis MN 55402

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AUG 17 2010

OFFICE OF PETITIONS

In re Application of	:	
Tracy A. Bathurst, et al.	:	
Application No. 10/859,903	:	DECISION GRANTING PETITION
Filed: June 2, 2004	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 59900-0121	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, August 16, 2010 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on July 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 2614 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

Terri Johnson
Petitions Examiner
Office of Petitions

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : January 31, 2011

TO SPE OF : ART UNIT 2838 SPE Monica Lewis

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/860,110 Patent No.: 7,501,795 B2

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
Randolph Square Building
2800 South Randolph Street
Arlington, VA 22206

Should the changes to claims 1 and 19 be entered as requested by applicant?
See COCIN dated 01-17-2011

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: The amendments that Applicant submitted were originally submitted in an amendment filed on 3/14/08.

_____ SPE /Monica Lewis/ Art Unit 2838

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

PTO/SB/131 (02-10)
Approved for use through 02/28/2011. OMB 0651-0020
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:	0112020.00169US1		
Application Number:	10/860,433-Conf. #1369	Filing Date (or 371(b) or (f) Date):	June 3, 2004
Patent Number:	7,658,869	Issue Date:	February 9, 2010
First Named Inventor:	Rahul SEN		
Title:	APPLICATOR LIQUID CONTAINING ETHYL LACTATE FOR PREPARATION OF NANOTUBE FILMS		

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	/Yung-Hoon Ha/	Date	August 9, 2010
Name (Print/Typed)	Yung-Hoon Ha	Registration Number	56,368

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 if more than one signature, see below**.*

[X] *Total of 1 forms are submitted.

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WILMERHALE/BOSTON
60 STATE STREET
BOSTON, MA 02109

Mail Date: 08/16/2010

Applicant	: Rahul Sen	: DECISION ON REQUEST FOR
Patent Number	: 7658869	: RECALCULATION of PATENT
Issue Date	: 02/09/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/860,433	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/03/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **492** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110110-A

DATE : January 10, 2010

TO SPE OF : ART UNIT 1761

SUBJECT : Request for Certificate of Correction on Patent No.: 7,629,056

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:

/HAROLD Y PYON/
Supervisory Patent Examiner.Art Unit 1761

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 1/10/2010

TO SPE OF : ART UNIT 1796

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/860,578 Patent No. 7,629,056

CofC mailroom date 12/30/10

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

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: _____

_____

_____

_____

/Harold Y. Pyon/ — **SPE**

1761 — **Art Unit**

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AUG 16 2010

OFFICE OF PETITIONS

ELMORE PATENT LAW GROUP, PC
515 GROTON RD
UNIT 1R
WESTFORD, MA 1886

In re Patent No. 7,279,579	:	DECISION ON REQUEST
Brittain, et al.	:	FOR
Issue Date: October 9, 2007	:	RECONSIDERATION OF
Application No. 10/860,608	:	PATENT TERM ADJUSTMENT
Filed: June 3, 2004	:	
Atty Docket No. 4000.3000 US1	:	

This is in response to the REQUEST FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705, filed October 7, 2007, and the SECOND REQUEST FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705, filed October 22, 2008, and the THIRD REQUEST FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705, filed April 16, 2010. The petition filed October 7, 2007 will be treated under 37 CFR § 1.705(b). The petitions filed on October 22, 2008 and April 16, 2010 will be treated under 37 CFR § 1.705(d). In all three petitions, applicants submit that the correct patent term adjustment to be indicated on the patent is seven hundred three (703) days, not five hundred seventy-five (575) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment.

As the October 7, 2007 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 untimely filed**.

The October 7, 2007 petition was filed ***prior to the issuance of the patent***. Knowledge of the actual date the patent issues was required to calculate the amount, if any, of additional patent term patentees are entitled to for Office failure to issue the patent within 3 years. *See* § 1.702(b). The computer could not

undertake the § 1.702(b) calculation until the actual date of issuance of the patent was determined. Likewise, the computer could 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 was determined. As such, the Office could not make a determination on the correctness of the patent term adjustment until the patent issued.

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

The requests for reconsideration of patent term adjustment under 37 CFR 1.705(d), filed October 22, 2008 and April 16, 2010, are **dismissed as untimely filed**.

On October 9, 2008, the above-identified application matured into U.S. Patent No. 7,279,579 with a revised patent term adjustment of 575 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 the patent term adjustment indicated in the patent was not filed until October 22, 2008.

The relevant regulation, 37 CFR 1.705(d), provides that:

> If there is a revision to the patent term adjustment indicated in the notice of allowance, the patent will indicate the revised patent term adjustment. If the patent indicates or should have indicated a revised patent term adjustment, *any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued* and must comply with the requirements of paragraphs (b)(1) and (b)(2) of this section. Any request for reconsideration under this section that raises issues that were raised, or could have been raised, in an application for patent term adjustment under paragraph (b) of this section shall be dismissed as untimely as to those issues. (*emphasis* added).

By the express provisions of 37 CFR 1.705(d), a request for reconsideration of patent term adjustment must be filed within two months of the date the patent issued. It is undisputed that

no such request for reconsideration was filed by December 9, 2007, the date two months from the date this patent issued, October 9, 2007.

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 pursuant to 37 CFR 1.705(d) setting a two-month period for filing a request for reconsideration of the revised patent term adjustment indicated in the patent.

37 CFR 1.705(d) provides the sole avenue before the Office for requesting reconsideration of the Office's determination of patent term adjustment indicated in the patent. Moreover, § 1.705(d) states that "any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued and must comply with the requirements of paragraphs (b)(1) and (b)(2) of this section." Since the October 22, 2008 and April 16, 2010 requests were not filed within two months of the issue date of the patent, the requests are properly **dismissed as untimely filed**.

Any request for reconsideration must be filed within two months of the mailing date of this decision. Extensions of time under 37 CFR 1.136 are not permitted. See § 1.181(f).

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[1] 35 U.S.C. § 154(b)(3) provides that the USPTO shall: (1) prescribe regulations establishing procedures for the application for and determination of patent term adjustments under 35 U.S.C. § 154(b); (2) make a determination of any patent term adjustment under 35 U.S.C. § 154(b) and transmit a notice of that determination with the notice of allowance under 35 U.S.C. § 151; and (3) provide the applicant one opportunity to request reconsideration of any patent term adjustment determination. Pursuant to the mandate and authority in 35 U.S.C. § 154(b)(3), the USPTO promulgated 37 C.F.R. § 1.705, which provides that: (1) the notice of allowance will include notification of any patent term adjustment under 35 U.S.C. § 154(b)(37 C.F.R. § 1.705(a)); (2) any request for reconsideration of the patent term adjustment indicated in the notice of allowance (except as provided in 37 C.F.R. § 1.705(d)) must be by way of an application for patent term adjustment filed no later than the payment of the issue fee and accompanied by (inter alia) the fee set forth in 37 C.F.R. § 1.18(e)(37 C.F.R. § 1.705(b)); and (3) if the patent indicates or should have indicated a revised patent term adjustment, any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued.

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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ELMORE PATENT LAW GROUP, PC
515 GROTON RD
UNIT 1R
WESTFORD, MA 1886

MAILED

DEC 02 2010

OFFICE OF PETITIONS

In re Patent of Brittain, et al.	:	DECISION ON REQUEST
Patent No. 7,279,579	:	FOR
Issue Date: October 9, 2007	:	RECONSIDERATION OF
Application No. 10/860,608	:	PATENT TERM ADJUSTMENT
Filed: June 3, 2004	:	
Atty Docket No. 4000.3000 US1	:	

This is in response to the REQUEST FOR RECONSIDERATION OF THE DECISION DATED AUGUST 16, 2010, filed September 23, 2010. 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 seven hundred three (703) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by seven hundred three (703) days is **GRANTED**.

A request for reconsideration of the patent term adjustment to be indicated in the patent was filed on October 2, 2007. On October 9, 2007, the above-identified application matured into U.S. Patent No. 7,279,579 with a revised patent term adjustment of 575 days. Given that the October 2, 2007 petition did not state under which *specific* rule it was filed (37 CFR 1.705(b) or 37 CFR 1.705(d)) and that the Issue Notification, mailed on September 19, 2007, listed a projected patent term adjustment, the October 2, 2007 petition will be treated on its merits.

The sole issue pertains to the three years to issue guarantee of 35 U.S.C. 154(b)(1)(B) and 37 CFR 1.702(b) (hereinafter, "B delay"). The application was filed on June 3, 2004. Thus, period of B delay is 128 days, which is the number of days

beginning on June 4, 2007, the day after the date three years after the filing date of the application, and ending on October 9, 2007, the date the patent issued. *See* 1.703(b).

In light thereof, the correct patent term adjustment is 703 days, which is the sum of 575 days of delay under 35 U.S.C. 154(b)(1)(A) and 128 days of B Delay, reduced by 0 days of Applicant delay.

The Office acknowledges previous submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required. The $400.00 Rule 183 petition fee will be refunded to deposit account no. 50-2807.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted **by seven hundred three (703)** days.

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,279,579 B2

DATED : **October 9, 2007** **DRAFT**

INVENTOR(S) : Brittain 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 575 days

Delete the phrase "by 575 days" and insert – by 703 days--

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CANTOR COLBURN LLP
20 CHURCH STREET
22ND FLOOR
HARTFORD, CT 06103

MAILED

OCT 22 2010

OFFICE OF PETITIONS

In re Patent No. 7,207,505 :
Issue Date: April 24, 2007 :
Application No. 10/860,937 : NOTICE
Filed: June 4, 2004 :
Attorney Docket No. MPC0300US

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**.

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

Inquiries related to this communication should be directed to Irvin Dingle at (571) 272-3210.

Irvin Dingle
Petitions Examiner
Office of Petitions

cc: George E. Bullwinkel
425 Woodside Avenue
Hinsdale, IL 60521

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P.O. BOX 721120
SAN JOSE, CA 95172-1120

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APR 12 2011

OFFICE OF PETITIONS

In re Application of :
Wiedmann et al. :
Application No. 10/861,011 : DECISION ON PETITION
Filed: June 4, 2004 TO WITHDRAW FROM RECORD
Attorney Docket No. 03.059.02 (920-0099US) :
:

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 April 4, 2011 the power of attorney 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: McAfee-Wong Cabello Lutsch Rutherford & Brucculeri LLP
20333 Tomball Parkway, 6th Floor
Houston TX 77070

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THE MACLEAN - FOGG COMPANY,
C/O THE ALDEN LAW GROUP
2122 YORK ROAD, SUITE 180
OAK BROOK IL 60523

MAILED

AUG 26 2010

OFFICE OF PETITIONS

In re Application of :
Chong Kheng Lim, et al. :
Application No. 10/861,050 : DECISION ON PETITION
Filed: June 4, 2004 :
Atty. Docket No. 04-9540-6310-0000-10 :

This is a decision on (a) the petition, filed May 5, 2010, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment and in the alternative, (b) a petition to revive the above-identified under the unintentional provision of 37 CFR 1.137(b).

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

The application was held abandoned for failure to reply in a timely manner to the Notice of Non-Compliant Amendment (Notice), mailed February 18, 2009, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. A Notice of Abandonment was mailed September 16, 2009.

Petitioner contends that the Notice of Abandonment was improper and should be withdrawn, asserting that a response was filed to the Notice on March 18, 2009.

The reply to the Notice of Non-Compliant Amendment, received on March 18, 2009 was deemed to be not in compliance for reasons set forth in the Notice of Non-Compliant Amendment mailed on May 15, 2009. No new time period was set and the time continued to toll from the February 18, 2009 notice. No reply or request for extension of time was subsequently filed.

As an acceptable reply to the Notice was not timely filed, the application became abandoned on March 19, 2009. In view thereof, the instant petition requesting withdrawal of the holding of abandonment cannot be granted.

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

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(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), in that it does not include a reply to the Notice of Non-Compliant Amendment of May 15, 2009.

A petition fee of $1,620 under 37 CFR 1.17(m) has been charged to the Deposit Account 50-2318, as authorized.

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

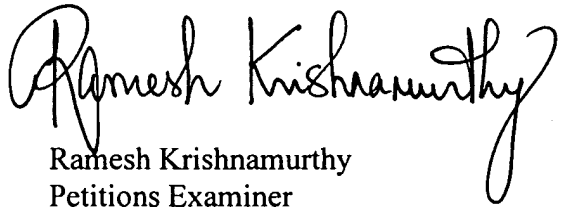
Further correspondence with respect to this matter should be addressed as follows:

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

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

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

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



Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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FOLEY & LARDNER LLP
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P.O. BOX 1497
MADISON WI 53701-1497

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NOV 23 2011

OFFICE OF PETITIONS

In re Application :
Michael Andrew Fischer et al. :
Application No. 10/861,065 : DECISION ON APPLICATION
Filed: June 4, 2004 : FOR PATENT TERM ADJUSTMENT
Attorney Docket No. 088245-2598 :

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FOR PATENT APPLICATION UNDER 37 C.F.R. §1.705(b) filed November 9, 2011. Applicant requests that the determination of patent term adjustment be corrected from 636 to 1644 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]

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

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

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BARNES & THORNBURG LLP
P.O. Box 2786
CHICAGO IL 60690-2786

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DEC 20 2010

OFFICE OF PETITIONS

In re Application of :
James P. Keefe :
Application No. 10/861,202 :
Filed: June 4, 2004 :
Attorney Docket No. 36798-95780 :

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 December 9, 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 Grant H. Peters on behalf of all attorneys/agents associated with customer number 23644. All attorneys/agents associated with customer number 23644 have been withdrawn.

The correspondence address has been changed and is copied below.

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

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: James P. Keefe
11978 Oak Tree Lane
Lemont, IL 60439

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United States Patent and Trademark Office
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/861,202	06/04/2004	James P. Keefe	36798-95780

CONFIRMATION NO. 1225

POWER OF ATTORNEY NOTICE

23644
BARNES & THORNBURG LLP
P.O. Box 2786
CHICAGO, IL 60690-2786

Date Mailed: 12/20/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 12/09/2010.

- 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.

/kainabinet/

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

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LOS ANGELES CA 90071

MAILED

SEP 07 2011

OFFICE OF PETITIONS

In re Application of

Jou :

Application No. 10/861,221

: DECISION ON PETITION

Filed: June 4, 2004

:

Attorney Docket No. **174847-999001**

:

This is in response to the petition under 37 CFR 1.137(b) filed September 2, 2011.

The petition is DISMISSED.

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

This application became abandoned for failure to respond in a timely manner to the non-final Office action mailed June 1, 2007. The notice set a shortened period for reply of two months from its mailing date. Extensions of time were available pursuant to 37 CFR 1.136(a). A response was received within the allowable period and the application became abandoned on July 2, 2007. A Notice of Abandonment was mailed on July 11, 2008.

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

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

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

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

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

The instant petition does not satisfy the requirements of item (3) above.

As to Item (3), the *Manual of Paten Examining Procedure*, Section 7711.03(c) provides, in pertinent part, that:

> Where a petition pursuant to 37 CFR 1.137(b) is 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 may require:
>
> (A) further information as to when the applicant (or the 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).<
>
> To avoid delay in the consideration of the merits of a petition under 37 CFR 1.137(b) in instances in which such petition was not filed within 1 year of the date of abandonment of the application, applicants should include:
>
> (A) the date that the applicant first became aware of the abandonment of the application; and
>
> (B) a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant.
>
> In either instance, applicant's failure to carry the burden of proof to establish that the "entire" delay was "unavoidable" or "unintentional" may lead to the denial of a petition under 37 CFR 1.137(a) or 37 CFR 1.137(b), regardless of the circumstances that originally resulted in the abandonment of the application.

Petitioner did not provide an explanation for the delay in filing the instant petition. Accordingly, the renewed petition must be accompanied by an explanation for said delay including, but not limited to, the considerations provided in MPEP § 711.03(c) cited above.

While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed to the address of currently of record until such time as appropriate instructions are received to the contrary.
Further correspondence with respect to this matter should be addressed as follows:

By mail:

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Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

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

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Cc:
Brett A. Lovejoy
One Market
Spear Street Tower
San Francisco, CA 94105-1596

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In re Patent No. 7238143
Issue Date: July 3,2007
Application No. 10861431
Filed: June 7,2004
Attorney Docket No. BOD_COND.VIB

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

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

PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
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PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7238143	2007-07-03	10861431	2004-06-07	BOD_COND.VIB

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	/G. F. Gallinger/	Date (YYYY-MM-DD)	2012-03-20
Name	GF Gallinger	Registration Number	34168

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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

Mail Date: 08/04/2010

Applicant	: Roland Guethaus	: DECISION ON REQUEST FOR
Patent Number	: 7643454	: RECALCULATION of PATENT
Issue Date	: 01/05/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/861,475	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/07/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1242** 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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Zilka-Kotab, PC
P.O. BOX 721120
SAN JOSE CA 95172-1120

MAILED

MAR 24 2011

OFFICE OF PETITIONS

In re Application of :
Ulrich Wiedmann et al. :
Application No. 10/861,609 : DECISION ON PETITION
Filed: June 4, 2004 : TO WITHDRAW
Attorney Docket No. NAI1P422/03.063.02 : 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
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WONG,CABELLO,LUTSCH,RUTHERFORD & BRUCCULERI, LLP
20333 SH 249
STE 600
HOUSTON TX 77070

MAILED
DEC 19 2011
OFFICE OF PETITIONS

In re Patent No. 8,068,441 :
Wiedmann et al. : DECISION ON REQUEST FOR
Issue Date: November 29, 2011 : RECONSIDERATION OF
Application No. 10/861,609 : PATENT TERM ADJUSTMENT
Filed: June 4, 2004 :
Attorney Docket No. :
NAI1P422/03.063.02 :
Title: AUTOMATED DISCOVERY OF :
ACCESS POINTS IN WIRELESS :
COMPUTER NETWORKS :

This is a decision on the petition filed on December 7, 2011, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by two thousand forty-seven (2,047) days.

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

The period of adjustment to which the patent is entitled under 37 CFR 1.702(a) is 1077 days.

The period of adjustment to which the patent is entitled under 37 CFR 1.702(b) is 1639 days.

The time taken up by the notice of appeal is excluded from the period of B-delay pursuant to 37 CFR 1.703(b)(4) in connection with the Notice of Appeal filed April 9, 2009. The reduction of 177 days commenced April 9, 2009; the date that the Notice of Appeal was filed, and ended October 2, 2009, the day the non-final Office action was mailed. See, 37 CFR 1.703(b)(4).

Considering the excluded period, the Office has determined that there are 231 days of overlap.

Patentee's delay totals 84 days.

In view thereof, the patent term is 2224 days; no adjustment to the patent term will be made.

It is noted that the Office issued a Notice of proposed rulemaking entitled *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review and Information Disclosure Statements*, 76 FR 18990 (April 6, 2011). To the extent that the final rule on *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review* revises the interpretation of appellate review applied in this decision, Patentees are given **one (1) month or thirty (30) days,** whichever is longer, from the date of the final rule to file a request for reconsideration. No extensions of time will be granted under § 1.136.

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

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

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

Charlema Grant
Attorney Advisor
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

SHAY GLENN LLP
2755 CAMPUS DRIVE
SUITE 210
SAN MATEO CA 94403

MAILED

SEP 20 2010

OFFICE OF PETITIONS

In re Application of :
Reuter et al. :
Application No. 10/861,782 : ON APPLICATION FOR
Patent No. 7,635,387 : PATENT TERM ADJUSTMENT
Filed: June 3, 2004 :
Issued: December 22, 2009 :
Atty Docket No.: 10057-704.501 :
Title: ADJUSTABLE HEIGHT FOCAL TISSUE DEFLECTOR :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)," filed May 21, 2010. Patentee requests that the patent term adjustment be decreased from one thousand, four hundred and twenty-seven (1427) days to one thousand, four hundred and eight (1408) days.

The request for reconsideration of the patent term adjustment is **DISMISSED**.

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 C.F.R. § 1.136.

Application No. 10/861,782 matured into U.S. patent No. 7,635,387 on December 22, 2009, with a patent term adjustment of 923 days. On February 25, 2010, Patentee filed a Request for Recalculation of Patent Term Adjustment in view of Wyeth. On April 21, 2010, the Office mailed a "DECISION ON REQUEST FOR RECALCULATION of PATENT TERM ADJUSTMENT IN VIEW OF WYETH AND NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION," indicating

that the patent term adjustment had been determined to be 1427 days.

Patentee has indicated that this patent is not subject to a terminal disclaimer.[1]

With this petition, Patentee has argued that one additional period of reduction should have been accorded: a final office action was mailed on September 18, 2007, and an after-final amendment was received on November 14, 2007. A notice of appeal was received on January 17, 2008 (which is three months and 30 days after the mailing of the final Office action), and a non-final office action was mailed on May 14, 2008 (which is four months and 61 days after the receipt of the after-final amendment).

The Office agrees that the mailing of the non-final Office action on May 14, 2008 warrants an adjustment of 61 days, pursuant to 37 C.F.R. § 1.703(a)(2).[2] It is noted that this entire 61-day period overlaps with the period of B-delay.

Patentee further argues that a 30-day reduction is warranted pursuant to 37 C.F.R. § 1.704(b).[3] However, a review of the electronic record indicates[4] that the non-final office action of May 14, 2008 was mailed in response to the after-final amendment of November 14, 2007, which was received less than three months

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[1] Petition, page 2.

[2] "The number of days, if any, in the period beginning on the day after the date that is four months after the date a reply under § 1.111 was filed and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first;"

[3] "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."

[4] It is noted that the "Office Action Summary" portion of the non-final office action of May 14, 2008 does not expressly state that the mailing is responsive to the after-final amendment of November 14, 2007, due to the fact that the appropriate field has been left blank.

after the mailing of the final office action of September 18, 2007. As such, no reduction is warranted.

Moreover, a notice of appeal was filed on January 17, 2008, and a non-final Office action was mailed on May 14, 2008. The 118 days of the over three year period consumed by appellate review, beginning on January 17, 2008 and ending on May 13, 2008, the day before the non-final office action was mailed, is not included in the B delay. See 35 U.S.C. § 154(b)(1)(B)(ii).

As such, the patent term adjustment of 1427 days is correct (683 days of examination delay plus 933 "B-delay" minus the aforementioned excluded 118 days minus 10 days of Applicant delay minus 61 days of overlap).

The Office notes that the patent term adjustment set forth in the decision of April 21, 2010 is correct.

The Office has determined that the patent term adjustment for the above-identified patent is **1427 days**.

The patent is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand, four hundred and twenty-seven (1427) days**, as set forth in the decision of April 21, 2010.

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 response to this decision should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail,[5] hand-delivery,[6] or facsimile.[7] Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web.[8]

---

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

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

[7] (571) 273-8300 - please note this is a central facsimile number.

[8] https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html

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

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,635,387 B2

DATED : **December 22, 2009** **DRAFT**

INVENTOR(S) : Reuter 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 923 days

Delete the phrase "by 923 days" and insert – by 1427 days--

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 2/14/2012

TO SPE OF : ART UNIT 1636

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/861798 Patent No.: 8092765 B2

CofC mailroom date: 2/7/2012

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: _____

_____

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: Claim 8 was modified by the Examiner's Amendment and should not be changed as proposed in the Cert. of Correction. the other corrections in the proposed Cert. of Cor. are approved.

ABDUL-MAJEED
SUPERVISORY PATENT EXAMINER

SPE

1636
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

Fay Kaplun & Marcin, LLP
150 Broadway, suite 702
New York NY 10038

MAILED
NOV 22 2010
OFFICE OF PETITIONS

In re Application of

Frenk, et al.

Application No. 10/861,818

Filed: June 4, 2004

Attorney Docket No. 8932-917-999

DECISION ON PETITION

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181(a), filed October 4, 2010.

The petition is **granted**.

This application was held abandoned January 22, 2010, after no reply was received to the Notice of Non-Compliant Amendment mailed December 21, 2009. The notice set forth a shortened period of reply of one month from its mailing date. No response was received within the allowable period and the application became abandoned on January 22, 2010. A Notice of Abandonment was mailed August 2, 2010. The instant petition was filed on October 4, 2010. Petitioner maintains that the USPTO erroneously changed the correspondence address of record to an address that was never associated with the subject application.

A review of the application file history reveals that a Power of Attorney to Prosecute Applications Before the USPTO was filed on October 9, 2009, giving power of attorney to customer number 76960 and changing the address of record to the address associated with that customer number. The USPTO mistakenly entered the customer number 76980, however. The Notice of Notice of Non-Compliant Amendment was mailed to the correspondence address associated with customer number 76980, rather than 76960. The evidence is convincing that petitioner did not receive the Notice of Non-Compliant Amendment because the USPTO incorrectly entered the aforementioned request to change correspondence address. The petition is granted, accordingly.

The correspondence address has since been corrected in the USPTO records.

The application file is being forwarded to Technology Center, GAU 3733 for further processing.

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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)
7,267,930	2007-09-11	10/862,007	2004-06-04	GRAMP008

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.

The Assignee of record of the entire interest			
Under 37 CFR 3.71 an assignee becomes of record by filing a statement in compliance with 37 CFR 3.73(b). Signature requirements are set forth in 37 CFR 1.4(d), and the undersigned certifies that he / she is empowered to act on behalf of the assignee of the entire interest			
Signature	/Grier Graham/	Date (YYYY-MM-DD)	2011-12-08
Name	Grier Graham		
Enter Reel and Frame Number		Remove	
Reel Number	015238	Frame Number	0935
Enter Reel and Frame Number		Remove	
Reel Number	021085	Frame Number	0384
Click ADD for additional Reel Number and Frame Number		Add	

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Patent No. 7267930
Issue Date: September 11,2007
Application No. 10862007
Filed: June 4,2004
Attorney Docket No. GRAMP008

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

This is a decision on the electronic petition, filed December 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 December 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 PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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K&L GATES LLP
210 SIXTH AVENUE
PITTSBURGH, PA 15222-2613

MAILED

DEC 22 2010

OFFICE OF PETITIONS

In re Application of :
Drake et al. :
Application No. 10/862,083 : DECISION ON PETITION
Filed: June 4, 2004 TO WITHDRAW FROM RECORD
Attorney Docket No. 030965/SI.0030.US01 :
:

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 3, 2010.

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

A review of the file record indicates that on December 7, 2010 the power of attorney to K&L Gates LLP was revoked by the assignee of the patent application. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

Telephone inquires concerning this decision should be directed to the undersigned at 571-272- 7751. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: ARCHER DANIELS MIDLAND COMPANY
4666 FARIES PARKWAY
DECATUR IL 62526

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/862,116	06/04/2004	Edwin C. Iliff	HEWAYS.038A	2425

23531 7590 06/14/2011

SUITER SWANTZ PC LLO
14301 FNB PARKWAY
SUITE 220
OMAHA, NE 68154

EXAMINER	
LAM, ELIZA ANNE	
ART UNIT	**PAPER NUMBER**
3626	

MAIL DATE	DELIVERY MODE
06/14/2011	PAPER

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

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

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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JUN 14 2011

SUITER SWANTZ PC LLO
14301 FNB PARKWAY
SUITE 220
OMAHA, NE 68154

In re Application of	:	
Edwin C. Iliff	:	DECISION ON PETITION
Application No. 10/862,116	:	REGARDING REQUEST TO
Filed: June 4, 2004	:	WITHDRAWAL FINALITY
For: SYSTEM AND METHOD FOR ASSISTING MEDICAL DIAGNOSIS USING AN ANATOMIC SYSTEM AND CAUSE MATRIX	:	UNDER 37 CFR §1.181

This is a decision on applicant's petition under 37 CFR 1.181 filed March 21, 2011 requesting withdrawal of the finality of the Office action mailed February 16, 2011 and issuance of a new Office action.

The petition is **DISMISSED as MOOT.**

Petitioner argues that the "Patent Office has not provided clear explanations of all actions taken during prosecution of the present application," specifically, the "Office has not made proper reference to Applicant's arguments in a response dated October 12, 2010 regarding the Patent Office's rejections in an Office Action dated July 12, 2010." Petitioner argues that the Office has repeatedly "not taken note of Applicant's arguments or answered the substance of them."

A review of the prosecution file indicates that a final rejection was mailed February 16, 2011. A response was filed April 18, 2011. A new final rejection was mailed May 23, 2011. Beginning on page 25 of the Office action mailed May 23, 2011, the examiner specifically makes reference to and answers in substance applicant's arguments filed November 19, 2010 and April 18, 2011. Accordingly, the petition is dismissed as moot since a new Office action has been mailed.

The application will be returned to the examiner's docket awaiting a response to the final Office action mailed May 23, 2011.

Questions concerning this decision should be referred to Teri Luu, Quality Assurance Specialist, at (571)-272-7045.

Wynn Coggins, Director
Technology Center 3600
Telephone No.: (571)-272-5350

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Leason Ellis LLP
One Barker Avenue
Fifth Floor
White Plains NY 10601-1526

MAILED

FEB 06 2012

OFFICE OF PETITIONS

In re Application of :
Huang et al. :
Application Number: 10/862,396 : DECISION ON PETITION
Filing Date: 06/08/2004 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket Number: 01596/001615-US0 :

This is a decision on the "PETITION TO ACCEPT AN UNINTENTIONALLY DELAYED CLAIM FOR THE BENEFIT OF A PRIOR-FILED APPLICATION UNDER 37 C.F.R. § 1.78," filed on January 17, 2012, which is treated as a petition under 37 CFR 1.78(a)(3), to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of priority to prior-filed nonprovisional and international applications as set forth in the concurrently-filed amendment.

The petition is **DISMISSED**.

The instant application was filed on June 8, 2004. Therefore, since this application was filed after November 29, 2000, a petition under 37 CFR 1.78(a)(3) is the appropriate avenue of relief to accept a late claim for the benefit of priority to a prior-filed nonprovisional application after issuance of the application into a patent. *See* MPEP 1481.

The petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) must be accompanied by:

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

The petition does not satisfy item (1) above.

With regard to item (1), the reference to add the above-noted, prior-filed nonprovisional application in the first sentence of the specification on page one following the title is not acceptable as drafted since it improperly incorporates by

reference the prior-filed application. An incorporation by reference statement added after an application's filing date is not effective because no new matter can be added to an application after its filing date (*see* 35 U.S.C. § 132(a)). If an incorporation by reference statement is included in an amendment to the specification to add a benefit claim under 35 U.S.C. § 120 after the filing date of the application, the amendment would not be proper. When a benefit claim under 35 U.S.C. § 120 is submitted after the filing of an application, the reference to the prior application cannot include an incorporation by reference statement of the prior application. *See* Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980). *Note* MPEP §§ 201.06(c) and 608.04(b).

37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional (or international) applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional or international application. An example of a proper benefit claim is: "This application is a continuation of Application No. PCT/US2010/000001, filed January 1, 2010." A benefit claim that merely states: "This application claims the benefit of Application No. PCT/US2010/000001, filed January 1, 2010," does not comply with 37 CFR 1.78(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. Also, the status of each nonprovisional or parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. *See* MPEP Section 201.11, Reference to Prior Nonprovisional Applications.

Lastly, it is noted that Application No. 10/416,459, is a national stage application under 35 U.S.C. 371 of international Application No. PCT/AU2001/001539, filed on November 27, 2001. The amendment filed with the subject petition states that the subject petition is a continuation-in-part of national stage Application No. 10/416,459, and that the application "claims the benefit of" international Application No. PCT/AU2001/001539. As noted in MPEP 1893.03(c)(III), a national stage application filed under 35 U.S.C. § 371 may not claim benefit of the filing date of the international application of which it is the national stage since its filing date is the date of filing of that international application. *See also* MPEP 1893.03(b). In this regard, since the international application is not an earlier application (it has the same filing date as the national stage), a priority claim in the national stage of the international application is inappropriate. Likewise, it is inappropriate to file a separate claim of benefit under 35 U.S.C. 120 to an international application if a claim of benefit under 35 U.S.C. 120 to the national stage application of that international application has been claimed.

If reconsideration of this decision is desired, a renewed petition under 37 CFR § 1.78(a)(3) and an Application Data Sheet or an amendment (complying with the provisions of 37 CFR 1.121 and 37 CFR 1.76(b)(5)), is required.

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

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

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

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

A reply may also be filed via the EFS-Web filing system of the USPTO.

Any questions concerning this matter may be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.

Bryan Lin
PCT Legal Examiner
Office PCT Legal Administration

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PETER MELE
1505 WHITE CHURCH ROAD
PO BOX 533
CROWN POINT, NY 12928

MAILED

DEC 22 2010

OFFICE OF PETITIONS

In re Patent No. 6,976,891
Issue Date: December 20, 2005
Application No. 10/862,612
Filed: June 7, 2004
Attorney Docket No. PM-6C

ON PETITION

This is a decision on the petition under 37 CFR 1.378(b), filed July 12, 2010, to accept the unavoidably delayed payment of a maintenance fee for the above-identified patent.

The petition is **DISMISSED**.

The patent issued on December 20, 2005. The 3 ½ year maintenance fee was due by December 20, 2009. The said fee could have been paid from December 20, 2008 thru June 23, 2009 or with a surcharge of $65 during the period of June 24, 2009 through December 20, 2009. Accordingly, the patent expired at midnight December 20, 2009 for failure to timely submit the first 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) and (3) above.

Petitioner asserts that the delay in payment of the 3 ½ year maintenance fee was unavoidable because the petitioner did not receive notification from the Patent Office that maintenance fee was due.

Petitioner has failed to meet his burden of proof in showing to the satisfaction of the Director that the delay in payment of the maintenance fee unavoidable within the meaning of 35 USC § 41(c) and 37 CFR 1.378(b)(3).

37 CFR 1.378(b)(3) states that nay petition to accept delayed payment of a maintenance fee must include:

"A 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. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date, and the manner in which patentee became aware of the expiration of the patent, and the steps taken to filed the petition promptly."

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 v. Lehman*, 55 F.3d 606, 609, 34 USPQ2d 1786, 1788 (Fed. Cir. 1995) (quoting *In re Patent No. 4,409,763*, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1988), *aff'd dub nom.* 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 maintenance fee for this patent. Id. As the patent holder at the time of expiration, it was incumbent on petitioner to have itself docketed this patent 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 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.

In view of the requirement to enumerate the steps taken to ensure timely payment of the maintenance fee, the patentee's lack of knowledge of the need to pay the maintenance fee and the failure to receive the Maintenance Fee Reminder do not constitute unavoidable delay. *See Patent No. 4,409,763, supra.* See also Final Rule entitled "Final Rules for Patent Maintenance Fees," published in *Federal Register* at 49 Fed. Reg. 34716, 34722-23 (August 31, 1984), and republished in the *Official Gazette* at *Off. Gaz Pat. Office* 28, 34 (September 25, 1984). Under the statutes and rules, the Office has no duty to notify patentees of the requirement to pay maintenance fees or to notify patentees when the maintenance fees are due. It is solely the responsibility of the patentee to assure that the maintenance fee is timely paid to prevent expiration of the patent. The lack of knowledge of the requirement to pay a maintenance fee and the failure to receive the Maintenance Fee Reminder will not shift the burden of monitoring the time for paying maintenance fee from patentee to the Office. See MPEP 2590.

However, the record fails to show that adequate steps within the meaning of 37 CFR 1.378(b)(3) were taken by or on behalf of petitioner to schedule or pay the maintenance fee. Petitioner is reminded that 37 CFR 1.378(b)(3) is a validly promulgated regulation, as is the requirement therein for petitioner's showing of the steps taken to pay the fee. *Ray*, 55 F.3d at 609, 34 USPQ2d at 1788. In the absence of a showing of the steps taken by or on behalf of petitioner, 37 CFR 1.378(b)(3) precludes acceptance of the maintenance fee.

Furthermore, the Letters Patent contains a Maintenance Fee Notice that warns that the patent may be subject to maintenance fees if the application was filed on or after December 12, 1980.

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 v. Lehman*, 55 F.3d 606, 609, 34 USPQ2d 1786, 1788 (Fed. Cir. 1995) (quoting *In re Patent No. 4,409,763*, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1988), *aff'd dub nom.* 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 maintenance fee for this patent. Id. As the patent holder at the time of expiration, it was incumbent on petitioner to have itself docketed this patent 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 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.

In view of the requirement to enumerate the steps taken to ensure timely payment of the maintenance fee, the patentee's lack of knowledge of the need to pay the maintenance fee and the failure to receive the Maintenance Fee Reminder do not constitute unavoidable delay. *See Patent No. 4,409,763, supra.* See also Final Rule entitled "Final Rules for Patent Maintenance Fees," published in *Federal Register* at 49 Fed. Reg. 34716, 34722-23 (August 31, 1984), and republished in the *Official Gazette* at *Off. Gaz Pat. Office* 28, 34 (September 25, 1984). Under the statutes and rules, the Office has no duty to notify patentees of the requirement to pay maintenance fees or to notify patentees when the maintenance fees are due. It is solely the responsibility of the patentee to assure that the maintenance fee is timely paid to prevent expiration of the patent. The lack of knowledge of the requirement to pay a maintenance fee and the failure to receive the Maintenance Fee Reminder will not shift the burden of monitoring the time for paying maintenance fee from patentee to the Office. See MPEP 2590.

However, the record fails to show that adequate steps within the meaning of 37 CFR 1.378(b)(3) were taken by or on behalf of petitioner to schedule or pay the maintenance fee. Petitioner is reminded that 37 CFR 1.378(b)(3) is a validly promulgated regulation, as is the requirement therein for petitioner's showing of the steps taken to pay the fee. *Ray*, 55 F.3d at 609, 34 USPQ2d at 1788. In the absence of a showing of the steps taken by or on behalf of petitioner, 37 CFR 1.378(b)(3) precludes acceptance of the maintenance fee.

Furthermore, the Letters Patent contains a Maintenance Fee Notice that warns that the patent may be subject to maintenance fees if the application was filed on or after December 12, 1980.

Accordingly, a reasonably prudent patentee would have inquired to see if his/her patent was subject to maintenance fees.

Additionally, petitioner has failed to pay the surcharge required under 37 CFR 1.20(i)(1). The surcharge required is $700 and petitioner submitted $270.

ALTERNATIVE VENUE

Petitioner should also note that since the maintenance fee was offered 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 $270 already submitted would be applied to the $1,640 fee owed under 37 CFR 1.378(c), leaving a balance due of $1370.

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.

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 regarding this decision should be directed to April M. Wise at (571) 272-1642.

/dab/
David Bucci
Petitions Examiner
Office of Petitions

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

Electronic Petition Request	PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)
Application Number	10862806
Filing Date	07-Jun-2004
First Named Inventor	Donald Collins
Art Unit	2614
Examiner Name	HARRY HONG
Attorney Docket Number	11605.00
Title	QUEUE MANAGEMENT SYSTEM AND METHOD

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

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

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

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

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

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

☐ Applicant(s) status remains as SMALL ENTITY.

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

Issue Fee and Publication Fee :

Issue Fee and Publication Fee must accompany ePetition.

☒ Issue Fee Transmittal is attached

Drawing corrections and/ or other deficiencies.

◉ Drawing corrections and/ or other deficiencies are not required

◯ I certify, in accordance with 37 CFR 1.4.(D)(4), that drawing corrections and/ or other deficiencies have previously been filed on

◯ Drawing corrections and/ or other deficiencies are attached.

☒ STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

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

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

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

◯ A sole inventor

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

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

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

Signature	/Paul W. Martin/
Name	Paul W. Martin
Registration Number	34870

UNITED STATES 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 21,2011

In re Application of :

Donald Collins

Application No : 10862806

Filed : 07-Jun-2004

Attorney Docket No : 11605.00

DECISION ON PETITION

UNDER CFR 1.137(b)

This is an electronic decision on the petition under 37 CFR 1.137(b), filed October 21,2011 , to revive the above-identified application.

The petition is **GRANTED.**

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

The electronic petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of payment of the Issue Fee and the Publication Fee (if necessary); (2) the petition fee as set forth in 37 CFR 1.17 (m); (3) the drawing correction and/or other deficiencies (if necessary); and (4) the required statement of unintentional delay have been received. Accordingly, the Issue Fee payment is accepted as having been unintentionally delayed.

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

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

Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 4-26-11 Paper No.: _____

TO SPE OF : ART UNIT 2837

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/862,816 Patent No.: 7,112,738

CofC mailroom date: 4-18-11

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

FOR IFW FILES: Check drawing figs.

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: Corrections do not affect the scope of the claims.

7/11/11 — SPE

AU 2832 — Art Unit

OK, APPROVED /EE/ [1]

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Stephen E. Shires

Patent No.: 7,112,735 B2

Issued: September 26, 2006

For: MUSICAL WIND INSTRUMENT, VALVES THEREFOR, AND METHODS OF MANUFACTURING SAME

Attorney Docket No.: 3174-6463US

VIA ELECTRONIC FILING

April 18, 2011

REQUEST FOR CERTIFICATE OF CORRECTION OF PATENT FOR APPLICANT'S MISTAKES (37 C.F.R. § 1.323)

Attn.: Certificate of Corrections Branch
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

It is noted that Applicant(s) errors appear in this patent of a typographical nature or character and correction thereof does not involve such changes in the patent as would constitute new matter or would require reexamination. A certificate of correction in the form attached hereto is requested.

Please send the Certificate to:

Name: Joseph A. Walkowski
Address: TraskBritt
P.O. Box 2550
Salt Lake City, Utah 84110

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110730A

DATE : July 30, 2011

TO SPE OF : ART UNIT 1622

SUBJECT : Request for Certificate of Correction on Patent No.: 7601731

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

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - ST (South Tower) 9A22
Palm location **7590** - Tel. No. (703) 305-8309

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

Thank You For Your Assistance **Certificates of Correction Branch**

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

Note your decision on the appropriated box.

☒ **Approved** All changes apply.

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

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

Comments:

/ANDREW D KOSAR/
Supervisory Patent Examiner.Art Unit 1622

UNITED STATES 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 10 2011
OFFICE OF PETITIONS

VERTEX PHARMACEUTICALS INC.
Susan Batty-Gunn
130 WAVERLY STREET
CAMBRIDGE, MA 02139-4242

In re Application of Makings et al. :
Application No. 10/862,909 : Decision on Petition
Filing Date: June 7, 2004 :
Attorney Docket No. VPI/03-106 US :

This is a decision on the petition under 37 CFR 1.137(b) filed June 24, 2011, which requests revival of the application.

The petition is **granted**.

The above-identified application became abandoned for failure to reply in a timely and proper manner to the final Office action mailed October 20, 2010, which set a shortened statutory period for reply of three (3) months. A two-month extension of time was obtained under the provisions of 37 CFR 1.136(a). Accordingly, the above-identified application became abandoned on Tuesday, March 22, 2011. A Notice of Abandonment was mailed June 20, 2011.

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

(1) The reply required to the outstanding action or notice, unless previously filed,
(2) The petition fee, and
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.[1]

The petition satisfies the requirements of 37 CFR 1.137(b) in so far as the petition includes (1) a reply in the form of a request for continued examination and an amendment, (2) the required petition fee of $1,620, and (3) the required statement of unintentional delay.[2] Therefore, the petition is granted and the application is revived.

---

[1] A terminal disclaimer is also necessary if the application is a design application or if the application was filed on or before June 8, 1995.

[2] 37 CFR 1.137(b)(3) requires "a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) [was] unintentional." To the extent any statement of delay in the petition varies from this exact language, the statement will be construed as the equivalent of the statement above. If the entire delay from the date of abandonment, until the date the petition was filed, was not unintentional, petitioner must notify the Office.

Technology Center Art Unit 1624 will be informed of the instant decision and the application will be further examined in due course.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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

PTO/SB/131 (02-10)
Approved for use through 07/31/2010. OMB 0651-0020
U.S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

Attorney Docket Number: ADCI-094CON	
Application Number: 10/862,932	Filing Date (or 371(b) or (f) Date): June 7, 2004
Patent Number: 7,666,284	Issue Date: February 23, 2010
First Named Inventor: Heller, Adam	
Title: Electrodes with Multilayer Membranes and Methods of Using and Making the Electrodes	

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 /Edward J. Baba, Reg. No. 52,581/	Date August 3, 2010
Name (Print/Typed) Edward J. Baba	Registration Number 52,581

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.

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

Abbott Diabetes Care Inc.
Bozicevic, Field & Francis LLP
1900 University Ave
Suite 200
East Palo Alto, CA 94303

Mail Date: 08/12/2010

Applicant	: Adam Heller	: DECISION ON REQUEST FOR
Patent Number	: 7666284	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/862,932	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/07/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1608** 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

Decision Date : April 12,2011

In re Application of :

John Opie

Application No : 10863009

Filed: 07-Jun-2004

Attorney Docket No : 11637.028

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY/AGENT OF RECORD

This is an electronic decision on the Request to Withdraw as attorney or agent of record under 37 CFR.§ 1.36(b), filed April 12,2011

The request is **APPROVED**

The request was signed by Rodney J. Fuller (registration no. 46714) on behalf of all the attorneys/agents of record. All attorneys/agents of record have been withdrawn.

Since there are no remaining attorneys of record, all future communications from the Office will be directed the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71 with correspondence address:

Name	Phil Mitchell
Name2	Scottsdale Medical Devices
Address 1	7300 E. Acoma Drive
Address 2	
City	Scottsdale
State	AZ
Postal Code	85260
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

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	10863009
Filing Date	07-Jun-2004
First Named Inventor	John Opie
Art Unit	3761
Examiner Name	MICHELE KIDWELL
Attorney Docket Number	11637.028
Title	Surgical drains

◉ Please withdraw me as attorney or agent for the above identified patent application and all the practitioners of record.

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

10.40(c)(1)(iv)

10.40(c)(1)(v)

10.40(b)(c)(1)(vi)

Certifications

☒ I/We have given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intend to withdraw from employment

☒ I/We have delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled

☒ I/We have notified the client of any responses that may be due and the time frame within which the client must respond

Change the correspondence address and direct all future correspondence to the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71:

Name	Phil Mitchell Scottsdale Medical Devices
Address	7300 E. Acoma Drive
City	Scottsdale
State	AZ
Postal Code	85260

Country	US
I am authorized to sign on behalf of myself and all withdrawing practitioners.	
Signature	/Rodney J. Fuller/
Name	Rodney J. Fuller
Registration Number	46714

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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FENNEMORE CRAIG
3003 NORTH CENTRAL AVENUE
SUITE 2600
PHOENIX, AZ 85012

MAILED

MAY 09 2011

OFFICE OF PETITIONS

In re Application of	:	
OPIE, et al	:	
Application No. 10/863,009	:	DECISION ON PETITION
Filed: June 7, 2004	:	TO WITHDRAW
Attorney Docket No. 11637.028	:	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 7, 2011.

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

A review of the file record indicates that the power of attorney to Rodney J. Fuller and the attorneys associated with Customer No. 27887, has been withdrawn in view of the Auto Decision dated April 12, 2011. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) filed March 7, 2011, is moot.

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

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

cc: PHIL MITCHELL,
SCOTTSDALE MEDICAL DEVICES
7300 E. ACOMA DRIVE
SCOTTSDALE AZ 85260

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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GOFF PATENT LAW PLLC
P.O. BOX 625
BRUSH PRAIRIE WA 98606

MAILED

DEC 0 1 2011

OFFICE OF PETITIONS

In re Patent No. 7,381,388 :
Issue Date: June 3, 2008 :
Application No. 10/863,039 : NOTICE
Filed: June 7, 2004 :
Attorney Docket No. 0013-00022-03 :

This is a notice regarding your request, November 11, 2011, 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.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MERCHANT & GOULD P.C.
P.O. Box 2903
Minneapolis MN 55402-0903

MAILED

SEP 14 2010

OFFICE OF PETITIONS

In re Application of :
Franco Zobele :
Application No. 10/863,941 : NOTICE
Filed: June 9, 2004 :
Attorney Docket No. **60155.0007US01** :

This is a notice regarding your request filed August 11, 2010 , for acceptance of a fee deficiency submission under 37 CFR 1.28.

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

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

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

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

JoAnne Burke
Petitions Examiner
Office of Petitions

cc: Benoit Castel
209 Madison Street
Suite 500
Alexandria, VA 22314

UNITED STATES PATENT AND TRADEMARK OFFICE

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

FEB 15 2011

OFFICE OF PETITIONS

HEWLETT-PACKARD COMPANY
INTELLECTUAL PROPERTY ADMINISTRATION
3404 E. HARMONY ROAD
MAIL STOP 35
FORT COLLINS, CO 80528

In re Application of :
Iyad Qumei :
Application No. 10/864,095 : DECISION ON PETITION
Filed: June 9, 2004 :
Attorney Docket No. 200701965-2 :

This is a decision on the petition, filed December 18, 2008, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application or in the alternative a petition to revive under the unintentional provisions of 37 CFR 1.137(b).

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, April 21, 2008, which set a shortened statutory period for reply of three (3) month shortened statutory period for reply. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on June 22, 2008.

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

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

As to the petition under 37 CFR 1.181:

Petitioner asserts that the Office action dated April 21, 2008 was not received.

A review of the written record indicates no irregularity in the mailing of the Office action and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner;

2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and

3. a copy of the docket record where the non-received Office action would have been entered had it been received 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 April 21, 2008, the petition requesting withdrawal of the holding of abandonment cannot be granted at this time.

As to the petition under 37 CFR 1.137(b):

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

A petition to revive cannot be granted where there is an outstanding requirement. In this instance, there was no response to the outstanding Office action mailed April 21, 2008. A courtesy copy of this Office action is being mailed along with this decision. Accordingly, the petition to revive cannot be granted until the response to the Office action is received.

As authorized the $810 petition fee has been charged to petitioner's deposit account.

Any request for reconsideration of this decision should be filed within **TWO (2) MONTHS** from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

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

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

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

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

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

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

Attachment: a copy of the Office action mailed April 21, 2009.

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.
10/864,095	06/09/2004	Iyad Qumei	15641US02	6825

23446 7590 04/21/2008
MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO, IL 60661

EXAMINER	
VU, TUAN A	
ART UNIT	PAPER NUMBER
2193	

MAIL DATE	DELIVERY MODE
04/21/2008	PAPER

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

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

Office Action Summary	Application No.	Applicant(s)	
	10/864,095	QUMEI, IYAD	
	Examiner	Art Unit	
	Tuan A. Vu	2193	

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

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 June 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-25* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-25* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *09 June 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *9/13/04;10/20/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This action is responsive to the application filed 6/09/04.

Claims 1-25 have been submitted for examination.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1, 21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13, 24 of co-pending Application No. 10,770,983 (hereinafter '983).

Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following observations.

Following are but a few examples as to how the certain claims from the instant invention and from the above copending application are conflicting with each other.

As per instant claim 1, '983 claim 13 recites system for 'updating firmware of a electronic device with a file system', the system comprising a operating system that supports the file system, updating information received from a server; and a loading software that receives said update information; which is equivalent to downloading update information from the server

in the instant claim. Although '983 claim 13 does not explicitly recite 'update software that applies update to the firmware, wherein update software is incorporated in a process associated with the operating system', '983 recites invoking a kernel of the above system to update the firmware if it determines that updating information is available. One of ordinary skill in the art in light of invoking of kernel, would recognize the process by '983 applies the updating information by means of system's kernel to be obvious language variant of the instant claim language regarding update software applying update to the firmware and update software incorporated in a process associated with the operating system; since '983 kernel would be deemed a low level of the electronic device very OS, the role by the kernel equivalent to a process by update software.

As per instant claim 21, '983 claim 24 also recites update of a firmware of a electronic device system as in '983 claim 13, such system having a OS to support the file system; receving updating information from a server via loading it by a loading software; and invoking a kernel and invoking the updating software to update the firmware as in '983 claim 13. Hence, by virtue of a software process utilizing a kernel, '983 claim 24 would be a obvious language variant instant claim 21 in regard to update software applying update to the firmware, with update software incorporated as a process associated with the operating system, as recited in instant claim 21.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1-16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The Federal Circuit has recently applied the practical application test in determining whether the claimed subject matter is statutory under 35 U.S.C. § 101. The practical application test requires that a " useful, concrete, and tangible result" be accomplished. An "abstract idea" when practically applied is eligible for a patent. As a consequence, an invention, which is eligible for patenting under 35 U.S.C. § 101, is in the "useful arts" when it is a machine, manufacture, process or composition of matter, which produces a concrete, tangible, and useful result. The test for practical application is thus to determine whether the claimed invention produces a "useful, concrete and tangible result".

The current focus of the Patent Office in regard to statutory inventions under 35 U.S.C. § 101 for method claims and claims that recite a judicial exception (software) is that the claimed invention recite a practical application. Practical application can be provided by a physical transformation or a useful, concrete and tangible result. The following link on the World Wide Web is the United States Patent And Trademark Office (USPTO) reference in terms of guidelines on a proper analysis on 35 U.S.C. §101 rejection.

<http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/guidelines101_20051026.pdf>

Specifically, claim 1 recites a system that updates firmware of a electronic device with a file system; the system comprising a operating system that supports a file system, that supports downloading; and a update software. As such, the system claimed amounts to including an OS and a update software, conceived as software material; thus accordingly, one of ordinary skill in the art would not construe the system as a whole to include hardware support to realize the functionality of a OS, and a update software. In absence of any hardware support, listing of mere software functionality is perceived as mere 'Functional Descriptive Material' (see Guidelines pdf file, Annex IV, pg. 52-54); and software per se cannot be categorized as one of four categories of statutory subject matter. The claim is rejected for not being a statutory category, nor can the claimed 'Functional descriptive material', or software in terms of an abstract idea, without hardware execution, achieve a real world tangible, concrete and useful result.

Claims 2-16, for not including a processor along with a storage device in the system are rejected for not being a statutory category nor can the claims able to realize a tangible, concrete and useful result.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 1-4, 6, 9-19, 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marsh et al., USPN: 7,055,148 (hereinafter Marsh) in view of Dill, USPubN: 2003/0097431 (hereinafter Dill).

As per claim 1, March discloses a system that updates firmware in an electronic device with a file system, using updating information received from a server (e.g. *distribute ... firmware patch* - col. 4, lines 35-46; *received* – col. 4 lines 14-16; Fig. 5; *patch... contains* - col. 7, lines 11-37) via a communication network, the system comprising:

an operating system that supports a file system (e.g. Fig. 1; col. 3, lines 22-34; col. 5, line 65 to col. 6 line 10),

the operating system facilitating downloading of updating information from the server (e.g. step 710 – Fig. 6; *patch ... may be received* – col. 4 lines 14-16; *patch 440* inside *memory 310* -Fig. 3; *pushes* – col. 9, lines 4-23; Fig. 4 – Note: *firmware patch 500* including firmware version and additional program and logic reads on updating information); and

updating software that applies the updating information to the firmware (e.g. col. 3, lines 7-34);

But Marsh does not explicitly disclose wherein the updating software is incorporated into a process associated with the operating system. Marsh discloses a process using basic kernel operation; that is, bootable kernel for boot request being associated with loader and reboot logic (see Fig. 4) as to enabling configuring a operating system (e.g. Fig. 6) in view of the effect of a new upgrade achieved via such bootable kernel and loader utilities (e.g. *bootable kernel, reboot logic*– col. 7, lines 12-20; *firmware patch, bootable kernel, system loader* - col. 7, lines 42-63); hence the tight association with deep layer of the OS like bios and kernel is strongly suggesting that Marsh firmware update is using bootable kernel and its loader code (col. 6, lines 23-40) to support loading of OS after reboot. Kernel type of boot process using a loader code to establish diagnosis test about the deep layers of the OS, its I/O, to initialize the OS memory, its file system was a known concept in OS restart related to upgrade or firmware upgrade. Dill, in a firmware upgrade (para 0021, pg. 2) to electronic devices or integrated card embedded processors to associate boot-loader similar to Marsh' approach, discloses using of boot loader code to set up diagnostics of setting, port, cache of the target architecture (para 0033, pg. 2; para 0034-0037, pg. 3) in tight association with kernel reboot code to mount and initialize its file system. It would have been obvious for one skill in the art at the time the invention was made to implement kernel-associated boot loader as in Marsh, so that such boot sequence would implicate deep diagnostic and mount of the OS file system as taught in Dill, because according to this kernel based reinitializing approach as shown in Dill, the new upgrade and the properly initialized OS

and its deep file system and I/O, memory setting would be able to functionally co-exist, which is exactly the aimed purpose in Marsh approach (e.g. step 760, 765, Fig. 6).

As per claim 2, Marsh does not explicitly disclose wherein the process comprises a bootstrap process executed by the operating system during start up of the electronic device. But bootstrap code is known to be a boot loader code typically equipped with minimum resources to help boot a system; hence Marsh by using a boot image to invoke a system loader (Fig. 4, 6), has implied this bootstrap concept. Dill teaches boot loader to effectuate system initialization for a reboot as set forth above, hence the bootstrap functionality in Marsh's loader would have been obvious for the same reasons as set forth in claim 1.

As per claim 3, Marsh discloses a boot block, wherein the bootstrap process (e.g. system loader --Fig. 4, Fig. 6 – bootstrap in view of Dill as in claim 2) is executed in the boot block (boot disc 710 Fig. 6).

As per claim 4, Marsh (in view of boot actions steps in Dill) discloses wherein the updating software is incorporated into one of a plurality of phases associated with the bootstrap process (e.g. col. 6, lines 23-40; system loader to guide … through boot process … directing subsequent boot process – col. 7, line 57 to col. 8, line 13).

As per claim 6, Marsh discloses wherein the process is executed prior to (e.g. *system loader to guide ... through boot process ... directing subsequent boot process* – col. 7, line 57 to col. 8, line 13; step 760, 765 -Fig. 6 – Note: invoking of loader including reboot prior to loading OS to RAM reads on prior to loading OS) the start of the operating system.

As per claim 9, Marsh discloses wherein the server is external to (*push* - col. 4 lines 35-39; Fig. 1; col. 9, lines 9-20) the electronic device.

As per claim 10, Marsh does not explicitly disclose wherein the location of the updating software is determined by the amount of free space in the boot block. But the patch firmware by Marsh entail a fixed area for storage, and based on a limited amount of storage in a boot disk (see step 710 Fig. 6). It would have been obvious for one skill in the art at the time the invention was made to implement a boot block so that if the amount of free space therein is not available, the firmware patch cannot be downloaded as set forth in Marsh download (refer to claim 9), that is location to receive the firmware patch would be prohibited.

As per claim 11, Marsh does not explicitly disclose wherein the updating software is invoked at the end of a second phase immediately after a stack is initialized in a first phase. Dill teaches the role of the boot loader in setting up memory and stack (refer to claim 1) prior to upgrading of the firmware. Hence, this bootstrap or loader to perform stack initializing would have been obvious based on claim 1 and Dill's teaching.

As per claim 12, Marsh discloses wherein the updating software is part of the bootstrap process (see Fig.7; Fig. 4; col. 7, lines 12-20; lines 42-63) .

As per claim 13, Marsh discloses wherein the updating software is a substitute to a standard boot sequence. Dill discloses rescue boot partition (*rescue* - para 0037-0038, pg 3) as opposed to normal operation as by Marsh (see Fig. 7A-B-C). Based on Dill's approach by which a patch can substitute to a current boot process identified as needing remediation, it would have been obvious for one skill in the art at the time the invention was made to implement Marsh' s firmware patch so that the patch would remedy to the situation as set forth in Dill, because patch when applied to rescue a current boot process in Marsh' s approach can achieve the result as

intended in Dill, i.e. enable reconfiguring an otherwise faulty memory on target processor for a better recovery, as taught in Dill.

As per claims 14-15, Marsh (in view of Dill's bootstrap) discloses wherein the bootstrap process comprises a boot loader that directs a booting sequence into a plurality of paths (col. 6, lines 23-40; Figs 7); wherein the updating software (step 745 – Fig. 6) is one of the plurality of paths.

As per claim 16, Marsh discloses (bootstrap in view of Dill as in claim 2) wherein the bootstrap process comprises a boot loader having the updating software and an operating system bootstrap (see loader 410, patch 440, bootable kernel -Fig. 4).

As per claim 17, Marsh discloses a electronic device with memory, a memory management unit, peripheral hardware, firmware, a processor, an operating system (see Fig. 1), a boot sequence comprising:

an initial phase that initializes the processor (col. 6, lines 18-29);

an updating software (col. 8, lines 2-9; Fig. 6); and

a third phase that completes a boot sequence, initializes the memory management unit, and transfers execution to a portion of the operating system (Fig. 6; col. 7 lines 27-32).

Marsh does not explicitly disclose that the boot sequence is actually bootstrap sequence with the first phase as to initializing peripheral hardware; such that a second phase completes initialization of stack and memory and update software entry point at end of second phase. But the system loader as analogized to boot loader by Dill has been rendered obvious in light of the rationale in claim 2. Further, Dill teaches this boot loader responsible for preparing peripheral of the I/O, setting CPU board along with its memory and stack (para 0034-0036, pg. 3; para 0039-

0040) and to mount file system after the system has been rebooting after a proper firmware installation. Hence, it would have been obvious for one skill in the art at the time the invention was made to implement Marsh's bootstrap loader code such that a second phase for initialization can prepare memory, board peripherals and stack as in Dill's first setting phase; so that, after which second phase, upon the update phase having been accomplished as taught in Dill, this bootstrap enables a third phase as to reconfigure the file system as in Dill; because the phase as thus laid out would prepare the target OS system to properly respond to the newly installed patch.

As per claim 18, Marsh does not explicitly disclose wherein the updating software is invoked using an instruction from the second phase that causes the code to branch and link to the updating software; but using a boot process inherently invoke step as they are sequenced in the boot process. Therefore, the limitation as to cause loader code to branch and link to an boot block entry point as to invoke a update software in light of Marsh's sequences (see Fig. 7A-C), would have been obvious because only via effecting a jump/link to the correct location of a boot disk can a update code as laid out in Marsh (see Fig. 4) be invoked to fulfill its assigned phase as set forth in claim 17.

As per claim 19, Marsh (in view of Dill) discloses wherein the bootstrap sequence is incorporated into a boot loader (e.g. Fig. 4) of the processor.

As per claim 21, Marsh discloses a machine-readable storage having stored thereon, a computer program having at least one code section that updates firmware in an electronic device with a file system, using updating information received from a server (refer to claim 1; col. 9,

lines 4-23) via a communication network, the at least one code section being executable by a machine for causing the machine to perform steps comprising:

facilitating downloading of updating information from the server (refer to claim 1); and

applying the updating information to the firmware (refer to claim 1);

But Marsh does not disclose wherein the applying of the updating information is incorporated into a process associated with the operating system. However, this limitation has been rendered obvious in claim 1.

As per claim 22, Marsh discloses wherein the electronic device comprises memory, a memory management unit, peripheral hardware, firmware, a processor, and an operating system (e.g. Fig. 1; col. 3 lines 1-32).

As per claim 23, refer to the rationale of claim 2 using Dill teaching of a boot loader - wherein the process is a bootstrap sequence.

As per claim 24, this claim includes the same limitation as in claim 17; hence would have obvious in light of the obviousness rejection as set forth therein.

As per claim 25, refer to the rationale of claim 18.

8. Claims 5, 7-8, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marsh et al., USPN: 7,055,148 and Dill, USPubN: 2003/009743, and further in view of Admitted Prior Art (APA – see Background of Application, Specifications - pg. 1-2) and Symbian: "Symbian OS powered Sony Ericsson P800 Smartphone to ship in Q3 2003" March 2002 (hereinafter Symbian) pp. 1-2).

As per claim 5, Marsh does not disclose wherein the operating system comprises a Symbian operating system. But according to APA, electronic devices like PDA, mobile phones

often contain firmware for which periodical release, version to fix bugs are introduced for update as exemplified in Marsh's firmware upgrade. At the time the invention of mobile technology exists, as set forth by APA, the incorporating of Symbian OS was a known practice in manufacturing of devices in wireless communication and related browser technology. Symbian discloses Ericsson smartphone to incorporate Symbian OS (see Symbian), hence it would have been obvious for one skill in the art at the time the invention was made to implement upgrade of smartphone or wireless device as in APA in light of Marsh's firmware approach so that firmware upgrade to mobile devices like Ericsson smartphone as set forth by Symbian, enable wireless device to obtain continual upgrade from its manufacturers like Ericsson, as endeavored by Marsh in view of APA.

As per claims 7-8, Marsh does not disclose wherein the electronic device is portable; and wherein the communication network is wireless. But the wireless device and network would have been obvious in view of the Symbian OS use in wireless phone and APA.

As per claim 20, refer to claim 7.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan A Vu whose telephone number is (571) 272-3735. The examiner can normally be reached on 8AM-4:30PM/Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lewis Bullock can be reached on (571)272-3759.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-3735 (for non-official correspondence - please consult Examiner before

using) or 571-273-8300 (for official correspondence) or redirected to customer service at 571-272-3609.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: 571-272-2100.

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).

/Tuan A Vu/

Primary Examiner, Art Unit 2193

April 13, 2008

Notice of References Cited	Application/Control No. 10/864,095	Applicant(s)/Patent Under Reexamination QUMEI, IYAD	
	Examiner Tuan A. Vu	Art Unit 2193	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-7,055,148	05-2006	Marsh et al.	717/172
*	B	US-2003/0097431	05-2003	Dill, Russell J.	709/221
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	Euroloader,"Technical Specification" December 2001, ECCA Euroloader Specificaion - pp. 1-60
	V	Symbian: "Symbian OS powered Sony Ericsson P800 Smartphone to ship in Q3 2003" March 2002 pp. 1-2
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

OIPE SEP 13 2004 JC73 PATENT & TRADEMARK OFFICE

FORM PTO-1449	SERIAL NO. 10/864,095	CASE NO. 15641US02
LIST OF PATENTS AND PUBLICATIONS FOR APPLICANT'S INFORMATION DISCLOSURE STATEMENT	FILING DATE June 9, 2004	GROUP ART UNIT unassigned
(use several sheets if necessary)	APPLICANT(S): Qumei	

REFERENCE DESIGNATION U.S. PATENT DOCUMENTS

EXAMINER INITIAL		DOCUMENT NUMBER	DATE	NAME	CLASS/ SUBCLASS	FILING DATE
VAT		5,261,055	11/09/1993	Moran et al.	395/275	02/19/1992
VAT		5,442,771	08/15/1995	Filepp et al.	395/650	11/26/1993
VAT		5,479,637	12/26/1995	Lisimaque et al.	395/430	08/28/1991
VAT		5,579,522	11/26/1996	Christeson et al.	395/652	07/24/1995
VAT		5,596,738	01/21/1997	Pope	395/430	04/12/1995
VAT		5,598,534	01/28/1997	Haas	395/200.09	09/21/1994
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VAT		6,438,585	08/20/2002	Mousseau et al.	709/206	01/16/2001
VAT		2001/0029178	10/11/2001	Criss et al.	455/419	06/07/2001
VAT		2001/0047363	11/29/2001	Peng	707/104.1	02/01/2001
VAT		2001/0048728	12/06/2001	Peng	375/354	02/01/2001
VAT		2002/0078209	06/20/2002	Peng	709/227	12/15/2000

EXAMINER / Tuan Anh Vu /	DATE CONSIDERED 04-13-08

EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

SEP 13 2004
PATENT & TRADEMARK OFFICE
JC73

FORM PTO-1449	SERIAL NO. 10/864,095	CASE NO. 15641US02
LIST OF PATENTS AND PUBLICATIONS FOR APPLICANT'S INFORMATION DISCLOSURE STATEMENT	FILING DATE June 9, 2004	GROUP ART UNIT unassigned
(use several sheets if necessary)	APPLICANT(S): Qumei et al.	

REFERENCE DESIGNATION **U.S. PATENT DOCUMENTS**

EXAMINER INITIAL		DOCUMENT NUMBER	DATE	NAME	CLASS/ SUBCLASS	FILING DATE
VAT		2002/0116261	08/22/2002	Moskowitz et al.	705/14	02/20/2001
VAT		2002/0131404	09/19/2002	Mehta et al.	370/352	11/28/2001
VAT		2002/0152005	10/17/2002	Bagnordi	700/234	04/12/2001
VAT		2002/0156863	10/24/2002	Peng	709/217	04/23/2001
VAT		2002/0157090	10/24/2002	Anton, Jr.	717/178	04/20/2001
VAT		2003/0033599	02/13/2003	Rajaram et al.	717/173	08/10/2001
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VAT		2002-0034228	05/09/2000	Korea		X	
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EXAMINER INITIAL		OTHER ART (Including Author, Title, Date, Pertinent Pages, etc.)

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symbian

Symbian OS powered Sony Ericsson P800 Smartphone to ship in Q3 2002

Multimedia smartphone with built in camera uses Symbian OS v7.0 and UIQ pen-based user interface

London, UK – March 6th 2002 – Symbian today announced that the Sony Ericsson P800 smartphone is the first multimedia smartphone to use Symbian OS v7.0 and the UIQ user interface. Sony Ericsson has indicated that the P800 will be available during Q3 2002.

Symbian OS v.7.0 builds on the advanced technology, open standards support and flexibility of previous Symbian OS versions by integrating full multimedia messaging capabilities, support for IPv6 and MIDP Java, and multimode capabilities, enabling phone manufacturers to rapidly roll out phones on 2.5G and 3G networks. UIQ is a customisable pen-based user interface that runs on top of Symbian OS v.7.0 and is designed for media rich mobile phones.

"The Sony Ericsson P800 adds to the range of launched Symbian OS smartphones and will help to ignite the mobile applications and services market place and draw in the 3 million available developers," said **Mark Edwards, Executive Vice President, Sales & Marketing, Symbian**. "Symbian OS v7.0 is a major release and the announcement of the P800 with availability in Q3 shows how Symbian is assisting shorter development cycles by including the functionality its customers want."

"Sony Ericsson is fully committed to Symbian OS for its smartphones, enabling Sony Ericsson's goal to develop mobile multimedia products that are easy and fun to use," said **Anil Raj, Corporate Executive Vice President of Sony Ericsson**. "The P800 is designed to allow users to enjoy a wide range of multimedia applications and features. Symbian OS and the UIQ touch screen interface play a crucial role in ensuring user satisfaction."

Sony Ericsson is a gold sponsor at the forthcoming Symbian Developer Expo, which is being held on April 23rd and 24th. At the Symbian Developer Expo, attendees will be able to preview the capabilities and powerful features of the P800, and software developers will be able to receive for the first time software development kits for the UIQ user interface. This will encourage the rapid development of mobile applications and services ready for the scheduled shipping of P800 in Q3, 2002.

About Symbian OS v7.0
Key new features of Symbian OS v7.0 include:

- **mobile telephony** - building on 2.5G GSM / GPRS support in previous versions, Symbian OS v7.0 includes support for multimode and 3G mobile phones, enabling manufacturers to bring out Symbian OS phones worldwide, across all networks, with the ability to reuse their application side software
- **mobile messaging** - building on its comprehensive integrated messaging environment, Symbian OS v7.0 includes EMS and MMS, providing key revenue generating services for network operators
- **mobile networking** - building on existing networking capabilities, Symbian OS v7.0 includes both IPv6 and also IPSEC technologies, extending the abilities of mobile phones to communicate securely with each other on a peer to peer basis
- **mobile application and services development** - building on Symbian's lead in support for open Java development, Symbian OS v7.0 incorporates MIDP Java, extending mobile phone capabilities to run the millions of Java applications and services designed specifically for mobile phones, and SyncML, allowing convenient over the air synchronization of data.

About UIQ
Key features include:

- **seamless messaging** – including: MMS, EMS, SMS, email and fax over GSM, GPRS, EDGE, HSCSD, CDMA, cdma2000
- **integrated contacts** – allows users to make a voice call or create an MMS, SMS or fax message with one tap on the recipient's Contacts entry; easily access web or WAP pages associated with contacts; send contacts as vCards over MMS, SMS, email, fax, Infrared or Bluetooth® wireless technology

- **Intuitive agenda** – enables easy entry and viewing of complex calendaring; also supports vCalendar over MMS, SMS, email, fax, infrared and Bluetooth® wireless technology
- **powerful Internet capabilities** – including support for: HTML 4.01; HTTP 1.1; HTTPS support over SSL 3.0 and TLS 1.0; CSS 1 and CSS 2; XML 1.0 and XHTML 1.0; Java script 1.3; 128-bit encryption and Java applets
- **simple synchronization** – via Infrared, Bluetooth® wireless technology and Serial Port with common desktop applications and SyncML servers.

About Symbian
Symbian is a software licensing company, owned by wireless industry leaders, that is the trusted supplier of the advanced, open, standard operating system for data-enabled mobile phones. Symbian's mission is to create a mass-market for Symbian OS mobile phones by enabling its licensees to build winning products.
For further information, please visit:
Symbian

About Sony Ericsson Mobile Communications AB
Sony Ericsson Mobile Communications AB offers mobile communications products for people who appreciate the possibilities of powerful technology. Established in 2001 by Telefonaktiebolaget LM Ericsson and Sony Corporation, the joint venture continues to build on the success of its two innovative parent companies. Sony Ericsson creates value for its operator customers by bringing new ways of using multimedia communications while mobile. The company's management is based in London, and has 3,500 employees across the globe working on research, development, design, sales, marketing, distribution and support.
For further information, please visit:
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EUROLOADER
E C C A

Braunschweig, 12 December 2001

Final Draft Version 1.2b

Technical Specification

of a

European Loader

for MultiMedia Terminals for Cable and Cable Modems

(ECCA EuroLoader Specification)

in compliance with

ISO/IEC 13818-6,
the DVB Specification for Data Broadcasting EN 301 192

and with special consideration of

DVB specifications

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Technical Specification

of a

European Loader

for MultiMedia Terminals for Cable and Cable Modems

(ECCA EuroLoader Specification)

History of the specification:

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0 Executive Summary

As the number of user terminal devices (Cable Modems and STBs) available has proliferated the number and types of software download mechanisms has increased correspondingly. Each new mechanism for software download requires an additional expense for head end equipment and data bandwidth, not to mention the increased complexity of managing the software download process. This situation is impractical and will become unacceptable to cable operators in the near future.

So long as the Conditional Access (CA) vendors and manufacturers specify and supply the software update mechanism, they effectively control which software can be installed at which time on a cable operator's network.

Using the Personal Computer (PC) industry as an example, history has shown that agreement on a common "boot strap" loader will eventually occur. ECCA seeks to expedite this process with the proposed EuroLoader specification. The EuroLoader download mechanism addresses the issues and challenges associated with the software download procedure with special consideration of the interests of cable operators.

Specific features of the standardised EuroLoader include;

- based on the recognised, robust efficient and proven DSM-CC standard
- common loader shifts control of the software update mechanism to the cable operator
- subsequent terminal devices deployed by a cable operator in the future will already have a compatible software update mechanism on the network
- effective data security to protect against hostile software downloads
- reduced cost at the cable operator head end by using standardised, non-proprietary technology
- download service as specified by ECCA can be seamlessly combined with other DVB services with no need for specialised streams
- the implementation of the EuroLoader by manufacturers is straightforward as the software environmental requirements are easily supplied
- an implementation of the EuroLoader already exists and is available for implementation into new user terminal device platforms

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1 Introduction

European cable operators currently offer digital broadcast services for several applications including; television, audio and data signals as well as interactive services over two-way systems. In order to provide these services various types of user terminals are connected to the networks. An important goal of EuroCableLabs is to establish an "Integrated System" which is capable of supporting digital audio and video broadcasting as well as interactive data and voice communication. The EuroCableLabs Integrated System is based on DVB technologies which have been developed according to European regulations and which fully comply with existing European standards.

The user terminal equipment such as set-top boxes (EuroBox) or cable modems (EuroModem) are used to receive digital information transmitted through cable networks. The combination of software and hardware enables the user terminal to perform the necessary signal processing to receive, transmit and interpret digital information. The hardware consists of a main processor and peripheral processing units. The processor is able to control the functionality of the user terminal device by executing a terminal-specific software program. After the terminal device has been installed in a network, its functionality can be improved or modified by replacing the software program. The critical component to the software replacement, and therefore to functionality of the network terminal, lies in the software downloading mechanism - the "loader".

1.1 Reasons for the EuroLoader specification

The various terminals connected to a cable network are different in terms of functionality and handling. The devices can be either receivers used only to receive broadcast signals, or they can be used for data and voice communications such as interactive set-top boxes, cable modems, cable telephones. A given network may also have a mixture of both types of devices. In the past each type of user terminal has required an individual software update mechanism. The mechanisms differ from vendor to vendor and from terminal type to terminal type. The manufacturers of user terminals will design more flexible hardware in the future requiring software to play a more important role. Therefore, the software update mechanism becomes more important as time goes on. Cable-modem software is currently updated using an FTP-based mechanism whereas broadcast receivers use various proprietary broadcast update mechanisms. All update mechanisms currently in place are proprietary solutions. In many cases the software update can only be performed by the terminal equipment manufacturer with specialised equipment.

This EuroLoader specification presents an alternative method of software update which will shift control of the software update procedure to the cable operator. If the proposed open standard software loader is implemented, cable operators will be able to perform the software update procedure for all of the user terminals installed on their network by using the same interoperable and standardised equipment and tools. Based on experience in the PC industry, after a transition phase, proprietary solutions will be avoided and eventually abandoned in favour of a standardised loader.

1.2 Features of the EuroLoader

Network maintenance will be simplified if a single loader is used instead of many separate loaders for each different terminal type. The introduction of a common loader does not require an additional loader be supported, as a new loader implementation would normally be required in the event of the introduction of a new terminal type anyway. However, after the common loader is implemented the software of all new devices can be upgraded by a single common mechanism. A significant advantage of the EuroLoader is the fact that it is based on a well specified, recognised and efficient data download standard.

The EuroLoader solution and has the following features:

(1) Independence of API vendors. The complete API can be removed and replaced.
(2) Independence of CA vendors. The CA system can be removed and replaced.
(3) Independence of content providers, which do not have any direct access to the terminals.
(4) One single loader usable for all terminals such as EuroModems and EuroBoxes.
(5) Network access is fully controlled by the cable operator.
(6) Use of common and open standards which are well defined, including a DSM-CC-based data carrousel defined in EN 301 192.
(7) Common and inexpensive equipment can be used at the play-out centre. No proprietary equipment is required for the update.
(8) Reduction of effort with respect to network maintenance because of the possibility to establish software update from one single and central point.
(9) Field-tested solution that is already implemented and intensively tested by Cablecom Media AG in Zurich.

The loader is the key to the future control of the entire cable network, enabling the operator to carry out not only transportation of information but also provisioning of customers. The access to the subscriber will remain with the cable operator only if he controls the cable network as well as the equipment connected.

In addition to the features mentioned above, a use of the EuroLoader guaranties that no terminals connected to a cable network will operate with software which is not supported by the network operator. If a terminal is connected to the network the first time, the EuroLoader will ensure that only software is loaded that fully supports the services delivered by the operator. If a subscriber, for instance, wants to use his own terminal after he moves to another location and connect it to another cable network, the terminal will be able to load appropriate software if the operators supports this terminal type. The EuroLoader makes sure that terminal hardware gets independently of the network connected and of the operator. Therefore it is a precondition for the establishment of an open and horizontal market.

1.3 Goal of the EuroLoader specification

The goal of the EuroLoader specification is to define the procedure for software upgrades. The

specification consists of two sections: a general introduction of the loader functionality and the detailed technical description of the mechanism. The second part is highly confidential and therefore subject to a non-disclosure agreement that must be signed by each manufacturer who wishes to review the document. It is not essential that individual manufacturers develop the application for the loader, as an appropriate library application already exists and is available for integration into new platforms immediately.

2 General Description

Most of the user terminals on a cable network are receivers only without any return channel capability. Hence a typical broadcast data application is a software update application. In a one way network, a hand shake mechanism over a return channel is not possible. All user terminal-specific data streams required by each individual terminal type are embedded in a single MPEG-2 transport stream according to ISO/ICE 13818. The "software download" data packets are transmitted frequently in order to avoid unnecessary delays in update. The actual content of the data transmitted is proprietary and specific related to one terminal type. The data to be downloaded is generated by the terminal manufacturers and sent to cable operators. The Cable operator is them responsible to install the terminal specific data onto the play out centre. The periodic repetition of the data transmission is necessary and is implemented using a data carrousel as specified in ISO/ICE 13818-6 and EN 301 192. Service information descriptors, specified in the teclinical section of this document, are used by the individual terminals to identify and extract their appropriate software download from the incoming stream. The data carrousel of the EuroLoader can be seamlessly combined with other DVB services and therefore, no specific DVB channel has to be allocated for this service.

2.1 Software structure

There are two types of software discussed in this document;

- the EuroLoader software,
- the operational software.

The EuroLoader software consists of two main software modules:

- the starter software
- the loader software

2.1.1 The EuroLoader software

A minimal kernel is installed in the device during manufacture and cannot be downloaded or replaced. The minimal kernel is responsible to initiate the software update procedure in the terminal. The software takes control when the user terminal is switched on or when operation begins from

standby". The EuroLoader software includes the "bootstrap" with minimal update functionality referred to as the **'starter'** in the technical section of this document. Additional control software is downloaded by the starter and temporarily stored in the terminal device memory. The downloaded component of the EuroLoader software is referred to as the **'loader'** in the technical section of this document. The combination of the starter and the loader are responsible for the terminal portion of the EuroLoader software download procedure.

2.1.2 The operational software

The operational software manages the terminal operations. It consists of drivers, operating system software, access control software, application software, and all other higher layer software. These layers of software are usually supplied by third parties or the terminal device manufacturer.

3 Technical Introduction

3.1 Abbreviations

'1010'	' binary value; identical with 0x0A hexadecimal or 10 decimal
0x01FE	hexadecimal value, identical with 510 decimal
511	decimal value; identical with 0x01FF hexadecimal
API	Application Programming Interface
CA	Conditional Access
CATV	Community Antenna TeleVision (System)
DDB	Download Data Block (see EN 301 192)
desc	descriptor
DII	DownloadInfoIndication (see EN 301 192)
DSI	DownloadServerInitiate (see EN 301 192)
DSM-CC	Digital Storage Medium Command and Control
DVB	Digital Video Broadcasting
EBU	European Broadcasting Union
ECCA	European Cable Communications Association
EIT	Event Information Table (see EN 300 468)
EPG	Electronic Programme Guide
ETR	ETSI Technical Report
ETS	European Telecommunication Standard
ETSI	European Telecommunications Standards Institute
FLASH	non-volatile reprogramable memory
gi	GroupInfo Bytes (see EN 301 192)
IB	In Band (see ETS 300 800)
ID	Identifier
id	see ID
IEC	International Electrotechnical Commission
IEEE	Institute of Electrical and Electronics Engineers (USA)
ISO	International Organisation for Standardisation
LSB	Last Significant Bit
MAC	Media Access Control
mi	ModuleInfo Bytes (see EN 301 192)
MPEG	Moving Picture Expert Group
NIT	Network Information Table, defined by EN 300 468
NV-RAM	Non-Volatile Random Access Memory
OOB	Out Of Band (see ETS 300 800)
original_network_id	a unique identifier of a network
OUI	Organisation Unique Identifier
PAT	Program Association Table

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PID	Packet IDentifier, defined by ISO/ICE 13818 (MPEG-2)
PMT	Program Map Table
PSI	Program Specific Information
RAM	volatile Random Access Memory
ROM	Read Only Memory
SDT	Service Description Table, defined by EN 300 468
service_id	a unique identifier of a service within a TS
SI	Service Information (see EN 300 468)
transport_stream_id	a unique identifier of a TS within an original network
TS	Transport Stream

3.2 Terminology

MUST (MANDATORY)	This specifies that the item is an absolute requirement of this specification.
SHOULD (RECOMMENDED)	This indicates that there may exist valid reasons in particular circumstances to ignore this item, but the full implications should be understood and the case carefully considered before choosing a different course.
MAY (OPTIONAL)	This indicates that this item is truly optional. One vendor may choose to include the item, another vendor may omit the same item and still be compliant with the specification.
SHOULD NOT	This phrase indicates that there may exist valid reasons in particular circumstances when the listed behaviour is acceptable or even useful, but the full implications should be understood and the case carefully considered before implementing any behaviour described with this label.
MUST NOT (PROHIBITED)	This phrase specifies that the item is an absolute prohibition of this specification.
MANDATORY	This adjective has the same meaning as the verb "MUST", it means that the item is an absolute requirement of this specification.
RECOMMENDED	This adjective has the same meaning as the verb "SHOULD", it means that there may exist valid reasons in particular circumstances to ignore this item, but the full implications should be understood and the case carefully considered before choosing a different course.
OPTIONAL	This adjective has the same meaning as the verb "MAY". One vendor may choose to include the item, another vendor may omit the same item.

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3.3 Description of the flow diagram

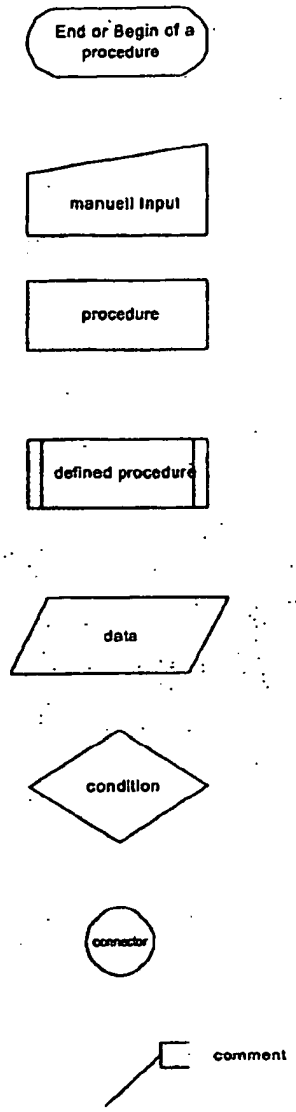

Diagram 1: general procedure

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3.4 Memory Resources required

The terminal device has following hardware resources:

1. Volatile working memory which may be used by any software. This memory is referred to as **RAM** in this document. The RAM contains all the information which remains temporarily stored. This memory area is always changeable; however, the data are lost in case of power OFF. This memory area is used for the loader module of the basic software.
2. Non-volatile reprogramable memory for storage of the operational software. This memory is called **FLASH** in this document. This memory area will be overwritten with the new software received during the download procedure.
3. Non-volatile, non-reprogramable memory designed to contain the basic software (except the loader part). This memory is called **ROM** in this document. In practice, these are sectors of the FLASH memory which are rendered non-reprogramable through hardware design hardware. This memory area is non changeable after manufacture of the terminal device(see next section).
4. Non-volatile reprogramable memory, accessible by all programs, designed to store the configuration data, temporary data, operation dependent information or data exchange between the basic software and the operational software. This memory is called **NV-RAM** in this document. Normally, NV-RAM is a separate chip (EEPROM) or one part of the FLASH memory which is only used as NV-RAM. This memory area is always changeable and the data are permanently stored in case of power off.

The following figure give an overview for the memory:

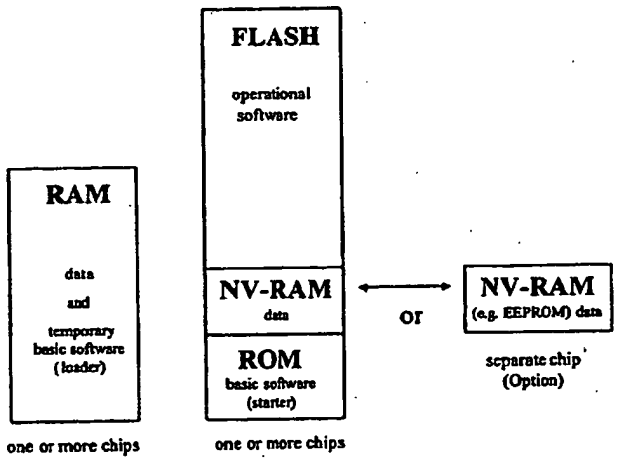

Figure 1: Memory overview

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3.5 ROM Organisation

The ROM contains all the information which remains unchangeable throughout the terminal device's life. This information can only be entered at the factory during the manufacturing process. It includes:

- the executable bootstrap and starter, common to all terminal device's with the same hardware configuration.
- an area for terminal device identifier information,
- an area for default operation settings (security information, default settings for downgraded mode, etc.).

Figure 2 gives an overview:

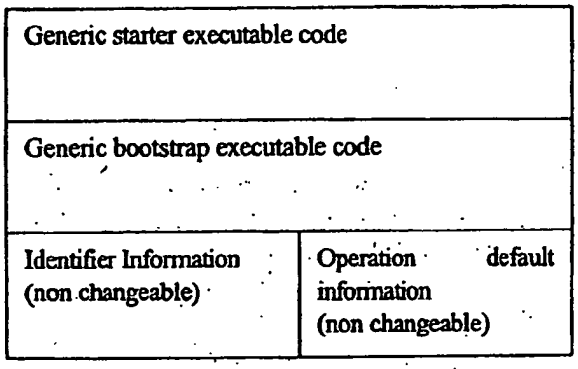

Figure 2: ROM Organisation

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4 Description of the software download service

4.1 General

The data stream MUST be generated according ITU 13818-6 Digital Storage Medium Command and Control (DSM-CC) protocol [2], [3], [9] and [8]. At the headend a DSM-CC server is required which delivers continued bitstreams as data carousel download. This scenario embodies the cyclic transmission of data by the download server. This download server may serve multiple clients simultaneously.

Following network model will be used:

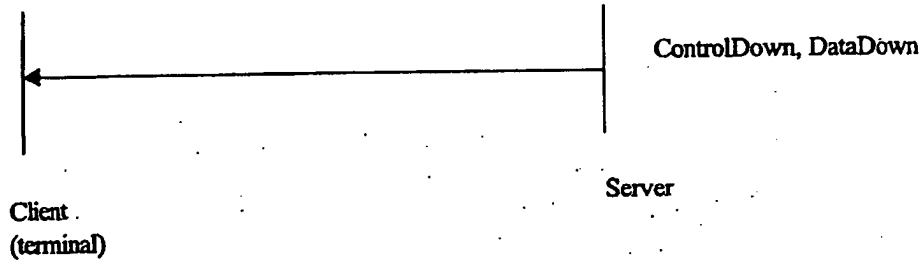

Figure 3: Network model

In the used network model all control messages and all data messages will be transmitted only in one direction from the server to the client (i.e. terminal device).

The transmitted data is organised in Modules which are divided into Blocks. All Blocks of all Modules within the data carousel have the same size, except for the last Block of each Module which may be of a smaller size. Modules are a delineation of logically separate Groups of data within the data carousel. Modules are clustered into a Group of Modules. One download for one kind of terminal device correspond to one Group. Groups are clustered into a SuperGroup. The software download service corresponds via the SDT to a SuperGroup. This structure is identical with the two-layer structure as defined in references [8] and [9].

The Groups and Modules of a data carousel are described by control messages. These messages (DSI, DII, and DDB) may describe all Groups, all Modules, or a subset of Modules, transmitted in the data carousel. Based on the control messages, the clients may acquire a subset of the modules from the network.

4.2 Definition of the two layer data carousel

The following figure shows the general structure and the definitions of an two layer data carousel as specified in [9]:

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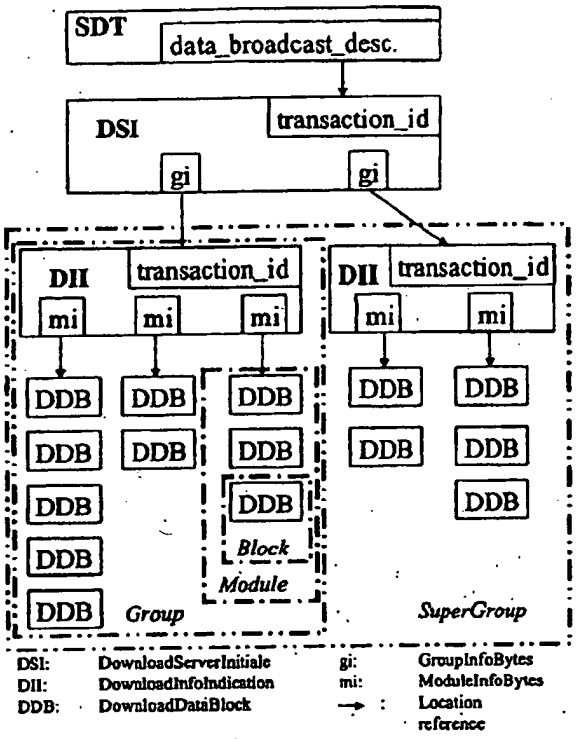

Figure 4: Definition of the two layer data carousel

4.3 Data carousel and storage functionality

The software download service will be delivered as a two-layer data carousel. Several downloads are included in the SuperGroup (two-layer structure). For each download one Group will be defined. Each Group contains at minimum two modules for one software download.

An SDT describes all services in one transport stream. A software download service is indicated in the SDT with the data broadcast descriptor. This data broadcast descriptor gives the reference to the data carousel message in the same transport stream (see Step 1 in the figure below). The transaction identifier points to a DownloadServerInitiate message.

The DownloadServerInitiate message is used to describe the different Groups in the SuperGroup. This message describes each Group with the GroupInfoBytes and allows for platform differentiation. The GroupInfoBytes field also consists of a loop of descriptors that may contain additional information including the GroupCompatibility descriptor, which provides the references to the related terminal devices for each software download (see Step 2 in the figure below). The terminal device MUST compare this GroupCompatibility descriptor with the stored identifier information values (see

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section 5.2). If both values are identical, then the software download for this terminal device is found and the download will start. The GroupInfoBytes include also a pointer to location of the related DownloadInfoIndication message.

The DownloadInfoIndication message gives the location reference to each Module in this Group (see Step 3 in the figure below). This message describes the modules in the data carousel with the ModuleInfoBytes field. This field contains a loop of descriptors that may contain miscellaneous information, e.g. a pointer to location of the DownloadDataBlock messages.

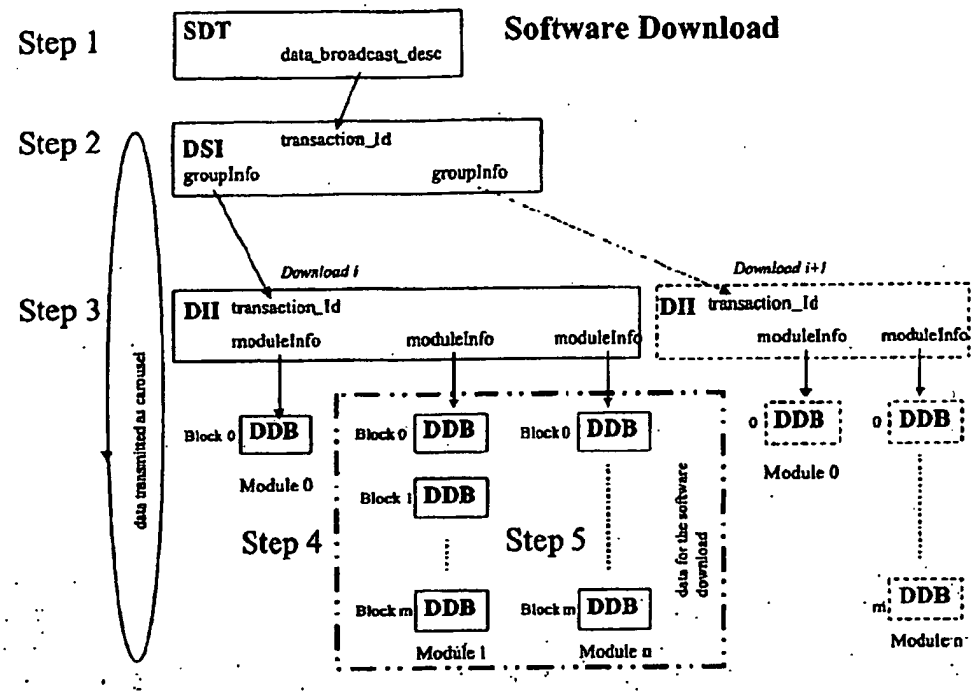
All DownloadDataBlock and DownloadInfoIndication messages within a SuperGroup have the same downloadID. This implies that Groups can share modules because all ModuleID's are unique within the scope of the downloadID.

The software download will start with the download of Module 0 controlled via the starter. This Module 0 SHOULD cover only one Download Data Block (DDB) (see Step 4 in the figure below).

The received data from Module 0 MUST be stored in the RAM only. This data contains executable code and other information for the terminal device, used to fulfill the security requirements as specified in section 6. The executable code is the loader. Before the loader will run, the starter MUST fulfill the security requirements as specified in section 6. If the security of the loader is proven the starter gives the control of the download procedure to the loader. The loader will control the update of the operational software.

The data for the operational software update itself will be delivered in additional modules (see Step 5 in the figure below). At minimum one additional Module with several DDB will be broadcasted.

The following figure provides an overview for the software download:

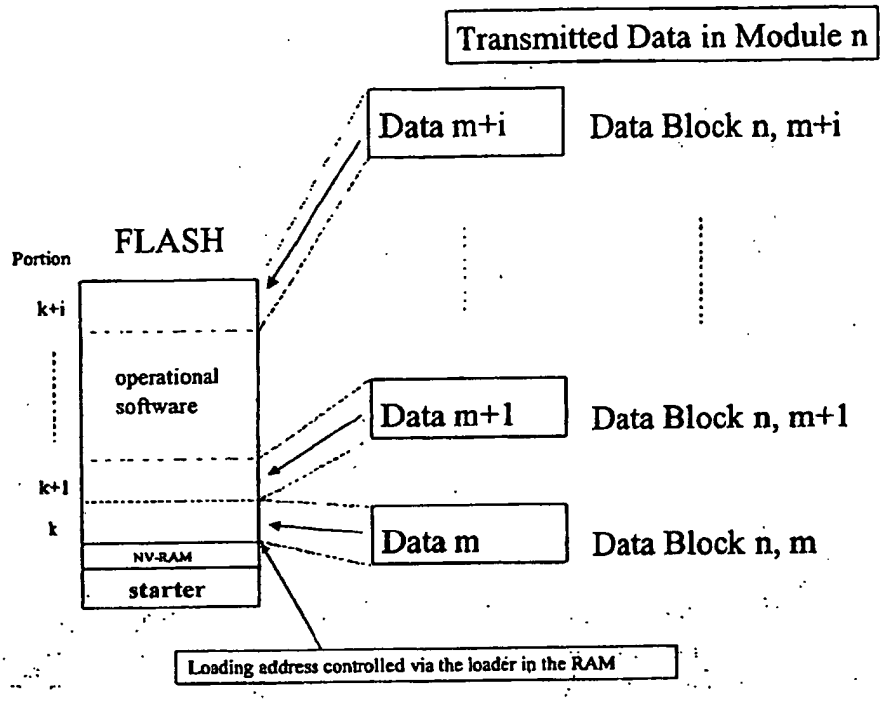


m = blockNumber, n = moduleId, i = counter, k = FLASH portion number

Figure 5: Overview for the Software Download

The minimum size of each DDB is one MPEG section (≙ 4 kbyte). The size of the DDB is flexible and not defined in this document. The transmitted sections contain a CRC_32 of the transmitted data. The transmitted CRC_32 MUST be compared with the calculated CRC_32 to confirm the integrity of the received data.

The data from one DDB will be directly stored in one portion of the FLASH. This procedure will be controlled via the temporary stored loader. The following figure shows this procedure:



m = blockNumber, n = moduleId, i = counter, k = FLASH portion number

Figure 6: Storage into the FLASH memory

After all DDBs are stored the loader MUST verify the hash of the entire operational software image (see section 6). If this hash value is identical with the delivered value by the loader, then the update of the operational software is complete.

4.4 Insertion of control messages and data block's

There are no restrictions as to how often a particular message is inserted into a single loop of the carousel or the order and relative position of messages. This allows the Data Carousel to be created in whatever way best suits a particular use. In addition the frequency and order of insertion of messages into the Data Carousel do not need to be fixed and can change dynamically as required.

It is RECOMMENDED to insert the control messages and Module 0 frequently for fast access to the executable code in Module 0. It is also RECOMMENDED to define small DDB (one section) for an fast access to the download.

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5 Requirements for the terminal device

5.1 General

The basic software MUST be fully autonomous from the normal operational software and include its own low level driver. The basic software MUST be fully independent from any Conditional Access (CA) system or Application Programming Interface (API). This autonomy allows the terminal device to operate when normal operating software is absent or corrupt. The implementation of the download control software MUST ensure that the download procedure is "tamper proof". While the download control software is running, all features of the normal operating mode are inoperative.

5.2 Identifier information

The identifier information is used to find the terminal device related software download. All identifier information MUST stored in the ROM and will never changed. This stored identifier information MUST be compared with the transmitted values in the GroupCompatibility descriptor of each Group in the data carousel. The GroupCompatibility descriptor is inserted by the DSI message (see section 7.7 and 7.3). The correct terminal device related download is identified when both values are identical. All stored identifier information except the MAC-address SHOULD be encrypted to protect active manipulation (see also section 6).
The parameters of the identifier information are specified in the following two sections.

5.2.1 Hardware dependant information:

All terminal devices MUST have a 48 bit MAC-address. The following parameters are related to the hardware:

Type	Num. of Bytes	Comment
Manufacturer ID	3	IEEE Organization Unique Identifier (OUI)
last 3 Bytes of the MAC-address	3	Manufacturer ID and this 3 Bytes together are the MAC-address
Hardware model	2	manufacturer dependant
Hardware version	2	manufacturer dependant

Table 1a: Hardware information

The manufacturer ID describes the manufacturer as specified in IEEE-802 and IEC/ISO 13818-6. This Parameter is used to distinguish between different manufacturers. The OUI is identical with the first 3 bytes of the MAC-address.

The hardware model is used to distinguish between different hardware models from the same manufacturer ID. The hardware model value is specified by each manufacturer.

The hardware version is used to distinguish between different hardware version with the same manufacturer ID and with the same model value. The hardware version value is specified by each manufacturer.

The full MAC-address is not used for any software update. But the full MAC-address may be used for applications in operational mode.

5.2.2 Software dependant information:

The following parameter are related to the software:

Type	Num. of Bytes	Comment
Software version	2	manufacturer dependant.
Software subversion	2	manufacturer dependant

Table 1b: Software information

The parameter software version is used to distinguish between different software versions under the same manufacturer ID. This value is specified by each manufacturer.

The parameter software subversion is used to distinguish between different software changes under the same software version number. This value is specified by each manufacturer.

5.3 Operation dependant information:

The operation dependant information is used to control the software update and will be stored in the NV-RAM or in the RAM.

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5.4 Operation default information:

The operation default information is used in case of the first installation or in case of a fatal failure. These default settings allow the recovery of the terminal device. It also includes some security information. The default information is stored in the ROM.

5.5 Update flag

For terminal devices for the retail market the customer SHOULD control the software update procedure. For this kind of terminal devices a specific flag SHOULD be used in the terminal device which indicates the customer choice. This update flag SHOULD be set via the normal operation software out of scope from this document. The customer MAY modify in higher application software the update flag. The setting of this update flag will indicate that the software download service SHOULD permitted by the customer. The support of this update flag in the operational software is an option.

The update flag MUST be implemented in the NV-RAM independent from the support in higher layer software. The default value MUST allow the software update.

In any case and independent from the value of the update flag the loader MUST be received and carried out by the terminal device. The use of the update flag depends on the loader itself. Bypassing of the update flag check allows software updates for terminal devices with a fatal failure independent from the value of the update flag.

The functionally of the update flag is also shown in section 6.

5.6 Starter activation

The starter takes control of the terminal device upon processor reset, immediately after the bootstrap sequence. Reset is caused when the core board is powered on. This power on sequence is managed by the micro on the main board. It occurs:

- on main power on
- on activation from standby
- on explicit request from the application software in normal operational mode (OPTION)
- on manual request from the customer (OPTION).

The starter MUST download Module 0. For details see section 6.

5.7 Loader activation

The loader takes control after Module 0 is downloaded via the starter and the security requirements as specified in section 6 are fulfilled. The loader MUST control the following download procedure

as specified in section 6.

5.8 Responses upon power off during the software download procedure

After a power off during the software update procedure the basic software MUST restart the software update. In this case an integrity failure of the FLASH will be detected. Details are specified in section 6.

5.9 Tune procedure to the software update service

5.9.1 General description

The network operator MAY implement a linkage descriptor loader to speed up the installation. The use of this linkage descriptor is an option for the network operator. The basic software MUST support this linkage descriptor loader independant from the implementation in the network.

The software update MUST also be possible without the presence of this linkage descriptor loader in the network. In this case there may be limited ability to recognize where the software download services is located. The terminal device MUST also tune to the software update in case where is no NIT is available or an incorrect NIT is present in the network. In these cases an automatic scan over all channels MUST initiated as a fallback solution.

If a linkage descriptor loader (as define in section 8.1.1) is transmitted in the first loop of the NIT , it will give information about the location of the new software download service to all connected terminal devices in the network. The location of the software download service is given with the parameter: transport_stream_id, orginal_network_id, and service_id.

If there is more than one software download service implemented (may be in different transport streams), then for each software download service, one linkage descriptor will be transmitted. The terminal device MUST analyze each linkage descriptor loader in this case.

It is RECOMMENDED to use only one software download service in the network.

5.9.2 Flow diagram

The following flow diagrams shows the functionally for the tune procedure:

Note:	It is possible that more as one linkage descriptor and / or more as one private data specifier descriptor are presence in the NIT.

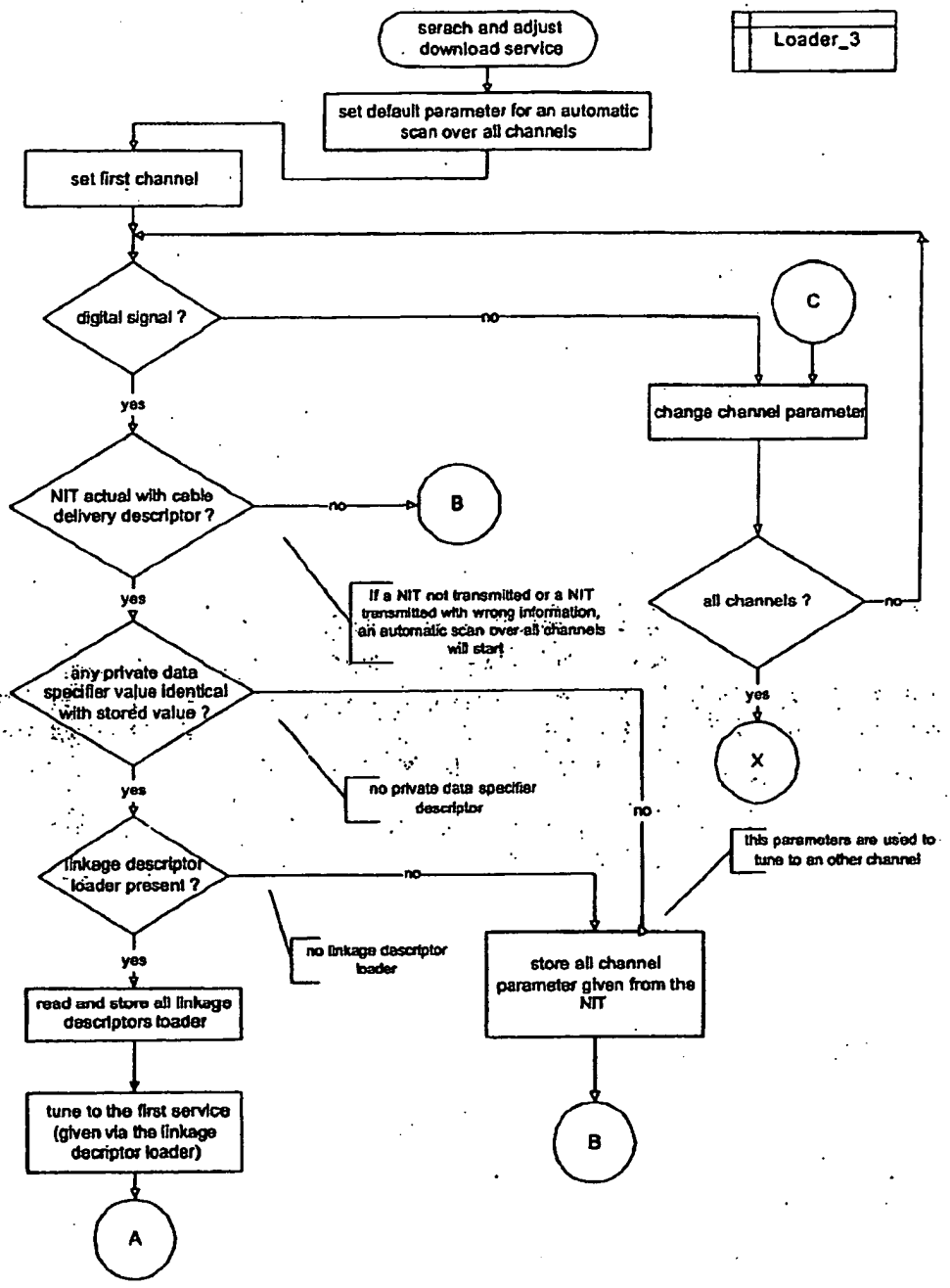

Diagram 2: tune procedure

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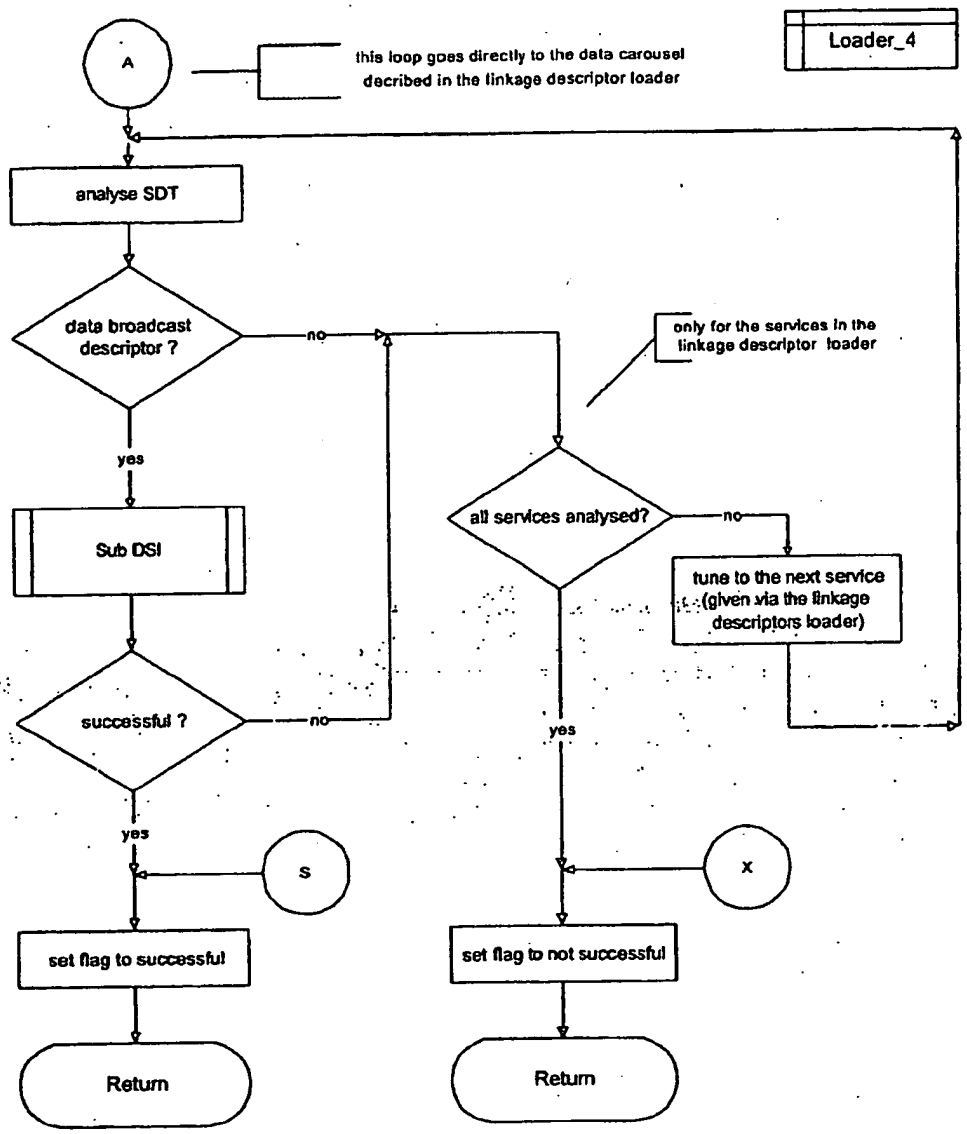

Diagram 3: tune procedure

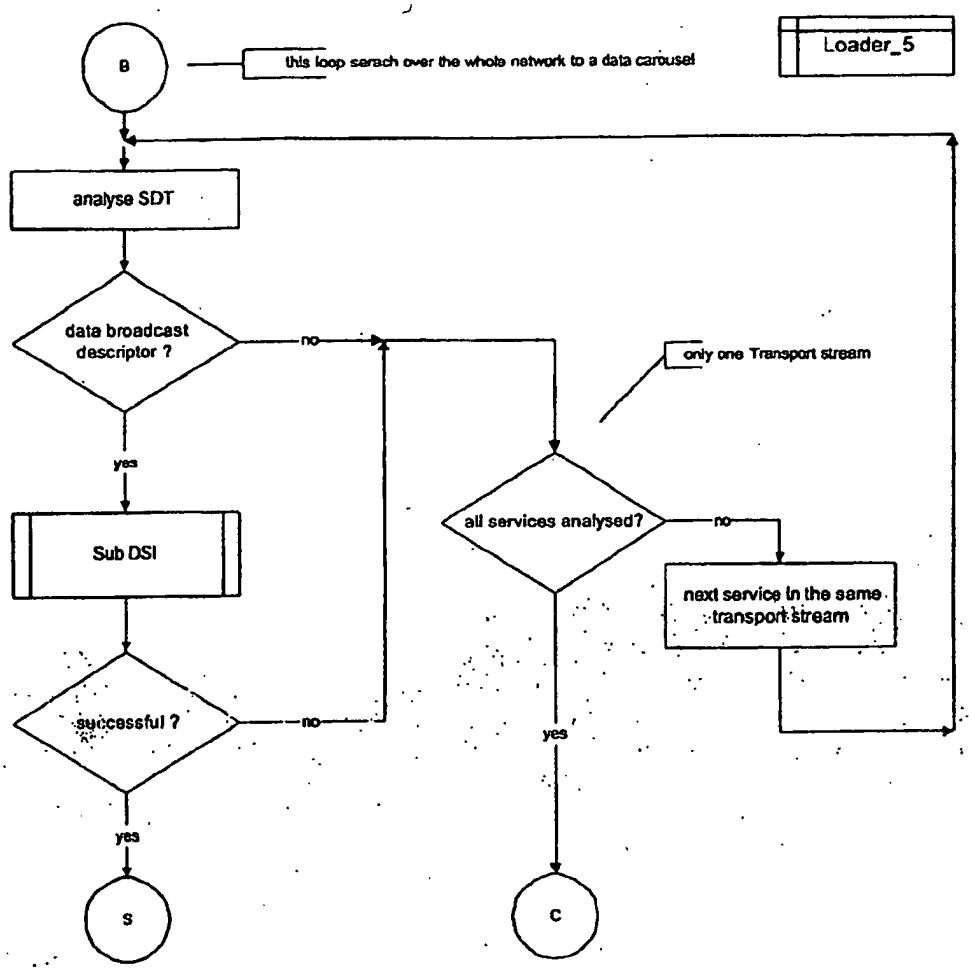

Diagram 4: tune procedure

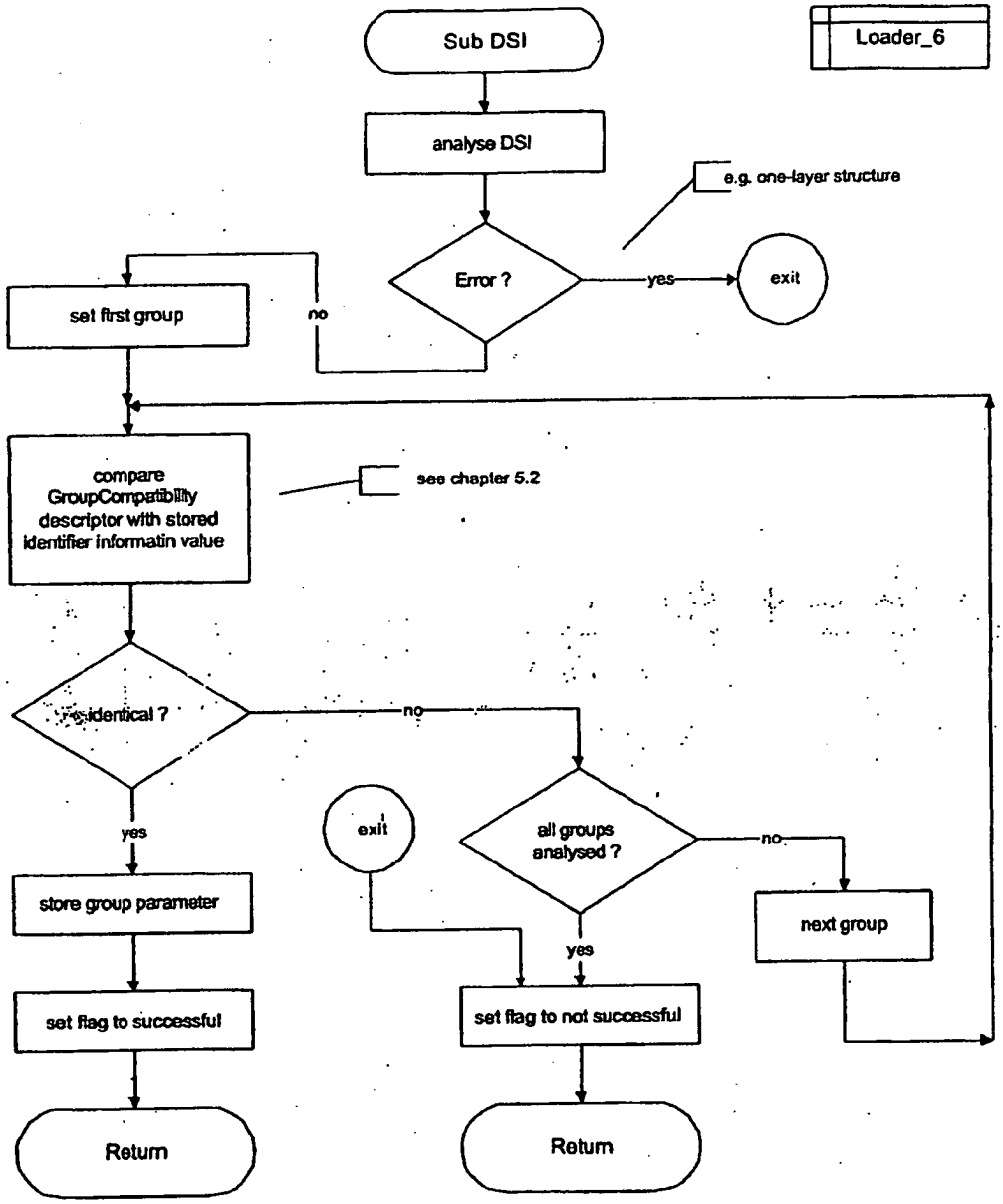

Diagram 5: tune procedure

5.10 New update software indication on application layer

5.10.1 General description

The network operator MAY transmit an optional linkage descriptor loader. This descriptor SHOULD be used on application layer to recognize when a new software version is available. This descriptor SHOULD be also used as a reference on which transport stream the software update service is located. This function SHOULD be done in the background as part of the operational software (application) without running the basic software (starter and loader) itself. If new software is available, indicated via a sequence number in this linkage descriptor loader, the starter software MAY be started, depending on the running application.

The use of this linkage descriptor is an option for the network operator. The software update MUST be also possible without this linkage descriptor. In this case there may be limited functionalities possible (e.g. to recognize that a new software download is available).

The terminal device manufacturer SHOULD support this linkage descriptor loader on application layer, but the basic software (starter and loader) MUST support this linkage descriptor independent from the implementation in the network or in the application software.

5.10.2 Implementation details

The implementation in the network of this linkage descriptor loader in the first loop of the NIT provides information about the availability of a new software download service to all connected terminal devices in the network. This information will be received by the terminal device independent of the transport stream used. The sequence number gives only an indication of the availability of a new software download. There is no information for which kind of terminal device or for which manufacturer this new software download is determined. This additional information gives only the DSI message in the software download service itself.

The value of the sequence number is not specified. The terminal device MUST store the current value. If a new software download is available, the sequence number value will be changed manually by the network operator. The terminal device MUST compare the stored value with the transmitted value. If both values identical there is no further action necessary by the terminal device, because this indicates there is no new software download available. In case of a difference between the stored and the transmitted value, a new software download is available, and hence the download procedure should be initiated.

In the case that more than one linkage descriptor loader is transmitted (more than one software update service) the difference of only one sequence number indicates that a new software is available. The terminal device MUST then store all sequence numbers.

This linkage descriptor gives also a reference to the location of the software download service with the parameter: transport_stream_id, orginal_network_id, and service_id. If there is more than one software download service implemented in the network (may be in different transport streams) for

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each software download service one linkage descriptor will be transmitted. The terminal device MUST analyze each linkage descriptor loader in this case.

It is RECOMMENDED to use only one software download service in the network.

The procedure after a new software download is available depends on application level. This document provides only the recommendation for the case when no application software is running or after the application isterminated, the terminal device will therefore run the basic software. The basic software checks the GroupCompatibility descriptor in the DSI message in the transport stream, for more information, which are specified via the linkage descriptor. Depending on this information the software update will start.

5.10.3 Flow diagram

The following flow diagram give more information for the background task on application level, which run in a loop on application level:

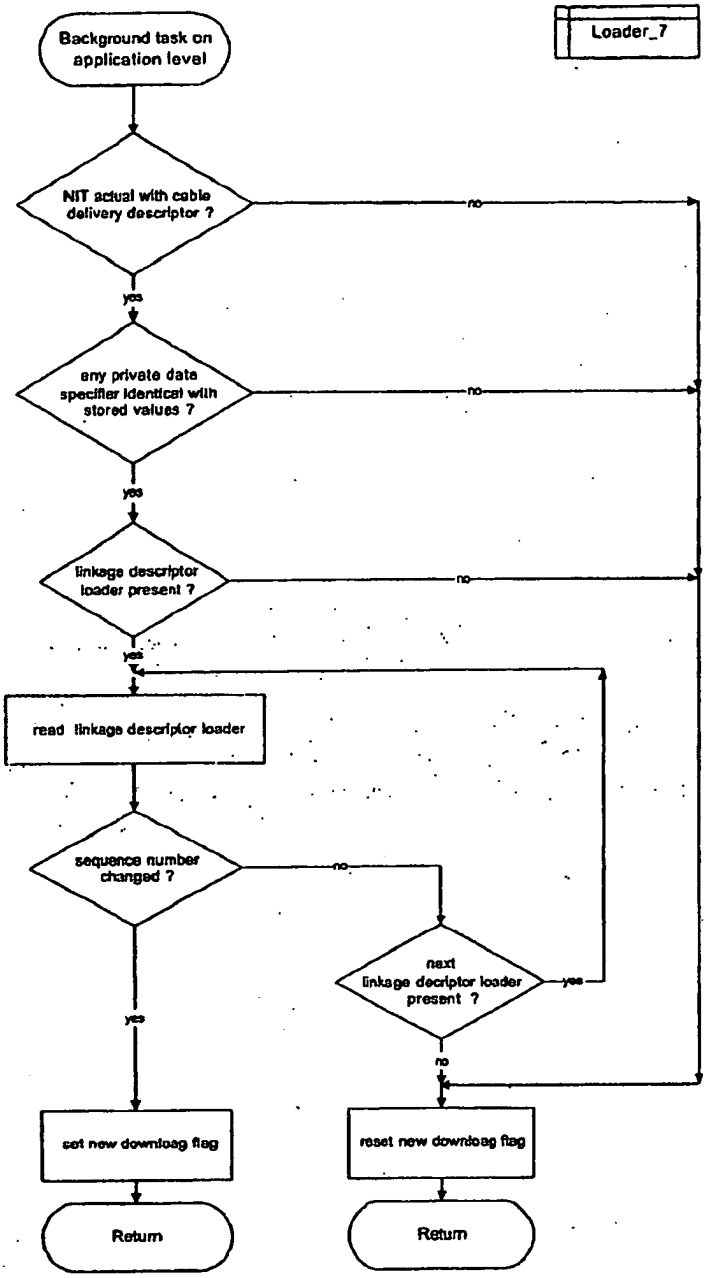

Diagram 6: information for the background task on application level

6 Security

6.1 General

The security mechanism described below is intended to protect against a large scale attack. For example, an attacker gains access to the network and tries to download malicious code to (a large numbers of) all terminal devices. (This malicious code can be thought of as being some sort of virus or "trojan horse").

The security mechanism does not provide a full protection against hardware hacks on individual terminal devices. Such protection is not feasible, since a hacker having access to and being able to modify the ROM and/or FLASH can bypass (disable) any security feature. However, such a powerful attack cannot be mounted on a large scale, but rather by individual hackers on individualterminal devices.

6.2 Functionality

When taking control, the starter MUST check the integrity of the ROM code itself to protect against random errors. Then the starter MUST check the integrity of the transmitted loader to prevent against active manipulations of this code. The terminal device related loader will find the identifier information using the mechanism described in section 5.2. To prevent active manipulation all identifier information stored in the ROM except the MAC-address SHOULD be encrypted. Parts of the starter SHOULD also be encrypted.

If the integrity of the loader has been successfully verified, the loader takes control over the update procedure. The loader MUST check the integrity of the software in the ROM, including the starter, again. This double check of the ROM integrity ensures that this software is tamper proof against any manipulation.

Note:	A manipulation of the ROM in such form, that the loader will not download, cannot be prevented.

If an integrity failure of the ROM code is detected by the starter or the loader, the terminal device activities MUST be stopped and an error message SHOULD be displayed. In this case the ROM is corrupt and the terminal device is not operational.

If the integrity of the ROM has been successfully verified, the loader verifies the integrity of the FLASH (excluding NV-RAM and ROM area). If an integrity failure of the FLASH code is detected the stored operational software is corrupt, or an old software version is used. If the loader support update flag is enabled, the loader MUST start the update of the new operational software. An informative message SHOULD be displayed.

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If one of the following cases occurs the starter MUST abort the download and check the integrity of the FLASH (excluding the NV-RAM and ROM area):

- the loader is not downloadable or
- an integrity failure in the loader is detected or
- the loader support update flag is set to disable the update.

Note: This check can only detect random errors in the code, not active manipulations.

If an integrity failure of the FLASH code is detected, and the loader is not downloadable or the update is disabled, all activities MUST be aborted and the terminal device MUST stop all procedures. In this case the stored operational software is corrupt and the software recovery is not downloadable. An error message, or an informative message for the case the update flag set to disable the software update, SHOULD be displayed. In this case is the terminal device is no longer operational until a hardware reset is performed and another attempt of software download will be initiated.

Note:	A provision of a new loader which may be bypass the update flag check can recover the terminal device in case that the update flag disable the update and an integrity failure of the FLASH is detected.

If an integrity failure during the software download procedure is detected by the loader, the software download MUST recover the related FLASH portion or initiate the entire software download procedure again.

After all portions of the software download are stored in the FLASH, the loader MUST perform an integrity check of the entire operational software download image(see section 6.7). In the case of an integrity failure the software download procedure MUST start again via the starter. If, after several attempts the software download is not possible, the terminal device MUST stop all activities. An error message SHOULD be displayed. In this case the terminal device is no longer operational until a hardware reset is performed.

6.3 Integrity check of the operational software

To minimize the possibility for a manipulation in the ROM area, the operational software MUST check the integrity of the ROM again. If an integrity failure is detected the terminal device MUST stop all operations. In this case the terminal device is no longer operational. An error message SHOULD be displayed.

6.4 Integrity check of the ROM and FLASH

For all ROM and FLASH integrity checks, except the integrity check of the downloaded loader code, a hash calculation according the public MD5 standard MUST be used [MD5]. The MD5 standard is not reverse calculable.

The calculated hash value MUST be compared with a stored value. The ROM/FLASH has passed the integrity test if both values are equal.

Note:	An attacker having access to the ROM/FLASH can manipulate both the ROM/FLASH and the MD5 checksums.

The hash value of the FLASH MUST be stored in the NV-RAM because this hash will be changed after a new software update. Any recovery of this hash value in case of a corruption or the storage of a default hash value is not required. If the hash becomes corrupt the loader MUST re-start the download of the operational software. After a successful software update, the loader MUST store the new hash value of the FLASH.

The hash value of the ROM MUST be stored in the ROM. This hash value will never changed.

6.5 Integrity check for the loader software

The loader, which controls the software download, is transmitted in Module 0 (see section 4). To protect hijacking and hacking of the software download, the integrity check of the loader MUST use an RSA key mechanism and a MD5 [MD5] calculation. The transmitted data will include an RSA signature of the MD5 hash value of the data transmitted in Module 0. A public RSA key is stored in the ROM in order to verify the signature. The data from Module 0 and any calculated data MUST stored in the RAM only.

Each manufacturer is responsible for the RSA key. The RSA key MUST have at minimum a length of 1024 bit. It MAY be the same for all terminal devices of one manufacturer.

6.5.1 Calculation of the signature by the manufacturer

In Addition to the loader code, a signature (sig) MUST transmitted. This signature MUST be computed at the manufacturer (sender) using the following procedure:

The hash (hash1) of the transmitted loader code, without the transmitted signature MUST be calculated according the MD5 standard, including the MD5 padding.

This hash value hash1 (of length 128 Bit) MUST be padded according to [PKCS#1]. The resulting value is then denoted by m.

The signature MUST be calculated according to the following equation:

$sig = m^d \bmod n$

m = the padded hash value hash1
d = the private RSA key
n = the public modulus

6.5.2 Integrity check of the signature

The integrity of the loader (Module 0) MUST be verified by the terminal device using the following procedure:

First m is recovered by checking the signature with the public key stored in ROM:

$m = sig^e \bmod n$

sig = the transmitted signature
e = the public RSA key
n = the public modulus

Then the hash value hash1 MUST be calculated by removing the padding defined in [PKCS#1] from m.

Next a second hash value hash2 MUST be calculated upon the transmitted loader code, without the transmitted signature, according the MD5 standard (including the MD5 padding).

If both hash values hash1 and hash2 are identical, then the integrity of the loader (Module 0) is proven.

6.6 Integrity check during the software update

For each transmitted MPEG section, the CRC_32 contained in each MPEG section MUST be compared with the calculated CRC_32 (often provided by the hardware section filter). Also the data stored in each FLASH portion MUST be compared with the CRC_32 values. The CRC_32 is defined in the annex of reference [3]. If both CRC_32 values identical then the integrity is proven.

6.7 Integrity check after the software update

The loader MUST contain a MD5 checksum over the whole downloadable software without the data from Module 0 itself or the data in the NV-RAM. After all portions of the FLASH are stored, the loader MUST compare the calculated MD5 checksum over the whole operational software with the transmitted MD5 checksum in the loader. If both values identical then the integrity is proven.

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6.8 Error cases

The following table summarizes all error cases and the resulting behavior of the terminal device. The messages SHOULD be displayed. The behavior without the messages MUST be implemented.

Case	Failure	Detected by	Result
1	ROM integrity failure	starter	Behaviour - hold all activities (error message)
2	ROM integrity failure	loader	Behaviour - hold all activities (error message)
3	ROM integrity failure	operational software	Behaviour - hold all activities (error message)
4	loader integrity failure or loader not downloadable	starter	Behaviour - normal operational mode (informative message)
5	case 4 AND FLASH integrity failure	starter	Behaviour - hold all activities (error message)
6	FLASH integrity failure AND update flag set to enable the update (see Note)	loader	Behaviour - start update procedure (informative message)
7	FLASH integrity failure AND update flag set to disable the update (see Note)	loader	Behaviour - normal operational mode (informative message)
8	FLASH integrity failure	starter	Behaviour - hold all activities (error message)
9	time out or to many attempts	loader	Behaviour - hold all activities (error message)

Table 2: Error cases

Note:	In these cases the update procedure will start independent from the update flag.

6.9 Flow diagram for the download procedure

The following flow diagram provides more details of the download mechanism functionality:

Note:	The error messages and the integrity check of the ROM in the operational software (see section 6.3) are not included in the following flow diagram.

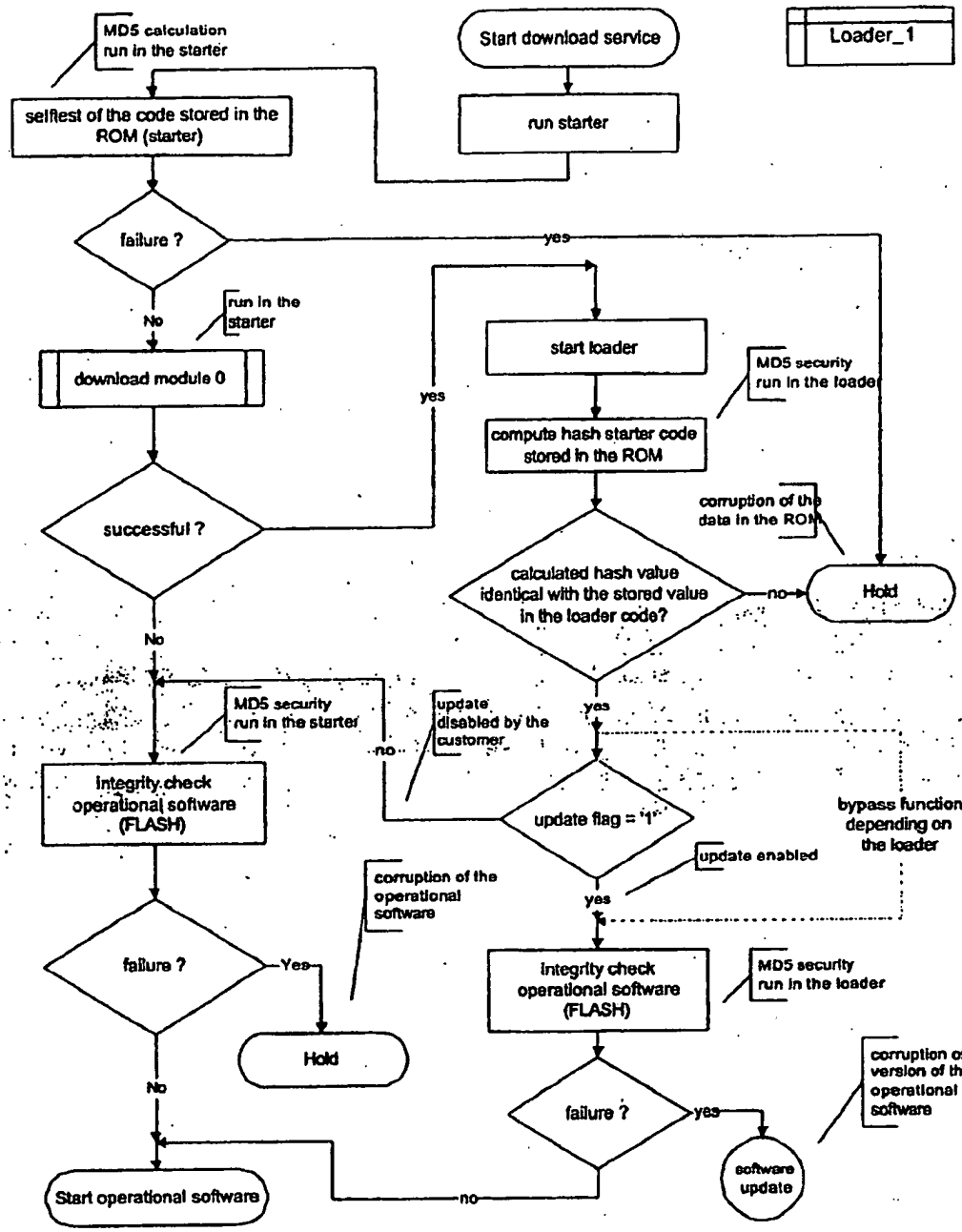

Diagram 7: download procedure

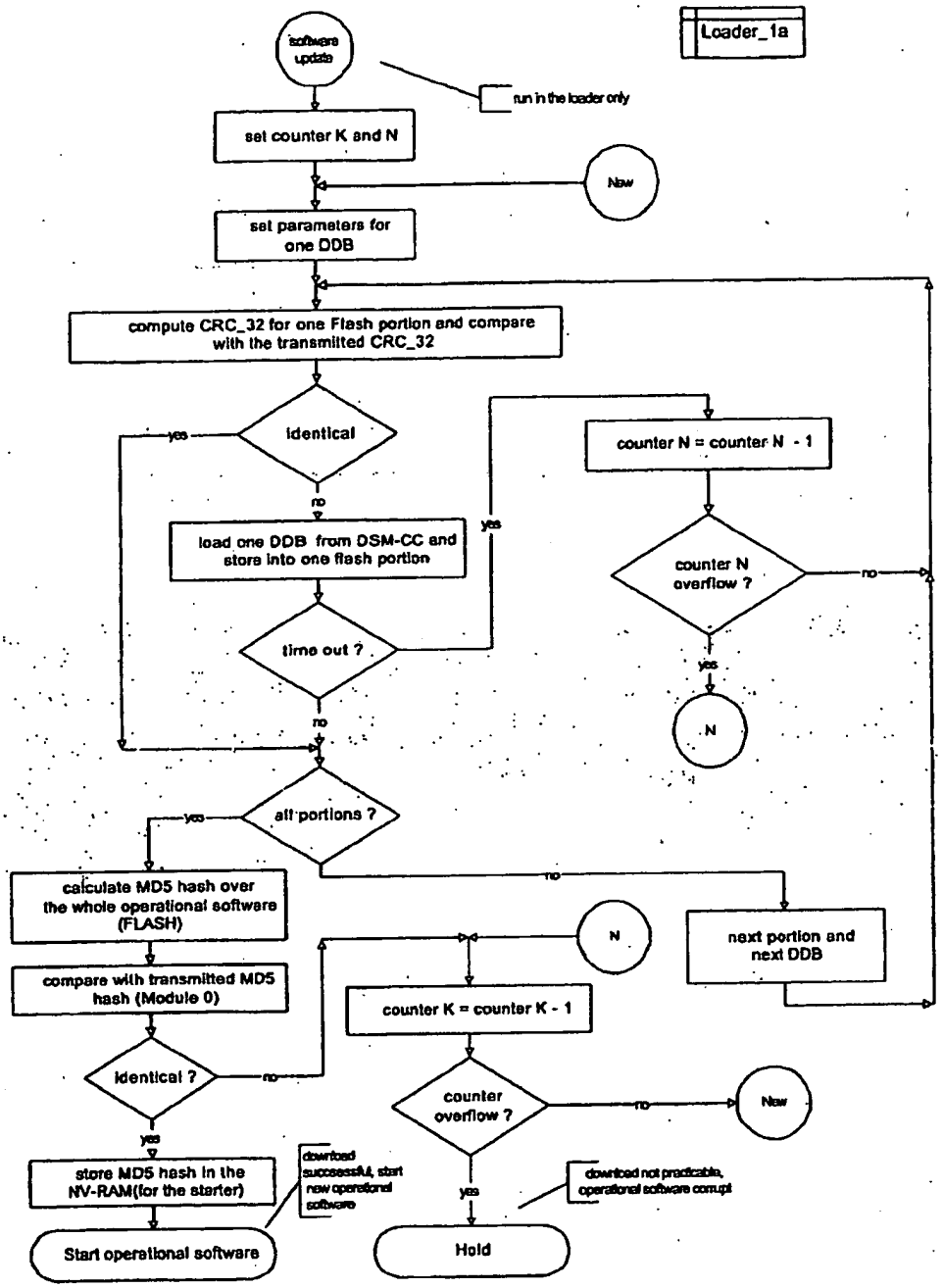

Diagram 8: download procedure

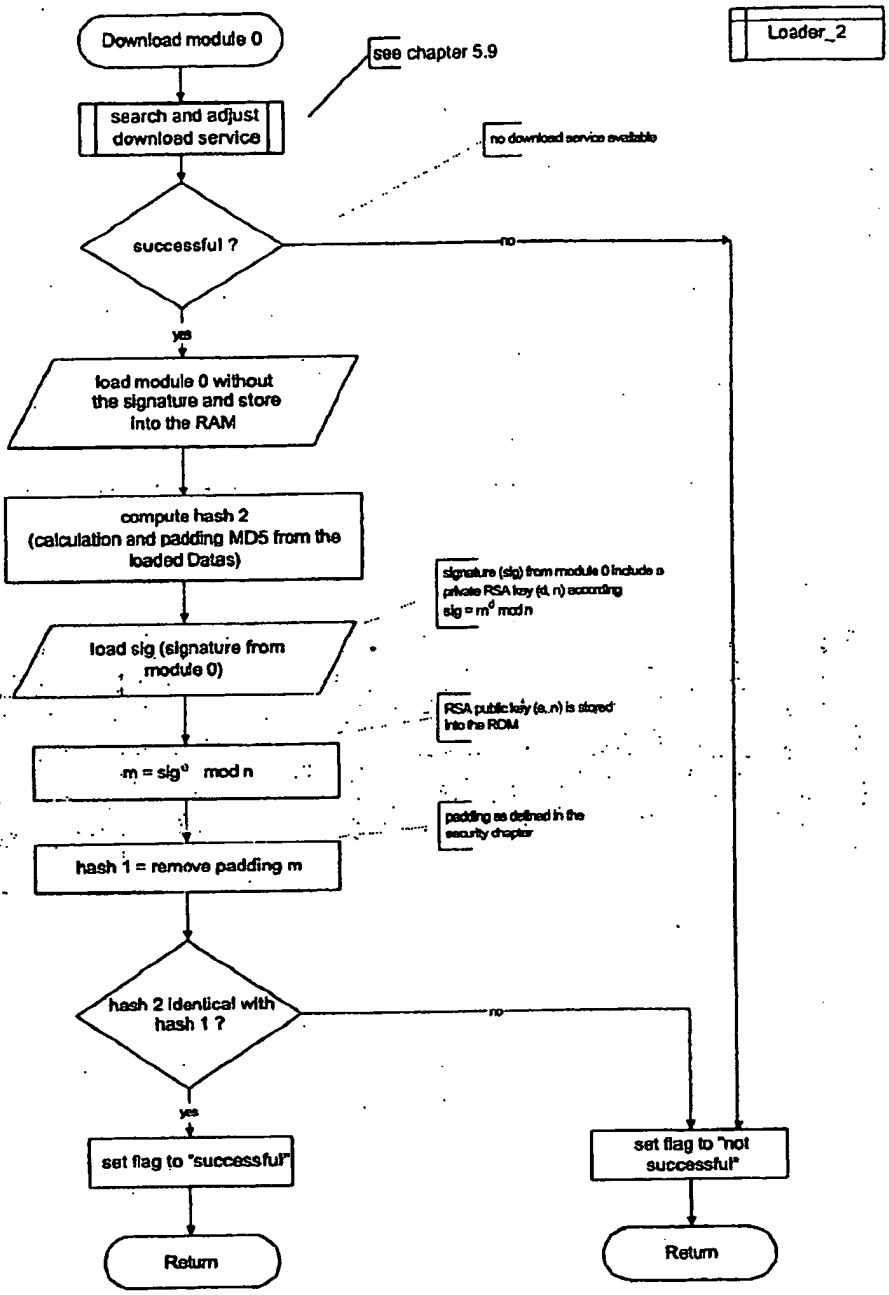

Diagram 9: download procedure

7 Data carousel messages specification

This section describes the data carousel messages used for the software download service in detail. This description complies with the DSM-CC standard as defined in reference [2] (section 9, 7, 6, 2, and 5), [3], [8], [9] and also describes the required optional values for some DSM-CC parameters. The terminal device MUST support the DSM-CC messages in the following sections. The adaptation field in the DSM-CC messages is not used.

7.1 DSM-CC section structure

All data carousel messages are encapsulated in DSM-CC sections according to references [3] and [2]. The CRC_32 of the DSM-CC section is used to verify received data. Each section MUST be verified with the CRC_32 value. The calculation is defined in reference [3]. The semantics of DSM-CC sections for the software download service are defined as follows:

```
DSM-CC section()
{
    table_id                    8 bit variable; see table 4
    section_syntax_indicator    1 bit '1'   ;CRC_32 used
    private_indicator           1 bit '0'   ; see [2],
    reserved                    2 bit '11' ,
    dsmcc_section_length        12 bit      variable; see [2]
    table_id extension          16 bit      variable; see table 4
    reserved                    2 bit '11' ;
    version_number              5 bit variable; see table 4
    current_next_indicator          1 bit '1'   ;see [2]
    section_number              8 bit variable; see table 4
    last_section_number         8 bit variable; see table 4
        data_carousel_message()
    CRC_32                      32 bit          ; see [3]
}
```

Table 3: DSM-CC section

Note:	The value of the field dsmcc_section_length shall not exceed 4093 bytes (indicating maximum data length of 4084 bytes).

For the data carousel are 4 type of messages are used: the DSI, DII, DC and DDB message.

According to the TR 101 202 [8] chapter 4.6.5 this messages use different values in some DSM-CC section_fields as shown in table 4:

Message	table_id	table_id_extension	version_ number	section_ number	last_section_ number
DSI	0x3B	two LSB bytes of transaction_id of DSI	0x00	0x00	0x00
DII	0x3B	two LSB bytes of transaction_id of DII	0x00	0x00	0x00
DC	0x3B	two LSB bytes of transaction_id of DC	0x00	0x00	0x00
DDB	0x3C	moduleId	Last significant 5 bits of the module Version	last significant 8 bits of the blockNumber	set to the maximum section_ number

Table 4: Message Vales

For implementation reasons some modifications in this table may be use full:

1. version_number field
   By the DII and DC message should be the version_number value identical with the related Group number (i) in the DSI message instead of the value 0x00. This allows a better differentiation (filtering) for which Group this specific DII or DC message is addressed.

2. table_id_extension field
   For a DDB message filtering the moduleID value is not sufficient. Better is a combination of Group number (i) as used in the DSI message and the moduleID in following form:
   The last significant 10 bits of the table_id_extension field contains the last significant 10 bits of the moduleId and the remaining 6 bits in the table_id_extension field contains the last significant 6 bits of the Group number (i) in the DSI message.

   The transaction_id value by the DC message MUST identical with the transaction_id value in that DII message which describes the related Group.

Note: This changes requires some discussions and the agreement in the DVB project.

7.2 Assignment and use of transactionID values

The use of the transactionId is specified in references [8] and [9].

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7.3 DownloadServerInitiate message (DSI)

This section describes the DSI in detail:

```
DownloadServerInitiate message()
{
     protocolDiscriminator     8 bit 0x11 ;see [2] section 2
     dsmccType       8 bit 0x03 ;see [2] section 2
     messageId       16 bit    0x1006     ;see [2] section 7
     transactionId        32 bit     variable;see Note 1
     reserverd       8 bit 0xFF
     adaptationLength     8 bit 0x00
     messageLength        16 bit     variable;see [2] section 2
     serverId        20 byte   20 * 0xFF; see [9]
     compatibilityDescriptor   16 bit     0x0000     ;(no
descriptor)
     privateDataLength    16 bit     variable; see [9]
     {
          Number OfGroups       16 bit     variable;(Group-
                                InfoIndication
                                see [9])
          for (i=0;i < numberOfGroups;i++)     i= Group Number
          {
               GroupId          32 bit     variable; see [9]
               GroupSize  32 bit     variable; see [9]
               GroupCompatibility()          ;see Note 2
               GroupInfoLength 16 bit     variable; see[9]
               for(i=0;i<N;i++)
               {
                    groupInfoByte     8 bit variable   ; see
               section 7.9
               }
          PrivateDataLength    16 bit     variable; see
Note 3
               for (i=0; i< PrivateDataLength; i++)
               {
                    privateDataByte 8 bit variable
               }
          }
     }
}
```

Table 5: DSI message

Note 1: This transactionId is identical with the used value in the data_broadcast_descriptor .
Note 2: The GroupCompatibility descriptor is specified in section 7.7.
Note 3: It is recommended to use a PrivateDataLength with the value 0x00 (no private data).

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7.4 DownloadInfoIndication message (DII)

This section describes the DII in detail:

```
DownloadInfoIndication message()
{
     protocolDiscriminator     8 bit 0x11; see [2] section 2
     dsmccType          8 bit 0x03; see [2] section 2
     messageId          16 bit    0x1002; see [2] section 7
     transactionId           32 bit    variable; see Note 1
     reserverd          8 bit 0xFF
     adaptationLength        8 bit 0x00
     messageLength           16 bit    variable; see [2] section 2
     downloadId         32 bit    variable; see [2] section 7
     blockSize          16 bit    variable; see [2] section 7
     windowSize         8 bit 0; non-flow control
     ackPeriod          8 bit 0; non-flow control
     tCDownloadWindow        32 bit    0; see [2] section 7
     tCDownloadScenario      32 bit    variable; see [2] section 7
     compatibility Descriptor()      16 bit    0; see [2] section 7
     numberOF Modules        16 bit    variable; see [2] section 7
     for (i=0;i< numberofModules;i++)
     {
          moduleId  16 bit    variable; see [2] section 7
          moduleSize 32 bit   variable; see [2] section 7
          moduleVersion   8 bit variable; see [2] section 7
          moduleInfoLength        8 bit variable; see [2]
                                                    section 7
          for (i=0;i< moduleInfoLength; i++)
          {
               moduleInfoByte  8 bit variable;
                                                see section 7.8
          }
     }
     PrivateDataLength       16 bit    variable ; see Note 2
     for (i=0; i< PrivateDataLength; i++)
     {    privateDataByte         8 bit variable
     }
}
```

Table 6: DII message

Note 1:	This transactionId is identical with the used value of the groupId in the DownloadServerInitate message.
Note 2:	It is recommended to use a PrivateDataLength with the value 0x00 (no private data).

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7.5 DownloadDataBlock (DDB)

This section describes the DownloadDataBlock in detail:

```
DownloadDataBlock message()
{
    protocolDiscriminator     8 bit 0x11; see [2] section 2
    dsmccType          8 bit 0x03; see [2] section 2
    messageId          16 bit    0x1003; see [2] section 7
    downloadId         32 bit    variable ; see [2] section 7
    reserverd          8 bit 0xFF; see [2] section 7
    adaptationLength       8 bit 0x00
    messageLength          16 bit    variable; see [2] section 7
    moduleId           16 bit    variable; see [2] section 7
    moduleVersion          8 bit variable; see [2] section 7
    reserverd          8 bit 0xFF; see [2] section 7
    blockNumber            16 bit    variable; see [2] section 7
    for(i=0;i<N;i++)
    {
        blockDataByte      8 bit variable; transmitted data
                                   for the download
    }
}
```

Table 7: DDB

All data in the DDB MUST be delivered from the manufacturer of the terminal device. The size of one DDB is defined jointly by the manufacturer and network operator. According to the DSM-CC standard the size of the DDB is flexible for each download.

It is RECOMMENDED, for fast access to the transmitted data, to use a size of 4066 blockDataBytes for each DDB. In this case, each DDB is encapsulated in one DSM-CC section. This is especially recommended for Module 0, which contains executable code for the loader.

The maximum size of one ***module*** is approximately 1 Mbyte.

7.6 DownloadCancel message (DC)

This message MAY be used by the network operator to stop the download service, in the case of a failure or to determinate the service. If the terminal device receives this DownloadCancel message, all activities related to this service MUST be stopped.

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```
DownloadCancel message()
{
    protocolDiscriminator     8 bit 0x11 ;see [2] section 2
    dsmccType        8 bit 0x03 ;see [2] section 2
    messageId        16 bit    0x1005    ;see [2] section 2
    transactionId          32 bit    variable   ;see [2] section 2
    reserverd        8 bit 0xFF ;see [2] section 2
    adaptationLength      8 bit 0x00 ;see [2] section 2
    messageLength          16 bit    variable   ;see [2] section 2
    downloadId       32 bit    variable   ;see [2] section 7
    moduleId         16 bit    variable   ;see [2] section 7
    blockNumber            16 bit    0x0000     ;no blocks
                                     processed
    downloadCancelReason 8 bit variable   ;(don't care)
    reserved         8 bit 0xFF ;see [2] section 7
    PrivateDataLength      16 bit    variable   ;see Note 1
    for (i=0; i< PrivateDataLength; i++)
    {
        privateDataByte 8 bit variable  ;see [2] section 7
    }
}
```

Table 8: DC message

Note 1: It is recommended to use a PrivateDataLength with the value 0x00 (no private data).

Possible values for the parameter downloadCancelReason may be:

- 0x03 Download authorisation denied,
- 0x04 Fatal Error (on Server side),
- 0x07 The Download Server has determined that the level of service is unreliable
- or any other value as defined in [2]

For the moduleId the value 0xFFFF should be used as wildcard value. In this case all modules in one Group are cancelled. The Group is identified via the downloadId.

This parameter is only informative. There is no requirement for the terminal device to analyze this parameter.

7.7 DSI descriptors

Following descriptors are mandatory and MUST be included in the DownloadServerInitiate (DSI) message:

7.7.1 GroupCompatibility descriptor

The GroupCompatibility descriptor gives the reference for the software download to the related terminal devices. This GroupCompatibility descriptor is included in each GroupInfoBytes and describes for which manufacturer, hardware or software version the software download is intended. There are two sub descriptors inside in this GroupCompatibility descriptor: one descriptor which describes the related hardware and one additional descriptor which describes the related software.

Semantics of the GroupCompatibility descriptor structure:

```
GroupCompatibility descriptor()
{
     campatibilityDescriptorLength  16 bit     variable   ;
     DescriptorCount                16 bit     variable   ;
     {
          HW_descriptor()
          SW_descriptor()
     }
}
```

Table 9: GroupCompatibility descriptor

The presence of more than two descriptors MUST NOT affect the operation of the loader software or the software download service.

The order of the insertion of this two descriptors do not need to be fixed and can changed.

7.7.2 Hardware Descriptor

Semantics of the HW_descriptor structure:

```
HW_descriptor()
{
     descriptorType          8 bit 0x01; Hardware Desc.
     descriptorLength        8 bit variable;
     specifierType           8 bit 0x01; see IEEE OUI
     specifierData           24 bit     variable; manufacturer ID
     model              16 bit     variable; see Note 1
     version                 16 bit     variable; see Note 2
     subDescriptorCount      8 bit variable; see Note 3
     for (j=0; j< subDescriptorCount; j++)

     {
          subDescriptor()       ;not used
     }
}
```

Table 10: Compatibility Descriptor Hardware

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Note 1:	see hardware model in section 5.2 (Identifier Information).
Note 2:	see hardware version in section 5.2 (Identifier Information).
Note 3:	It is recommended to use a subDescriptorCount with the value 0x00 (no subDescriptor).

The presence of subDescriptors MUST NOT affect the operation of the loader software or the software download service.

7.7.3 Software Descriptor

Semantics of the SW_descriptor structure:

```
SW_descriptor()
{
     descriptorType          8 bit 0x02; Software Desc.
     DescriptorLength        8 bit variable   ;
     specifierType           8 bit 0x01; see IEEE OUI
     specifierData           24 bit     variable; manufacturer ID
                                        (same as used in the HW-
                                        descriptor.)
     model                16 bit     variable; see Note 1
     version              16 bit     variable; see Note 2
     subDescriptorCount   8 bit variable; see Note 3
     for (j=0; j< subDescriptorCount; j++)
     {
          subDescriptor()       ;not used
     }
}
```

Table 11: Compatibility Descriptor Software

Note 1:	see software version in section 5.2 (Identifier Information).
Note 2:	see software subversion in section 5.2 (Identifier Information).
Note 3:	It is recommended to use a subDescriptorCount with the value 0x00 (no subDescriptor).

The presence of subDescriptors MUST NOT affect the operation of the loader software or the software download service.

7.8 DII descriptors

The ModuleInfo descriptors give additional Information about the transmitted Module. This information is be used to distinguish between download services. For the software download service the following descriptors are MANDATORY:

```
type_descriptor()
{
     descriptot_tag  1 byte     0x01 ;see [9] chapter 8.2.2
     descriptor_length    1 byte     variable   ;
     for (i=0; i<N; i++){
     text_char  1 byte     "mine type"
}}

CRC32_descriptor()
{
     descriptot_tag  1 byte     0x05 ;see [9] chapter 8.2.6
     descriptor_length    1 byte     variable   ;
     CRC_32     4 byte     variable   ;CRC 32 over all
                    data's in one DDB
}

Compressed_module_descriptor()
{
     descriptot_tag  1 byte     0x09 ;see [9] chapter 8.2.11
     descriptor_length    1 byte     variable   ;
     compression_method   1 byte     variable   ;
     orginal_size    4 byte     variable   ;
```

And the following descriptors are RECOMMENDED:

```
name_descriptor()
{
     descriptot_tag  1 byte     0x02 ;see [9] chapter 8.2.3
     descriptor_length    1 byte     variable   ;
     for (i=0; i<N; i++){
     text_char  1 byte     variable   ; name of the module
}}

location_descriptor()
{
     descriptot_tag  1 byte     0x06 ;see [9] chapter 8.2.7
     descriptor_length    1 byte     variable   ;
     location_tag    1 byte     variable   ;
}

module_link_descriptor()
{
     descriptot_tag  1 byte     0x04 ;see [9] chapter 8.2.5
     descriptor_length    1 byte     variable   ;
     position   1 byte     variable   ;
     module_id  2 byte     variable   ;
```

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}

These recommended descriptors are an OPTION for the network operator. The terminal device MUST analyze thiese descriptors if they are present in the network.

All other descriptors as defined in [9] are not used for the software update service. The terminal MUST ignore the other descriptors when present.

7.9 Other data carousel descriptors

The GroupInfo descriptors provide additional Information about the transmitted Groups. This information is be used to distinguish between download services. For the software download service the following descriptors are MANDATORY:

```
type_descriptor()
{
     descriptot_tag  1 byte     0x01 ;see [9] chapter 8.2.2
     descriptor_length     1 byte     variable   ;
     for (i=0; i<N; i++){
     text_char  1 byte     "mine type"
}}
```

And the following descriptors are RECOMMENDED:

```
name_descriptor()
{
     descriptot_tag  1 byte     0x02 ;see [9] chapter 8.2.3
     descriptor_length     1 byte     variable   ;
     for (i=0; i<N; i++){
     text_char  1 byte     variable   ; name of the module
}}

location_descriptor()
{
     descriptot_tag  1 byte     0x06 ;see [9] chapter 8.2.7
     descriptor_length     1 byte     variable   ;
     location_tag     1 byte     variable   ;
}

group_link_descriptor()
{
     descriptot_tag  1 byte     0x08 ;see [9] chapter 8.2.9
     descriptor_length     1 byte     variable   ;
     position   1 byte     variable   ;
     group_id   4 byte     variable   ;
}
```

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These recommended descriptors are an OPTION for the network operator. However, the terminal device MUST analyze these descriptors when present in the network.

All other descriptors as defined in [9] are not used for the software update service. Therefore, the terminal MUST ignore these descriptors when present.

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8 PSI and SI specifications

This section describes the service information which MUST be available in the relevant transport stream for the software download. The terminal device MUST support all of the following service information independent of the implementation in the network.

8.1 Network Information Table (NIT)

If a NIT actual with an cable delivery system descriptor is transmitted, this NIT MUST be used. If there is no NIT actual or no NIT actual with an cable delivery system descriptor transmitted (e.g. in smaller networks), an automatic scan over all cable channels MUST be started.

8.1.1 Linkage descriptor loader

This section defines the linkage descriptor loader. The linkage descriptor uses a private data field. To specify the private data field a private data specifier descriptor MUST be transmitted together with the linkage descriptor. The use of a linkage descriptor is an option for the cable operator. However, for the implementation of the basic software in the terminal device, this descriptor MUST be supported in all cases.

Semantics of the linkage descriptor structure:

```
linkage_descriptor_loader()
{
    descriptor_tag          8 bit 0x4A ;
    Descriptor_length       8 bit variable;
    transport_stream_id    16 bit      variable; Note 1
    orginal_network_id     16 bit      variable; Note 1
    service_id          16 bit         variable; Note 1
    linkage_type            8 bit 0x06; data broadcast service
    private_data            8 bit 0x00; used as type indicator
    private_data            8 bit variable; used as sequence
                                              number
}
```

Table 12: Linkage descriptor loader

Note 1:	The values of the transport_sream_id, orginal_network_id and service_id MUST be indentical with the values which describe the software download service transmitted in the network.

8.1.2 Description of the private data field in the linkage descriptor loader

The private data field is specified by an organization with the unique private_data_specifier descriptor (see next section). In the case where there are other linkage descriptors from the same

and this descriptors use also the private data field under the same private_data_specifier descriptor (same private_data_specifier value) then the first private data byte is used as type indicator for further differentiation.

The type indicator specifies the following private data. The value 0x00 specifies the following private data as sequence number for the descriptor loader. Any other value is not used for the software update service and the terminal device MUST ignore this descriptor, if a linkage descriptor loader is expected. In this case this descriptor is used for any other download service and contains other private data.

The second private data byte is used as sequence number (see also section 5.9 and 5.10). The value of the sequence number is not specified. The terminal device MUST store the current value. If a new software download is available, the sequence number value will be changed manually by the network operator. The terminal device MUST compare the stored value with the transmitted value. If both values identical there is no further procedure necessary by the terminal device, as this indicates there is no new software download available. In case of a difference between the stored and the transmitted value, a new software download is available.

In the case that more than one linkage descriptor loader is transmitted (more than one software update service), then the difference of only one sequence number already indicates that a new software is available. The terminal device MUST store all sequence numbers.

In case that more than two private data bytes are transmitted in the linkage descriptor loader, all data exceeding the two defined private data bytes MUST be ignored.

In the case that less as two private data bytes are transmitted, this descriptor is not used as linkage descriptor loader. The terminal device MUST ignore this descriptor then.

8.1.3 Private data specifier descriptor

This descriptor specifies the private data field for the ECCA organisation (see [5] and [10]).

```
private_data_specifier_descriptor()
{
     descriptor_tag          8 bit 0x5F ;
     descriptor_length       8 bit variable ;
     private_data_specifier     32 bit      variable   ; see Note 1
}
```

Table 13: Private data specifier descriptor

Note 1:
The value of the private_data_specifier is not registered at the time of the creation of this document. The registration proposal for the ECCA organization is 0xECCA0001. One of the following ETR 162 [7] will publish the registered value for the ECCA organization. This value MUST be used.

Informative note for network operators:
This descriptor MUST be inserted in the first loop of the NIT. Directly after this insertion MUST all linkage descriptors loader follow.

8.2 Service Description Table (SDT)

The transmitted data stream for the software download will be indicated in the transport stream with a data broadcast descriptor. Only one data broadcast descriptor is used in the SDT (actual) for one SuperGroup (see section 4). The service name and the service provider name is defined by each operator. Both values are only informative. The terminal device MUST be able to find the software download service only by the data broadcast descriptors as specified in section 8.2.2.

8.2.1 Service descriptor

For the terminal device the analysis of the service descriptor is an option. For the implementation of the service descriptor in the network the following parameters are recommended:

```
service_descriptor()
{
    descriptor_tag          8 bit 0x48
    descriptor_length       8 bit variable
    service_type            8 bit 0x0C; data broadcast
    service_provider_name_length    8 bit variable
    for (i=0;i<N;i++)
    {char}                  8 bit variable; informative
    service_name_length     8 bit variable
    for (i=0;i<N;i++)
    {char}                  8 bit variable; informative
}
```

Table 14: Service descriptor

8.2.2 Data broadcast descriptor

The following data broadcast descriptor MUST be available in the SDT actual. The terminal device MUST support this descriptor.

```
data_broadcast_descriptor()
{
      descriptor_tag          8 bit 0x64
      descriptor_length       8 bit variable
      data_broadcast_id       16 bit     0x0006
      component_tag           8 bit variable; see [9]
      selector_length         8 bit 0x10
      {
            carousel_typ_id         2 bit       '10'; see below
            Reserved          6 bit       '111111'
            transaction_id            32 bit      variable; see [8 and
                                                                    9]
            time_out_value_DSI        32 bit      variable;see [8 and
                                                                    9]
            time_out_value_DII        32 bit      variable;see [8 and
                                                                    9]
            Reserved                  2 bit '11'
            leak_rate           22 bit      variable;see [8 and
                                                                    9]
      }
      ISO_639_language_code       24 bit      variable
      text_length               8 bit variable
      for i=0, i=text_lenght; i++
      {
            char                8 bit variable;e.g.
      }                         "OS-DOWNSTREAM"
                                (only informative)
}
```

Table 15: Data broadcast descriptor

There are two possible values for the carousel_typ_id :

bit 1	bit 0	Comment
0	1	one layer carousel (not used)
1	0	two layer carousel

Table 16: Values for the carousel_typ_id

8.3 Program Map Table (PMT)

The presence of a data carousel in a service MUST be indicated in the PMT of that service by setting the stream type of the stream that contains the data carousel to the value of 0x0B. The terminal device MUST support the analysis of the PMT.

8.4 Event Information Table (EIT)

The use of an EIT is optional. The using of an EIT is out of the scope of this software download procedure. The EIT will deliver only additional information to the customer (e.g. for an EPG). There is no requirement for the terminal device to analyze the EIT for the software update mechanism.

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9 References

[1] ETS 300 800 V2 (6th November 1998)
Digital Video Broadcasting (DVB); DVB interaction channel for cable TV distribution systems (CATV)

[2] ISO/IEC 13818-6 (1998)
Generic coding of moving pictures and associated audio information; Part 6: Extensions for DSM-CC

[3] ISO/IEC 13818-1 (1997)
Generic coding of moving pictures and associated audio information; Part 1: Systems

[4] TR 101 196 (V1.1.1)
Digital Video Broadcasting (DVB); DVB interaction channel for cable TV distribution systems (CATV); Guidelines for the use of ETS 300 800

[5] EN 300 468 (V1.3.1)
Digital Video Broadcasting (DVB); Specification for Service Information (SI) in DVB systems

[6] Technical Specification of a European Cable Modem (ECCA EuroModem Specification) Version 1.0 (May 1999)

[7] ETR 162
Digital broadcasting systems for television, sound and data services; Allocation of Services Information (SI) codes for Digital Video Broadcasting (DVB) services

[8] TR 101 202 (V1.1.1)
Digital Video Broadcasting (DVB); Implementation guidelines for Data Broadcasting

[9] EN 301 192 (V1.2.1)
Digital Video Broadcasting (DVB); DVB specification for data broadcasting

[10] ETR 211
Digital Video Broadcasting (DVB); DVB guidelines on implementation and usage of Service Information (SI)

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[11] IEEE 802-1990
IEEE Standards for Local and Metropolitan Area Networks

[MD5] MD5, IETF RFC 1321
Internet Engineering Task Force, Request For Comments number 1321
Network Working Group; Author: R. Rivest
MIT Laboratory for Computer Science and RSA Data Security, Inc. ;April 1992
Title: The MD5 Message-Digest Algorithm

[PKCS#1] B. Kaliski and J. Staddon:
PKCS #1: RSA Cryptography Specifications, Version 2.0.Internet-Draft,
RSA Laboratories, September 1998

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JUN 02 2011

OFFICE OF PETITIONS

In re Application of :
Iyad Qumei :
Application No. 10/864,095 : DECISION ON PETITION
Filed: June 9, 2004 :
Attorney Docket No. 200707965-2 :

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

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

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

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, April 21, 2008, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on July 22, 2008.

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

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

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

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

This application is being referred to Technology Center AU 2193 for appropriate action by the Examiner in the normal course of business on the reply received May 10, 2011.

April M. Wise
Petitions Examiner
Office of Petitions

cc: MANNAVA & KANG, PC
11240 WAPLES MILL ROAD
SUITE 300
FAIRFAX, VA 22030

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7-7-2011

Commissioner for Patents
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Alexandria, VA 22313-1450
www.uspto.gov

Patent No. :7,937,286 B2
Serial No. : 10/864,529
Inventor(s) : Alan B. Newman
Issued : May 3, 2011

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.

Respecting the alleged error(s) in the Attorney, Agent, or Firm, since the Attorney Agent, or Firm is printed solely in accordance with the PTOL-85b (Issue Fee Transmittal), submitted at time of payment of the base issue fee, no correction is in order here under the provisions of Rule 322.

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

Any petition under 37 CFR 1,182 should be directed to the attention of the Assistant Commissioner for Patents, using the following mailing address or Fax number.

By Mail: Commissioner of Patents and Trademarks
Box DAC
Washington, DC 20231

By Fax: (703) 308-6916
Attn: Office of Petitions

If, the petition under 37 CFR 1.182 (required fee currently $130) is filed and granted, the patentee would be entitled to a certificate of correction under 37 CFR 1.323 (required fee currently $100.00).

Eva James
For Mary Diggs
Decisions & Certificate
of Correction Branch
(571-272-3422 or 703-756-1580)

Eric L. Sophir-SNR Denton US LLP
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ej

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DEC 13 2010
OFFICE OF PETITIONS

In re Patent No. 7,044,032 :
Issue Date: May 16, 2006 :
Application No. 10/864,738 :
Filed May 16, 2006 :
For: LOCKING PLIERS AND METHOD OF USE :

This communication is in response to the petition under 37 CFR 1.378(b), filed August 12, 2010, under 37 CFR 1.378(b).

Prior to a decision on the merits of the petition submitted August 12, 2010, petitioner must be advised that submission of the maintenance fee surcharge (currently $700.00) is a prerequisite prior to treatment on the merits of any petition submitted pursuant to 37 CFR 1.378(b).

If reconsideration of this matter 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 request for reconsideration must include the required fees. Petitioner is responsible for the fees in the amount due at the time of submission of the request for reconsideration. As USPTO fees are subject to change, petitioner is advised to review the fee schedule at http://www.uspto.gov/about/offices/cfo/finance/fees.jsp prior to submission of a request for reconsideration to ensure that the proper fees are submitted.

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

There is no indication in the record that petitioner has submitted a change of correspondence address to the Office. Petitioner does not set forth a mailing address in the petition. Accordingly, this correspondence is being dually mailed to the inventor's address listed in the declaration previously filed as well as to the correspondence address of record with an advisal that petitioner submit a change of address form.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Petitions Attorney
Office of Petitions

Enc.

CC: Timothy T. Tyson
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Paul M. Jansen
19151 Tulsa St.
Northbridge CA 91326

MAILED
MAR 14 2011
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In re Patent No. 7,044,032 :
Issue Date: May 16, 2006 :
Application No. 10/864,738 :
Filed June 10, 2004 :
For: LOCKING PLIERS AND METHOD OF USE :

This decision is in response to the petition under 37 CFR 1.378(b), filed January 10, 2011, under 37 CFR 1.378(b).

The petition under 37 CFR 1.378(b) for reinstatement of expired patent is hereby **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 May 16, 2006. The 3.5 year maintenance fee could have been paid from May 16, 2009 through November 16, 2009 without a surcharge, or with a surcharge during the period from November 17, 2009 through May 16, 2010. Accordingly, the patent expired on May 16, 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 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 showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.378(b)(3) because the petition fails to satisfy requirement (1) set forth above.

Petitioner argues that the maintenance fee form and a check for $555.00 for the maintenance fee and surcharge were timely submitted on May 3, 2010 via USPS Express Mail Service. Petitioner argues that the package "arrived on May the 5th and was signed for by the maintenance fee office."

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). 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).

Petitioner asserts that the maintenance fee form, maintenance fee, and surcharge were submitted to the Office via USPS Express Mail Service. Petitioner has provided a copy of an USPS Express Mail label bearing Express Mail label number EM927299999US bearing a "date-in" of May 3, 2010.

In accordance with 37 CFR 1.10(e):

> "Any person mailing correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Director to consider such correspondence filed in the Office on the USPS deposit date, provided that:
>
> (1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;
>
> (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";
>
> (3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant

> to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and
>
> (4) The petition includes a statement which establishes, to the satisfaction of the Director, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS."

The instant petition fails to comply 37 CFR 1.10(e)(2) and (3) set forth above. As petitioner has not established that the package containing the above-referenced USPS Express Mail Label Number included the maintenance fee form, maintenance fee, surcharge, and a certificate of Express Mail in accordance with 37 CFR 1.10, petitioner has failed to establish that the maintenance fee and surcharge were timely submitted to the Office in accordance with the Office requirements under 37 CFR 1.10(e).

Any renewed petition must establish that the entire period of delay from the time that the maintenance fee was due until the time of the filing of a grantable petition has been unavoidable. Petitioner is reminded that any renewed petition should entail an exhaustive effort to establish that the failure to timely pay the maintenance fee was unavoidable as after reconsideration pursuant to 37 CFR 1.378(e), no further reconsideration regarding unavoidable delay will be undertaken.

ALTERNATIVE VENUE

Under 35 U.S.C. 41(c)(1), the Director of the Office may accept late payment of any maintenance fee filed within 24 months after the 6-month grace period, if the delay in payment is shown to the satisfaction of the Director of the Office to have been unintentional. See MPEP § 711.03(c) for a general discussion of the "unintentional" delay standard. In addition to the timeliness deadline set forth in the preceding paragraph, a petition filed under the unintentional standard of 37 CFR 1.378(c) must include: (A) the required maintenance fee set forth in 37 CFR 1.20 (e) through (g); (B) the surcharge for an unintentionally expired patent as set forth in 37 CFR 1.20(i)(2); and (C) a statement that the delay in payment of the maintenance fee was unintentional.

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

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401 Dulany Street
Alexandria, VA 22314

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

Any questions concerning this matter may be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

Enc.

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ARLINGTON, VA 22201

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In re Application of :
Shunji Tomatsu et al. :
Application No. 10/864,758 :
Filed: June 10, 2004 :
Attorney Docket No. HAYAK-0012 :

DECISION ON APPLICATION FOR PATENT TERM ADJUSTMENT

This is in response to the "Application for Patent Term Adjustment" filed May 28, 2010. Applicants request the initial determination of patent term adjustment be corrected from zero (0) days to six hundred ninety-four (694) days.

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

The Office issued a Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) on March 22, 2010. Applicants were advised of a patent term adjustment to date of 0 days. In response, Applicants timely filed this application for patent term adjustment on May 28, 2010, prior to submitting the issue fee on June 22, 2010.

Applicants assert the correct patent term adjustment is 694 days, not 0 days. Specifically, Applicants assert the patent term adjustment should include a 555-day increase for delay under 37 C.F.R. § 1.703(b) ("B Delay") and assert the Office should not have entered a 214-day reduction in patent term adjustment for delay under 37 C.F.R. § 1.704(c)(7).

B Delay

Applicants' request that the patent term adjustment include a 555-day increase for B Delay 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]

First Instance of Delay Under 37 C.F.R. § 1.704(c)(7)

Applicants argue the Office should not have entered a 214-day reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(7).

Pursuant to 37 C.F.R. § 1.704(c)(7), circumstances that will result in a reduction in the period of adjustment include:

> 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.

The Office issued a non-final Office action on February 3, 2009.

Applicants filed a reply to a non-final Office action on June 3, 2009. The top of every page of the claims and remarks filed June 3, 2009, states, with emphasis in the original "**DRAFT**."

[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 C.F.R. § 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 C.F.R. § 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 C.F.R. § 1.705(b) and 35 U.S.C. § 154(b)(3)(B). A dispute as to the calculation of the 37 C.F.R. § 1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 C.F.R. § 1.705(d) will be dismissed as untimely filed.

The Office issued a Notice of Non-Compliant Amendment on December 11, 2009. The notice identified *two* reasons the amendment was non-compliant. The notice stated,

> Both newly submitted claims and remarks are indicated as draft. Further, each sequence claimed such as 1-34 of SEQ ID NO:7 ... must be separate SEQ ID NOs. for searching purposes and indexing purposes.

Applicants filed a response to the December 11, 2009 notice on January 3, 2010. Applicants traversed the requirement for certain sequences to be separate sequence ID numbers and stated, "Withdrawal of the objection is respectfully requested." Applicants did *not* assert the original amendment was proper even though each page had included the term "DRAFT." Instead, Applicants provided new claims and remarks pages which did not include the term "DRAFT."

Applicants' instant application for patent term adjustment states,

> In the response filed 3 January 2010, Applicants traversed the Examiner['s] contention of non-compliance and requested withdrawal of the objection.... The response of 3 January 2010, which was identical to the previous response of 3 June 2009, resulted in a Notice of Allowance. Thus, the Notice of Non-Compliant amendment was clearly improper.

Applicants assertion the January 3, 2010 reply was identical to the June 3, 2009 reply, is inaccurate because the January 3, 2010 reply did *not* include the term "DRAFT" on each page.

In view of the prior discussion, the entry of a 214-day reduction under 37 C.F.R. § 1.704(c)(7) was proper.

Second Instance of Delay Under 37 C.F.R. § 1.704(c)(7)

A review of the record indicates the Office should have entered an 88-day reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(7).

The Office mailed a non-final Office action on August 21, 2006. Applicants filed a reply on September 21, 2006. The Office mailed a notice stating the reply was not fully responsive on December 11, 2006. A proper reply was filed December 18, 2006.

The number of days beginning September 22, 2006, the day after the date a reply with an omission was filed, and ending December 18, 2006, the date a proper reply was filed is 88 days.

In view of the facts above, the Office has entered an 88-day reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(7) based on the papers filed September 21, 2006, and December 18, 2006.

Delay Under 37 C.F.R. § 1.704(c)(8)

A review of the record indicates the Office should have entered a 31-day reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(8).

Pursuant to 37 C.F.R. § 1.704(c)(8), circumstances that will result in a reduction in the period of adjustment include:

> Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed.

The Office mailed a final Office action on June 16, 2008. A reply consisting of a request for continued examination ("RCE") and amendment was filed December 16, 2008. An information disclosure statement ("IDS") was filed January 16, 2009. The record fails to indicate the IDS was expressly requested by the examiner and the IDS was not accompanied by a statement under 37 C.F.R. § 1.704(d).

The number of days beginning December 17, 2009, the day after the date the reply was filed, and ending January 16, 2009, the date the IDS was filed, is 31 days.

In view of the facts above, the Office has entered a 31-day reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(8) as a result of the IDS filed January 16, 2009.

Conclusion

The argument the patent term adjustment should include a 555-day increase for B Delay is premature.

The entry of a 214-day reduction under 37 C.F.R. § 1.704(c)(7) was proper.

The Office has entered an 88-day reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(7) based on the papers filed September 21, 2006, and December 18, 2006.

The Office has entered a 31-day reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(8) as a result of the IDS filed January 16, 2009.

The total period of delay under 37 C.F.R. § 1.704 is 570 (31 + 84 + 94 + 31 + 214 + 88 + 31) days.

The total period of Office delay under 37 C.F.R. § 1.702(a) is 376 days.

The total period of delay under 37 C.F.R. § 1.704 is greater than the total period of delay under 37 C.F.R. § 1.702(a). However, the patent term adjustment for a patent cannot be less than zero days. Therefore, the initial patent term adjustment determination of 0 days was proper and will not be changed.

Submission of the $200.00 fee set forth in 37 C.F.R. § 1.18(e) is acknowledged. No additional fee is required.

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

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

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.

Anthony Knight
Director
Office of Petitions

PALM Resource Center

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

Application Number*: 10864758 Search Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application: 10864758

Application Filing Date	06/10/2004	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays	376
A Delays	376	PTO Manual Adjustment	-119
B Delays	0	Applicant Delay (APPL)	451
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
95	11/22/2010		P028	Adjustment of PTA Calculation by PTO		119	0
83	03/22/2010		MN/=.	Mail Notice of Allowance			0
82	03/15/2010		N/=.	Notice of Allowance Data Verification Completed			0
81	03/15/2010		IREV	Issue Revision Completed			0
80	03/15/2010		DVER	Document Verification			0
79	03/15/2010		EX.A	Examiner's Amendment Communication			0
78	03/15/2010		CNTA	Notice of Allowability			0
73	01/19/2010		FWDX	Date Forwarded to Examiner			0
72	01/03/2010	06/03/2009	A...	Response after Non-Final Action		214	66
71	01/03/2010		XT/G	Request for Extension of Time - Granted			0
69	12/11/2009		EML_NTR	Email Notification			0
68	12/11/2009		NINA	Mail Notice of Informal or Non-Responsive Amendment			0
67	12/03/2009		FWDX	Date Forwarded to Examiner			0
77	06/03/2009		IDSC	Information Disclosure Statement considered			0
76	06/03/2009		IDSC	Information Disclosure Statement considered			0
66.1	06/03/2009		A.I.	Informal or Non-Responsive Amendment after Examiner Action			0
66	06/03/2009	05/03/2009	A...	Response after Non-Final Action		31	58
65	06/03/2009		XT/G	Request for Extension of Time - Granted			0
64	06/03/2009		M844	Information Disclosure Statement (IDS) Filed			0
63	06/03/2009		LET.	Miscellaneous Incoming Letter			0
62	06/03/2009		XT/G	Request for Extension of Time - Granted			0
60	06/03/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
59	06/03/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
58	02/03/2009		MCTNF	Mail Non-Final Rejection			0
57	02/02/2009		CTNF	Non-Final Rejection			0
56	01/16/2009		IDSC	Information Disclosure Statement considered			0
55	01/16/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
54	12/17/2008		FWDX	Date Forwarded to Examiner			0
52	12/17/2008		FWDX	Date Forwarded to Examiner			0
50	12/17/2008		ABN9	Disposal for a RCE / CPA / R129			0
53	12/16/2008		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
51	12/16/2008	09/16/2008	RCEX	Request for Continued Examination (RCE)		91	47
49	12/16/2008		XT/G	Request for Extension of Time - Granted			0
48	12/16/2008		BRCE	Workflow - Request for RCE - Begin			0
47	06/16/2008		MCTFR	Mail Final Rejection (PTOL - 326)			0
46	06/09/2008		CTFR	Final Rejection			0
45	04/05/2008		FWDX	Date Forwarded to Examiner			0
44	03/05/2008	12/12/2007	A...	Response after Non-Final Action		84	42
43	03/05/2008		XT/G	Request for Extension of Time - Granted			0
42	09/12/2007		MCTNF	Mail Non-Final Rejection			0
41	09/11/2007		CTNF	Non-Final Rejection			0
40	07/11/2007		FWDX	Date Forwarded to Examiner			0
39	07/09/2007	06/08/2007	A...	Response after Non-Final Action		91	37
38	07/09/2007		XT/G	Request for Extension of Time - Granted			0
37	03/08/2007		MCTNF	Mail Non-Final Rejection			0
36	03/05/2007		CTNF	Non-Final Rejection			0
35	01/14/2007		FWDX	Date Forwarded to Examiner			0
34	12/18/2006		A...	Response after Non-Final Action			0
33	12/11/2006		MCTMS	Mail Miscellaneous Communication to Applicant			0
32	12/07/2006		CTMS	Miscellaneous Action with SSP			0
31	09/26/2006		FWDX	Date Forwarded to Examiner			0
30	09/21/2006		ELC.	Response to Election / Restriction Filed			0
29	08/21/2006	08/10/2005	MCTRS	Mail Restriction Requirement	376		-1
28	08/18/2006		CTRS	Requirement for Restriction / Election			0
26	08/08/2006		DOCK	Case Docketed to Examiner in GAU			0
27	04/25/2006		IDSC	Information Disclosure Statement considered			0
25.7	04/25/2006		M844	Information Disclosure Statement (IDS) Filed			0
25	04/25/2006		WIDS	Information Disclosure Statement (IDS) Filed			0
24	03/28/2005		DOCK	Case Docketed to Examiner in GAU			0
23	03/17/2005		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
22	03/17/2005		DOCK	Case Docketed to Examiner in GAU			0
20	11/23/2004		WRDIPE	Application Return from OIPE			0
19	11/23/2004		RDIPE	Application Return TO OIPE			0
18	11/23/2004		WRDIPE	Application Return from OIPE			0
17	11/23/2004		COMP	Application Is Now Complete			0
16	11/23/2004		RDIPE	Application Return TO OIPE			0
15	11/23/2004		OIPE	Application Dispatched from OIPE			0
14	11/23/2004		COMP	Application Is Now Complete			0
7	11/03/2004		CRFE	CRF Is Good Technically / Entered into Database			0
21	10/22/2004		A.PE	Preliminary Amendment			0
13	10/22/2004		FLFEE	Payment of additional filing fee/Preexam			0
12	10/22/2004		SEQLIST	A set of symbols and procedures, provided to the PTO on a set of computer listings, that describe in			0
11	10/22/2004		CRFL	CRF Disk Has Been Received by Preexam / Group / PCT			0
10	10/22/2004		OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic			0
9	10/22/2004		TRNCLAIM	Translation of Claims into English			0
8	10/22/2004		TRNSPEC	Translation of Specification into English			0
6	10/07/2004		INCD	Notice Mailed--Application Incomplete--Filing Date Assigned			0
4	09/24/2004		L128	Cleared by L&R (LARS)			0
3	09/23/2004		L198	Referred to Level 2 (LARS) by OIPE CSR			0
2	09/04/2004		SCAN	IFW Scan & PACR Auto Security Review			0
1	06/10/2004		IEXX	Initial Exam Team nn			0

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BOSTON MA 02111

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OFFICE OF PETITIONS

In re Patent No. 7,601,518	:	DECISION ON REQUEST
Wahlberg et al.	:	FOR RECONSIDERATION OF
Issue Date: October 13, 2009	:	PATENT TERM ADJUSTMENT
Application No. 10/864,891	:	and
Filed: June 10, 2004	:	NOTICE OF INTENT TO ISSUE
Atty Docket No. 19313-018001US	:	CERTIFICATE OF CORRECTION
	:	

This is a decision on the petition filed on December 8, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by six hundred fifteen (615) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.** The patent term adjustment is corrected to indicate that the term of the above-identified patent is extended or adjusted by **four hundred thirty-three (433)** days.

Patentee's calculation fails to take into account that a notice of appeal was filed on February 22, 2008. 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 182 days, beginning on February 22, 2008 and ending on August 22, 2008, the date of filing of the RCE (but does not include August 22, 2008 as that day has already been excluded pursuant to 35 U.S.C. 154(b)(1)(B)(i) for the RCE filed on that date). Thus, B delay is 256 (438 - 182) days. (The 76 days accorded at issuance was for B delay. The 76 days is being removed and corrected to 256 days). As such, the patent term adjustment is being increased from 253 days to 433 days, not 615 days.

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

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

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **four hundred thirty-three (433)** days.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,601,518 B2

DATED : **October 13, 2009** **DRAFT**

INVENTOR(S) : Wahlberg 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 253 days

Delete the phrase "by 253 days" and insert – by 433 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. 7207237
Issue Date: April 24,2007
Application No. 10864995
Filed: June 10,2004
Attorney Docket No. 06543.00001

:
: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.

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)
7207237	2007-04-24	10864995	2004-06-10	006543.00001

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	/Jon O, Nelson/	Date (YYYY-MM-DD)	2011-07-20
Name	Jon O. Nelson	Registration Number	24566

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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SILICON VALLEY PATENT AGENCY
7394 WILDFLOWER WAY
CUPERTINO CA 95014

MAILED

APR 11 2011

OFFICE OF PETITIONS

In re Application of	:	
WEN	:	
Application No. 10/865,013	:	DECISION ON PETITION
Filed: June 10, 2004	:	
Attorney Docket No. GHSW123045	:	

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

The petition is **GRANTED**.

The application became abandoned for failure to timely pay the issue and publication fees on or before November 9, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed August 9, 2010, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on November 10, 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 $755 and publication fee of $300; (2) the petition fee of $810; and (3) a statement of unintentional delay.

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

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

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

cc: RAYMOND J. WERNER
2056 NW ALOCLEK DRIVE #314
HILLSBORO, OR 97124

UNITED STATES PATENT AND TRADEMARK OFFICE

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SILICON VALLEY PATENT AGENCY
7394 WILDFLOWER WAY
CUPERTINO CA 95014

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APR 11 2011

OFFICE OF PETITIONS

In re Application of	:	
WEN	:	
Application No. 10/865,013	:	DECISION ON PETITION
Filed: June 10, 2004	:	
Attorney Docket No. GHSW123045	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 23, 2011, to revive the above-identified application.

The petition is **DISMISSED because it is MOOT.**

The application became abandoned for failure to timely pay the issue and publication fees on or before November 9, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed August 9, 2010, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on November 10, 2010.

The petition filed January 23, 2011, is dismissed as moot in view of the petition filed January 10, 2011, which was granted. Since the petition fee of $810, issue fee of $755 and publication fee of $300 submitted with the petition filed January 23, 2011, is unnecessary, a total of $1865 will be refunded to petitioner's Deposit Account No. 50-2436 within the normal course of business.

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

The application has been referred to the Office of Data Management for processing into a patent.

/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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THE PROCTER & GAMBLE COMPANY
Global Legal Department - IP
Sycamore Building - 4th Floor
299 East Sixth Street
CINCINNATI OH 45202

MAILED
MAY 03 2011
OFFICE OF PETITIONS

In re Application of :
Shulin Larry Zhang et al. :
Application No. 10/865,123 : DECISION ON PETITION
Filed: June 10, 2004 :
Attorney Docket No. **99199ML** :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 24, 2011, to revive the above-identified application.

There is no indication that the petition is signed by a registered patent attorney or patent agent of record. However, in accordance with 37 CFR 1.34, the signature of Mr. Richard J. McNeely 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. Richard J. McNeely 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. Richard J. McNeely, 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 application became abandoned for failure to timely pay the issue and publication fees on or before February 3, 2011, as required by the Notice of Allowance and Fee(s) Due, mailed November 3, 2010. Accordingly, the date of abandonment of this application is February 4, 2011.

The petition is hereby **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,510 filed on February 24, 2011 and the publication fee of $300 filed December 30, 2010, (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.

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: Richard J. McNeely
One South Main Street, Suite 1300
Dayton, Ohio 45402

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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COGNEX CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
1 VISION DRIVE
NATICK MA 01760-2077

MAILED
APR 11 2012
OFFICE OF PETITIONS

In re Application of	:	
William Silver	:	DECISION ON
Application No. 10/865,155	:	PETITION
Filed: June 9, 2004	:	
Attorney Docket No. C04-008	:	

This is a decision on the PETITION TO REVIVE filed March 14, 2012.

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 June 16, 2011. This Office action set a shortened statutory period for reply of three (3) months from the mail date of the action. An amendment, made timely by an extension of time within the third month, was filed on December 15, 2011; however, it was determined not to place the application in condition for allowance. See Advisory Action mailed January 9, 2012. No proper reply having been received and no further extension of time obtainable the application became abandoned effective December 17, 2011. The filing of this 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); and paid the petition fee. No terminal disclaimer is required for revival of this application. Petitioner also makes a statement of unintentional delay. However, the language of the statement varies from the language required by 37 CFR 1.137(b)(3). The statement is being

construed as the statement required by 37 CFR §1.137(b)(3), 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." If this is not a correct reading of the statement appearing in the petition, petitioner must promptly notify the Office.

Technology Center AU 2624 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 March 14, 2012.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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PAUL D. YASGER
ABBOTT LABORATORIES
100 ABBOTT PARK ROAD
DEPT. 377/AP6A
ABBOTT PARK, IL 60064-6008

MAILED
AUG 3 1 2010
OFFICE OF PETITIONS

In re Application of
Scott Safar, et al.
Application No. 10/865,207
Filed: June 10, 2004
Attorney Docket No. 7096USO1

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 5, 2010, to revive the above-identified application.

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

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

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 January 4, 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 March 5, 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, (2) the petition fee of $1620, and (3) a proper statement of unintentional delay.

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

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

This application is being referred to Technology Center AU 1797 for appropriate action by the Examiner in the normal course of business on the reply received August 5, 2010.

April M. Wise
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	10865243
Filing Date	09-Jun-2004
First Named Inventor	Tracy Maahs
Art Unit	3734
Examiner Name	MICHAEL MENDOZA
Attorney Docket Number	USGINZ01800
Title	Apparatus and methods for optimizing anchoring force

◉ 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 :

Tracy Maahs

Application No : 10865243

Filed : 09-Jun-2004

Attorney Docket No : USGINZ01800

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY/AGENTOF RECORD

This is an electronic decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed October 7,2011

The request is **APPROVED.**

The request was signed by Johney U. Han (registration no. 45565) on behalf of all attorneys/agents associated with Customer Number 40518 . All attorneys/agents associated with Cusotmer Number 40518 have been withdrawn.

Since there are no remaining attorneys of record, all future communications from the Office will be directed to the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71, with correspondence address:

Name USGI Medical, Inc.
Name2
Address 1 1140 Calle Cordillera
Address 2
City San Clemente
State CA
Postal Code 92673
Country US

As a reminder, requester is required to inform the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71 of the electronically processed petition.

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

Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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NUTTER MCCLENNEN & FISH LLP
SEAPORT WEST
155 SEAPORT BOULEVARD
BOSTON MA 02210-2604

MAILED

MAR 15 2011

OFFICE OF PETITIONS

In re Patent No. 7,105,808 :
Issue Date: September 12, 2006 :
Application No. 10/865,548 : NOTICE
Filed: June 10, 2004 :
Attorney Docket No. 101328-0264 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed January 7, 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: Daniel O'Brien
Massachusetts Institute of Technology
Technology Licensing Office, Rm. NE25-230
Five Cambridge Center, Kendall Square
Cambridge, MA 02142-1493

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

PTO/SB/131 (02-10)
Approved for use through 02/28/2011. OMB 0651-0020
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: 2-650-2	
Application Number: 10/865,593	Filing Date (or 371(b) or (f) Date): June 9, 2004
Patent Number: 7,665,251	Issue Date: February 23, 2010
First Named Inventor: Steven Lang	
Title: Structural Steel Framed Houses with Gable End Frames, Intermediate Frames, and Wall and Roof Panels Having Perimeters of C-Shaped Steel Channels	

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 /Steven T. Cooper/	Date August 20, 2010
Name (Print/Typed) Steven T. Cooper	Registration Number 65,716

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

☑ *Total of 1 forms are submitted.

The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

WARE FRESSOLA VAN DER SLUYS & ADOLPHSON, LLP
BRADFORD GREEN, BUILDING 5
755 MAIN STREET, P O BOX 224
MONROE, CT 06468

Mail Date: 08/26/2010

Applicant	: Steven Lang	: DECISION ON REQUEST FOR
Patent Number	: 7665251	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/865,593	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/09/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1401** 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.

12-06-10

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants	:	Jean Philippe COUDERC and Wojciech ZAREBA
Patent No.	:	7/221,976
Application No.	:	10/865,682
Filed	:	June 10, 2004
Issue Date	:	May 22, 2007
Title	:	ANALYSIS OF THE ALTERNANS CYCLE TO CYCLE AND/OR THE VARIABILITY OF THE VARIABILITY OF THE VENTRICULAR REPOLORAZATION WAVE IN AN ECG SIGNAL
Group Art Unit	:	3766
Examiner	:	HELLER, Tammie K.
Attorney Docket	:	8707-2176
Customer No.	:	34313

New York, New York
DATE: December 2, 2010

Via Express Mail
Attn.: Office of Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR CERTIFICATE OF CORRECTION OF PATENT FOR MISTAKE UNDER 37 C.F.R. Section 1.322 and/or 1.323

1. In response to your February 19, 2010 transmittal (attached at **Tab A**), we hereby re-submit our Petition to Correct a mistake in Issued U.S. Letters Patent 7,221,976. The problem is that the Assignee's name and address was omitted when the USPTO printed the Letters Patent.

2. Attached at **Tab B** of this Request For Certificate of Correction of Patent is Form PTO/SB/44 with at least one copy being suitable for printing.

12/07/2010 CCHAU1 00000033 150665 7221976
01 FC:1811 100.00 DA

12/07/2010 CCHAU1 00000033 150665 7221976
02 FC:1464 130.00 DA

Applicant	:	Jean-Philippe Couderc
Appl. No.	:	10,865,682
Examiner	:	Heller, Tammie K.
Docket No.	:	8707-2176

3. STATEMENT: The Assignment was submitted for recordation as set forth in 37 CFR 3.11 before issuance of the patent. (A true and correct copy of the Notice of Recordation of Assignment is attached hereto at **Tab C**.) Please add the Assignee's information, as recorded on 09/15/2004, to U.S. Issued Letters Patent as follows:

ASSIGNEE Name: **Ela Medical S.A.S.**
Address: **98 Rue Maurice-Arnoux**
F-92120, Montrouge, France

4. A true and correct copy of the Fees Transmittal PTOL-85, as submitted on August 16, 2006 is attached at **Tab D**.

5. Fee and Method of Fee Payment for Certificate of Correction:

☒ Charge Account No. 15-0665 for the USPTO fees as follows:

37 CFR 1.17(i) for $130.00;

37 CFR 1.20(a) for $100.00.

☐ Previously submitted, fee under 37 CFR 1.20(a);

☒ If any additional fees are due, please charge Account 15-0665.

Respectfully submitted,
ORRICK, HERRINGTON & SUTCLIFFE LLP

Dated: December 1, 2010

By: /s/Robert M. Isackson
Robert M. Isackson
Reg. No. 31,110

TAB A

UNITED STATES PATENT AND TRADEMARK OFFICE

OPAP IAP6
DEC 0 2 2010
PATENT & TRADEMARK OFFICE

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

ORRICK IP PROSECUTION
Docketed 4/1/10
Resubmit Certf Corr
RM1
Docketed by dw
Entered 3/1/10

Date : February 19, 2010

Patent No. :7221976
Inventor(s) :Jean-Philippe Couderc and Wojciech Zabera
Issued :May 22, 2007
Title :ANALYSIS OF THE ALTERNANS CYCLE TO CYCLE AND/OR THE VARIABILITY
:OF THE VENTRICULAR REPOLARIZATION WAVE IN AN ECG SIGNAL

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of 37 CFR 1.322 and/or 1.323.

Assignees' names and addresses (assignment data) printed in a patent are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Fee(s) Transmittal Form PTOL-85B. After payment of the issue fee, correction of assignment data submitted on the PTOL-85B can only be done by Certificate of Correction under 37 CFR 1.323, with a request under 37 CFR 3.81(b).

A request for a patent to be corrected to state the name of the assignee must:

V A. state that the assignment was submitted for recordation as set forth in 37 CFR 3.11 before issuance of the patent;

B. include a request for a certificate of correction under 37 CFR 1.323 along with the fee set forth in 37 CFR 1.20(a); and

V C. include the processing fee set forth in 37 CFR 1.17(i).

If the request is granted, Certificates of Correction Branch will be notified that a Certificate of Correction may be issued.

See Manual of Patent Examining Procedure, Section 1481.01 (Rev. 3) (Oct. 2005).

Applicant has not included items A and or C above, accordingly, the request for Certificate of Correction to add or change the assignee data is dismissed.

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

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

RECEIVED
MAR 0 1 2010

By hand:	Customer Service Window Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	571-273-8300 ATTN: Office of Petitions
EFS web	uspto.gov/ebc/index.html (must be registered as an e-filer to submit responses) Technical Support 1-866-217-9197

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) 756-1544

R.M. Isackson, Esq., Orrick, Herrington
& Sutcliffe, LLP, IP Prosecution Dept.
4, Park Plaza, Ste 1600,
Irvine, CA 92614-2558.

/arg

TAB B

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. : 7,221,976

APPLICATION NO.: 10/865,682

ISSUE DATE : May 22, 2007

INVENTOR(S) : Jean-Philippe Couderc and Wojciech Zabera

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:

On the cover page of the issued Letters Patent, please add the Assignee's information as follows:

ELA Medical S.A.S.
98 Rue Maurice-Arnoux
F-92120, Montrouge, France

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

R.M. Isackson, Esq., Orrick Herrington & Sutcliffe, LLP, IP Prosecution Dept., 4 Park Plaza, Suite 1600, Irvine, CA 92614-2558. Tel. (212) 506-5280

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, Commissionor 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/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. : 7,221,976

APPLICATION NO.: 10/865,682

ISSUE DATE : May 22, 2007

INVENTOR(S) : Jean-Philippe Couderc and Wojciech Zabera

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:

On the cover page of the issued Letters Patent, please add the Assignee's information as follows:

ELA Medical S.A.S.
98 Rue Maurice-Arnoux
F-92120, Montrouge, France

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

R.M. Isackson, Esq., Orrick Herrington & Sutcliffe, LLP, IP Prosecution Dept., 4 Park Plaza, Suite 1600, Irvine, CA 92614-2558. Tel. (212) 506-5280

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.

TAB C

OPAP IAP8
DEC 0 2 2010
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MAR 2 4 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MARCH 16, 2005

PTAS

ORRICK, HERRINGTON & SUTCLIFFE LLP
ROBERT M. ISACKSON, ESQ.
666 FIFTH AVENUE
NEW YORK, NY 10103

102838562A

DOCKETING DEPT.
RECEIVED

UNITED STATES PATENT AND TRADEMARK OFFICE
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

BY _____

8707.2176

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 09/15/2004

REEL/FRAME: 015782/0793
NUMBER OF PAGES: 3

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:
COUDERC, JEAN PHILIPPE

DOC DATE: 08/23/2004

ASSIGNOR:
ZABARA, WOJCIECH

DOC DATE: 08/23/2004

ASSIGNEE:
ELA MEDICAL S.A.
98 RUE MAURICE-ARNOUX
F-92120 MONTROUGE, FRANCE

SERIAL NUMBER: 10865682
PATENT NUMBER:

FILING DATE: 06/10/2004
ISSUE DATE:

TITLE: ANALYSIS OF THE ALTERNANS CYCLE TO CYCLE AND/OR THE VARIABILITY OF THE VENTRICULAR REPOLARIZATION WAVE IN AN ECG SIGNAL

TAB D

OPAP
DEC 0 2 2010
PATENT & TRADEMARK OFFICE

PART B - FEE(S) TRANSMITTAL

Complete and mail this form, together with applicable fee(s), to: Mail

Mail Stop ISSUE FEE
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Or Fax (571) 273-2885

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Block 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (note: Legibly mark-up with any corrections or use Block 1)

ORRICK, HERRINGTON & SUTCLIFFE, LLP
IP PROSECUTION DEPARTMENT
4 PARK PLAZA
SUITE 1600
IRVINE, CA 92614-2558

Note: A certificate of mailing can only be used for domestic mailing of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawings, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in tan envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

Sharon B. Leachman	(Depositor's name)
	(Signature)
August 16, 2006	(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/865,682	06/10/2004	Jean-Philippe Couderc	8707-2176	8346

TITLE OF INVENTION: ANALYSIS OF THE ALTERNANS CYCLE TO CYCLE AND/OR THE VARIABILITY OF THE VENTRICULAR REPOLARIZATION WAVE IN AN ECG SIGNAL

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DUE DATE
Nonprovisional	NO	$1400	$300	$1700	08/16/2006

EXAMINER	ART UNIT	CLASS-SUBCLASS
Heller, Tammie K	3766	600-515000

1. Change of Correspondence address or indication of "Fee Address" (37 CFR 1.363).
☒ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
☐ "Fee Address" indication (or "fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of Customer Number is required.**

2. For printing on the patent front page, list (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1. Orrick Herrington &
2. Sutcliffe, LLP
3.

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. Inclusion of assignee data is only appropriate when an assignment has been previously submitted to the USPTO or is being submitted under separate cover. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: ELA Medical S.A.S.
98 Rue Maurice-Arnoux
F-92120, Montrouge, France

Please check the appropriate assignee category or categories (will no be printed on the patent) ☐ individual ☒ corporation or other private group entity ☐ government

4a. The following fee(s) are enclosed:
☒ Issue Fee
☒ Publication Fee
☒ Advance Order - # of Copies Eight

4b. Payment of Fee(s)
☐ A check in the amount of the fee(s) is enclosed
☐ Payment by credit card. Form PTO-2038 is attached
☒ The Director is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number 15-0665 (enclose an extra copy of this form).

5. **Change of Entity Status** (from status indicated above)
☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. b. ☐ Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

The Director of the USPTO is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above. NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the application; a registered attorney or agent; or the assignee or other party in interest as shown by records of the United States Patent and Trademark Office.

Authorized Signature Veronica Mullally Date August 16, 2006

Typed or Printed name VERONICA MULLALLY Registration No. 46,059

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is the file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Alexandria, Virginia 22313-1450.
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

OPAP IAP6
DEC 0 2 2010
PATENT & TRADEMARK OFFICE

Electronic Acknowledgement Receipt

EFS ID:	1157793
Application Number:	10865682
Confirmation Number:	8346
Title of Invention:	ANALYSIS OF THE ALTERNANS CYCLE TO CYCLE AND/OR THE VARIABILITY OF THE VENTRICULAR REPOLARIZATION WAVE IN AN ECG SIGNAL
First Named Inventor:	Jean Philippe Couderc
Correspondence Address:	Robert M. Isackson Orrick, Herrington & Sutcliffe LLP 666 Fifth Avenue - New York NY 10103 US 2125065280 -
Filer:	Robert M. Isackson./Sharon Leachman
Filer Authorized By:	Robert M. Isackson.
Attorney Docket Number:	8707-2176
Receipt Date:	16-AUG-2006
Filing Date:	10-JUN-2004
Time Stamp:	17:43:40
Application Type:	Utility
International Application Number:	

Payment information:

Submitted with Payment	yes
Payment was successfully received in RAM	$ 1420

Issue Fee Acknowledgment Receipt

RAM confirmation Number	383
Deposit Account	150665
The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows: Charge any Additional Fees required under 37 C.F.R. Section 1.16 and 1.17	

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)	Multi Part	Pages
1	Change of Address	8707-2176AddressCHG.pdf	29695	no	1
Warnings:					
Information:					
2	Issue Fee Payment Recorded	8707-2176ISSUEFee.pdf	92500	no	1
Warnings:					
Information:					
3	Fee Worksheet (PTO-875)	fee-info.pdf	8374	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	130569		

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111
If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371
If a timely submission to enter the national stage of an International application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

WPAT, PC
INTELLECTUAL PROPERTY ATTORNEYS
7225 VEVERLY ST.
ANNANDALE VA 22003

MAILED

AUG 10 2010

OFFICE OF PETITIONS

In re Application of	:	
Chi-Mao Hung et al	:	
Application No. 10/865,941	:	DECISION GRANTING PETITION
Filed: June 14, 2004	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 67507-001	:	

This is a decision on the petition filed August 3, 2010, which is being treated under 37 CFR 1.313(c)(2), to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on July 28, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Petitioner is encouraged to note 37 CFR 1.4(c), where each distinct subject matter should be filed separately.

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

This application is being referred to Technology Center AU 2629 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
www.uspto.gov

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

MAILED

AUG 16 2010

OFFICE OF PETITIONS

In re Application of :
Chapman, et al. :
Application No. 10/865,954 : ON APPLICATION FOR
Filed: June 11, 2004 : PATENT TERM ADJUSTMENT
Attorney Docket No. 09991.0017 :

This is in response to the "NOTICE OF POSSIBLE PTO ERROR IN THE DETERMINATION OF PATENT TERM ADJUSTMENT AND REQUEST FOR REVIEW OF CALCULATION," filed May 4, 2010. The correspondence will be treated as a petition under 37 CFR 1.705(b).

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

The Office has updated the PALM screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is **five hundred eight (508) days**. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On March 8, 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 is 522 days. On May 4, 2010, applicants submitted the instant petition. Applicants disclose that they believe that the patent term adjustment indicated in the Determination of Patent Term Adjustment is incorrect and should be recalculated. Applicants state that it appears that the PTA Calculations in Private PAIR incorrectly reflects the date of receipt of a Request for Continued Examination (RCE) as October 17, 2007, instead of November 2, 2007.

A review of the application history reveals that applicants are correct. The Office incorrectly entered the date of receipt of the RCE in the PTA Calculations as October 17, 2007, instead of

November 2, 2007.[1] Thus, the date of November 2, 2007, not October 17, 2007, should have been used for the purpose of calculating patent term adjustment.

In accordance with 37 CFR 1.702(a)(2), the period of adjustment of the term of the patent should have been increased by 2 days (not 16 days), counting the number of days in the period beginning on the day after the date that is four months after the filing of the RCE, March 3, 2008, and ending on the date the non-final Office action was mailed, March 4, 2008. Accordingly, the period of adjustment of 16 days will be removed and a period of adjustment of 2 days will be entered.

In view thereof, the correct patent term adjustment at the time of mailing of the notice of allowance is **five hundred eight (508) days** ([554+2+13] 569 days of Office delay - 61 days of applicant delay).

The required $200.00 fee under 37 CFR 1.18(e) will be charged to deposit account no. 06-0916.

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 decision should be directed to Shirene Willis Brantley, Senior Petitions Attorney, at (571) 272-3230.

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of REVISED PALM screen

[1] It is noted that the Image File Wrapper for the instant application indicates the date of receipt of the RCE as November 2, 2007.

Day : Saturday
Date: 8/14/2010

PALM INTRANET

Time: 14:42:49

PTA Calculations for Application: 10/865954			
Application Filing Date:	06/11/2004	PTO Delay (PTO):	583
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	61
Post-Issue Petitions:	0	Total PTA (days):	508
PTO Delay Adjustment:	-14		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
105	08/14/2010	ADJUSTMENT OF PTA CALCULATION BY PTO		14	
96	03/08/2010	MAIL NOTICE OF ALLOWANCE			
95	03/05/2010	ISSUE REVISION COMPLETED			
94	03/04/2010	DOCUMENT VERIFICATION			
93	03/04/2010	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
92	03/04/2010	CASE DOCKETED TO EXAMINER IN GAU			
91	03/03/2010	NOTICE OF ALLOWABILITY			
89	02/04/2010	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
88	02/04/2010	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
87	02/04/2010	REFERENCE CAPTURE ON IDS			
86	02/04/2010	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	83
85	02/05/2010	DATE FORWARDED TO EXAMINER			
84	02/04/2010	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
83	02/04/2010	REQUEST FOR CONTINUED EXAMINATION (RCE)			
82	02/05/2010	DISPOSAL FOR A RCE / CPA / R129			
81	02/04/2010	WORKFLOW - REQUEST FOR RCE - BEGIN			
80	01/13/2010	MAIL ADVISORY ACTION (PTOL - 303)			
79	01/12/2010	ADVISORY ACTION (PTOL-303)			
78	01/07/2010	DATE FORWARDED TO EXAMINER			
77	12/30/2009	AMENDMENT AFTER FINAL REJECTION			
76	11/05/2009	MAIL FINAL REJECTION (PTOL - 326)	13		73
75	11/04/2009	FINAL REJECTION			

74	08/27/2009	DATE FORWARDED TO EXAMINER			
73	06/23/2009	RESPONSE AFTER NON-FINAL ACTION			
72	03/23/2009	MAIL NON-FINAL REJECTION			
71	03/17/2009	NON-FINAL REJECTION			
69	01/14/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
68	01/14/2009	REFERENCE CAPTURE ON IDS			
67	01/14/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
66	01/22/2009	DATE FORWARDED TO EXAMINER			
65	01/14/2009	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
64	01/22/2009	DATE FORWARDED TO EXAMINER			
63	01/14/2009	REQUEST FOR CONTINUED EXAMINATION (RCE)		61	58
62	01/22/2009	DISPOSAL FOR A RCE / CPA / R129			
61	01/14/2009	REQUEST FOR EXTENSION OF TIME - GRANTED			
60	01/14/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
59	01/14/2009	WORKFLOW - REQUEST FOR RCE - BEGIN			
58	08/14/2008	MAIL FINAL REJECTION (PTOL - 326)			
57	08/14/2008	FINAL REJECTION			
56	06/14/2008	DATE FORWARDED TO EXAMINER			
55	05/12/2008	RESPONSE AFTER NON-FINAL ACTION			
53	03/04/2008	MAIL NON-FINAL REJECTION	16		44
52	02/26/2008	NON-FINAL REJECTION			
47	12/20/2007	DATE FORWARDED TO EXAMINER			
46	11/02/2007	RCE- AF PROCESSED			
45	12/20/2007	DATE FORWARDED TO EXAMINER			
44	10/17/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
43	12/20/2007	DISPOSAL FOR A RCE / CPA / R129			
42	11/02/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
41	10/17/2007	MAIL ADVISORY ACTION (PTOL - 303)			
40	10/17/2007	ADVISORY ACTION (PTOL-303)			
39	10/13/2007	DATE FORWARDED TO EXAMINER			
38	10/09/2007	AMENDMENT AFTER FINAL REJECTION			
37	08/06/2007	MAIL FINAL REJECTION (PTOL - 326)			

36	08/03/2007	FINAL REJECTION			
35	05/14/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
34	05/14/2007	REFERENCE CAPTURE ON IDS			
33	05/14/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	31
32	06/02/2007	DATE FORWARDED TO EXAMINER			
31	05/14/2007	RESPONSE AFTER NON-FINAL ACTION			
30	05/14/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
29	02/16/2007	MAIL NON-FINAL REJECTION	554		-1
28	02/15/2007	NON-FINAL REJECTION			
27	04/22/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
26	01/29/2007	CASE DOCKETED TO EXAMINER IN GAU			
25	12/14/2006	TRANSFER INQUIRY TO GAU			
24	11/13/2006	TRANSFER INQUIRY TO GAU			
23	11/08/2006	TRANSFER INQUIRY TO GAU			
22	11/08/2006	CORRESPONDENCE ADDRESS CHANGE			
21	11/08/2006	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
20	10/24/2006	CASE DOCKETED TO EXAMINER IN GAU			
19	02/28/2006	CASE DOCKETED TO EXAMINER IN GAU			
18	06/21/2005	CASE DOCKETED TO EXAMINER IN GAU			
17	06/08/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
16	06/08/2005	CASE DOCKETED TO EXAMINER IN GAU			
15.7	04/22/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15	04/22/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
14	11/17/2004	APPLICATION RETURN FROM OIPE			
13	11/17/2004	APPLICATION RETURN TO OIPE			
12	11/17/2004	APPLICATION DISPATCHED FROM OIPE			
11	11/17/2004	APPLICATION IS NOW COMPLETE			
10	11/03/2004	ADDITIONAL APPLICATION FILING FEES			
9	11/03/2004	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
8	10/25/2004	NOTICE MAILED--APPLICATION INCOMPLETE--			

		FILING DATE ASSIGNED			
6	06/11/2004	PGPUBS NONPUB REQUEST			
5	08/10/2004	CLEARED BY L&R (LARS)			
4	07/27/2004	REFERRED TO LEVEL 2 (LARS) BY OIPE CSR			
3	07/27/2004	CASE CLASSIFIED BY OIPE			
2	07/11/2004	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	06/11/2004	INITIAL EXAM TEAM NN			

Search Another: Application# [ ] Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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

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DEC 28 2010

OFFICE OF PETITIONS

In re Application of :
Evan C. Unger et al. :
Application No. 10/865,972 : DECISION ON PETITION
Filed: June 10, 2004 :
Attorney Docket No. 122069.00065 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 9, 2010, 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 May 5, 2008. 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 41.37(b). As no claim was allowed, the application became abandoned on July 6, 2008. See MPEP 1215.04. A Notice of Abandonment was mailed on January 28, 2009

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a RCE (Request for Continued Examination, with the required fee of $810, (2) the petition fee of $1,620, and (3) a proper statement of unintentional delay. Accordingly, the RCE is accepted as being unintentionally delayed.

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 1618 for appropriate action by the Examiner in the normal course of business on the RCE received November 9, 2010.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

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JUL 05 2011

OFFICE OF PETITIONS

In re Patent No. 7,194,960
Issue Date: March 27, 2007
Application No. 10/866,031
Filed: June 10, 2004
Attorney Docket No. 81319/7304

ON PETITION

This is a decision in response to a petition filed June 2, 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 28, 2011, 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).

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.

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.

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.

A. Kelley-Collier

Alicia Kelley-Collier
Petitions Examiner
Office of Petitions

cc: RICHARD CLARKE
3755 AVOCADO BLVD # 1000
LA MESA, CA 91941

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

Mail Date: 08/31/2010

Applicant	: Jiong Sun	: DECISION ON REQUEST FOR
Patent Number	: 7660882	: RECALCULATION of PATENT
Issue Date	: 02/09/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/866,067	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/10/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1609** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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OFFICE OF PETITIONS

In re Application :
Martti Moisio et al. :
Application No. 10/866,141 : DECISION ON APPLICATION
Filed: June 11, 2004 : FOR PATENT TERM ADJUSTMENT
Attorney Docket No. :
C1102.70019US01

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR §1.705 filed October 27, 2011. Applicant requests that the determination of patent term adjustment be corrected from 272 to 963 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 recent court decision in Wyeth v. Dudas, No. 07-1492 (D.D.C. September 30, 2008).[1]

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.

[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).

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.[2]

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

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 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

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

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CLEVELAND, OH 44115-1414

Mail Date: 08/11/2010

Applicant	: Girish R. Krishna	: DECISION ON REQUEST FOR
Patent Number	: 7665133	: RECALCULATION of PATENT
Issue Date	: 02/16/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/866,337	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/12/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1081** 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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SUITE 550
SAN JOSE CA 95110-1083

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OFFICE OF PETITIONS

In re Application of	:	
Amit GANESH et al.	:	
Application No. 10/866,344	:	DECISION ON PETITION
Filed: June 10, 2004	:	
Attorney Docket No. 50277-2242	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 15, 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 February 14, 2011, as required by the Notice of Allowance and Fee(s) Due, mailed November 12, 2010. Accordingly, the date of abandonment of this application is February 15, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,510.00 and the publication fee of $300.00, (2) the petition fee of $1,620.00; and (3) a proper statement of unintentional delay. Accordingly, the issue and publication fees are accepted as having been unintentionally delayed.

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

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

Michelle R. Eason
Paralegal Specialist
Office of Petitions

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OFFICE OF PETITIONS

In re Patent No. 7,499,494	:	DECISION ON REQUEST
Nair et al.	:	FOR
Issue Date: March 3, 2009	:	RECONSIDERATION OF
Application No. 10/866,460	:	PATENT TERM ADJUSTMENT
Filed: June 10, 2004	:	and
Atty Docket No. 132548	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on May 4, 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 and ninety-two (1092) days. This petition was recently forwarded to the undersigned for consideration.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.** The patent term adjustment is corrected to indicate that the term of the above-identified patent is extended or adjusted by **one thousand and ninety-one (1091)** days.

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on June 11, 2007 and ends on September 7, 2008, the day *before* the RCE was filed. See 35 U.S.C. 154(b)(1)(B)(i). Thus, considering overlap, the "B" delay is 269, not 270 days. The

patent term adjustment is now increased from 822 days to 1091 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 $200.00 fee set forth in 37 CFR 1.18(e) was submitted on December 9, 2008. No additional fees are required.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand and ninety-one (1091)** days.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,499,494 B2

DATED : **March 3, 2009** **DRAFT**

INVENTOR(S) : Nair 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 822 days

Delete the phrase "by 822 days" and insert – by 1091 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

NORTEL
INTELLECTUAL PROPERTY LAW GROUP
2221 LAKESIDE BLVD
MS 991/14B50
RICHARDSON, TX 75082-4399

MAILED

FEB 01 2011

OFFICE OF PETITIONS

In re Application of :
John H. Yoakum et al :
Application No. 10/866,482 : ON PETITION
Filed: June 12, 2004 :
Attorney Docket No. 7000-330

This is a decision on the petition, filed January 28, 2011 under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on January 27, 2011 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

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

This matter is being referred to Technology Center AU 2156 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed amendment.

/Irvin Dingle/
Irvin Dingle
Petitions Examiner
Office of Petitions

cc: Anthony J. Josephson
Withrow & Terranova, P.L.L.C.
100 Regency Forest Drive, Suite 160
Cary, NC 27518

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
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WITHROW & TERRANOVA, P.L.L.C.
100 REGENCY FOREST DRIVE
SUITE 160
CARY NC 27518

AUG 30 2011

In re Application of
YOAKUM, JOHN H. et al. :
Application No. 10/866,482 : **DECISION ON PETITION**
Filed: June 12, 2004 :
Attorney Docket No.: 7000-330 :

This is a decision on the Petition To Withdraw Holding Of Abandonment Based On Failure To Receive Office Action, received in the United States Patent and Trademark Office (USPTO) on July 13, 2011.

The petition is **GRANTED**.

The application was held abandoned for failure to timely submit the Issue fee and Publication fee as required by the Notice of Allowance mailed February 8, 2011 which set forth a three (3) month statutory period for reply. The Notice of Abandonment was mailed on May 24, 2011.

Petitioner attests that the Notice of Allowability mailed on February 8, 2011 was not received. Petitioner also included a statement that attested the Notice was not received.

In view of the foregoing, the holding of abandonment for failure to timely submit the issue fee is hereby withdrawn and the application is restored to pending status. The application will be forwarded to the Technology Center for the remailing of the Notice of Allowance.

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 09/01/10

TO SPE OF : ART UNIT 1646

SUBJECT : Request for Certificate of Correction for Appl. No.: 10866540 Patent No.: 7732572

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

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

Lamonte Newsome
Certificates of Correction Branch
703-756-1574

Thank You For Your Assistance

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

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

Comments: _____

_____

_____

_____

_____

Gary Benzion
SPE

1646
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/866,606	06/10/2004	Aladar A. Szalay	33316.04803.US21 / 4803B	3074

13565 7590 08/02/2011

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

EXAMINER	
CHEN, SHIN LIN	

ART UNIT	PAPER NUMBER
1632	

MAIL DATE	DELIVERY MODE
08/02/2011	PAPER

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

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

UNITED STATES PATENT AND
TRADEMARK OFFICE

AUG 0 2 2011

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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McKenna Long & Aldridge LLP
4435 Eastgate Mall
Suite 400
San Diego CA 92121

In re Application of:
Szalay et al.
Serial No.: 10/866,606
Filed: June 10, 2004
Attorney Docket No: **33316.04803.US21 / 4803B**

: PETITION DECISION

This is in response to the petition filed on July 5, 2011 under 3 7 CFR 1.181 to correct the misclassification of submitted Information Disclosure Statements. Specifically, applicants request correction of the classification in PAIR of the Information Disclosure Statements submitted on September 18, 2008; November 12, 2008; January 19, 2010; August 6, 2010; and April 29, 2011 in connection with the above-referenced application and consideration by the Examiner of the documents and information contained therein.

Applicants argue the "Information Disclosure Statements were submitted in connection with the above-captioned application on September 18, 2008; November 12, 2008; January 19, 2010; August 6, 2010; and April 29, 2011. Each Information Disclosure Statement was prepared in accordance with 37 C.F.R 1.97 and 1.98. As required under 37 C.F.R 1.98, each Information Disclosure Statement contained 1) a list of all patents, publications, applications, or other information submitted for consideration by the Office, including a column that provides a space next to each document to be considered, for the examiner's initials and a heading that clearly indicates that the list is an Information Disclosure Statement; and 2) legible copies of all items listed. The items either were in English or a translation was provided. A copy of the misclassified Information Disclosure Statements filed on September 18, 2008; November 12, 2008; January 19, 2010; August 6, 2010; and April 29, 2011 is attached.

The submitted Information Disclosure Statement included a tabular Form PTO-1449, which was classified as an "IDS," and a written disclosure of information. In each instance, the written disclosure of information was misclassified in PAIR as a "Transmittal Letter" (September 18, 2008 "Transmittal Letter" of 5 pages; November 12, 2008, "Transmittal Letter" of 14 pages; January 19, 2010, "Transmittal Letter" of 6 pages; August 6, 2010, "Transmittal Letter" of 4 pages; and April 29, 2011, "Transmittal Letter" of 2 pages). Consequently, the information contained therein may not be considered or reviewed by the Examiner."

Applicants' argument has been accorded careful consideration and is persuasive. PAIR will be corrected to reflect the misclassification of the submitted Information Disclosure Statements of September 18, 2008; November 12, 2008; January 19, 2010; August 6, 2010; and April 29, 2011.

DECISION

The petition is **GRANTED.**

The examiner is instructed to consider the IDS of September 18, 2008; November 12, 2008; January 19, 2010; August 6, 2010; and April 29, 2011 which was misclassified in PAIR as a "Transmittal Letter" (September 18, 2008 "Transmittal Letter" of 5 pages; November 12, 2008, "Transmittal Letter" of 14 pages; January 19, 2010, "Transmittal Letter" of 6 pages; August 6, 2010, "Transmittal Letter" of 4 pages; and April 29, 2011, "Transmittal Letter" of 2 pages).

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

/MC Seidel/
Marianne C. Seidel, Quality Assurance Specialist
Technology Center 1600

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KEY SAFETY SYSTEMS, INC.
MARKELL SELTZMAN, PATENT DEPT.
7000 NINETEEN MILE ROAD
STERLING HEIGHTS MI 48314

MAILED

FEB 15 2011

OFFICE OF PETITIONS

In re Application of :
MENALDO, et al :
Application No. 10/866,811 : DECISION ON PETITION
Filed: June 15, 2004 :
Attorney Docket No. 1511 US :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 14, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to submit corrected drawings in a timely manner in reply to the Notice of Allowance and Fee(s) Due, mailed October 18, 2007, which set a period for reply of three (3) months. Accordingly, this application became abandoned on January 19, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of corrected drawings, (2) the petition fee of $1540; and (3) a statement of unintentional delay.

The Examiner assigned to this application has approved the corrected drawings filed with the petition on March 14, 2008.

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

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

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

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

cc: LONNIE R. DRAYER
KEY SAFETY SYSTEMS, INC.
5300 ALLEN K. BREED HIGHWAY,
LAKELAND, FL 33811

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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WOODCOCK WASHBURN LLP (MICROSOFT CORPORATION)
CIRA CENTRE, 12TH FLOOR
2929 ARCH STREET
PHILADELPHIA PA 19104-2891

MAILED

SEP 20 2010

OFFICE OF PETITIONS

In re Application of
Larry A. Morris et al.
Application No. 10/866,861
Filed: June 14, 2004
Attorney Docket No.:
MSFT-6441/150827.02

: DECISION ON APPLICATION FOR
: PATENT TERM ADJUSTMENT

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN NOTICE OF ALLOWANCE PURSUANT TO 37 CFR § 1.705 and STATEMENT OF FACTS IN SUPPORT THEREOF", filed March 17, 2010. Applicants request that the initial determination of patent term adjustment be corrected from zero (0) days to one thousand five hundred thirteen (1513) days.

The request for correction of the initial determination of patent term adjustment (PTA) is GRANTED. The determination of PTA at the time of the mailing of the Notice of Allowance is one thousand five hundred thirteen (1513) days.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is one thousand five hundred thirteen (1513) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On February 4, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. §154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is zero (0) days. The initial determination did not include any adjustment for PTO delay pursuant to 35 U.S.C. 154(b)(1)(A)(I) and 37 CFR §§1.702(a)(1) or any adjustment of applicant delay pursuant to 37 C.F.R. §1.704(b)

Applicant disputes the determination and argues that the initial determination should include a period of adjustment for Office failure to mail a first action under 35 U.S.C. 132. Applicant asserts that a non-Final Office Action was mailed October 5, 2009 and thus a period of adjustment in the amount of 1513 should be accorded for examination delay.

A review of the application history confirms that a non-Final Office Action was mailed October 5, 2009 and thus, the number of days in the period of adjustment pursuant to § 1.703(a)(1) for the Office's mailing of a first action under 35 U.S.C. 132 on October 5, 2009, is 1513 days. This period is counted beginning on the day after the date that is fourteen months after the filing date, and ending on the date of the mailing of the first action under 35 U.S.C. 132, October 5, 2009.

The correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is therefore one thousand five hundred thirteen (1513) 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 Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of Revised PALM Screen

Patent Term Adjustments

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

Application Number*: 10866861 Search Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application: 10866861

Application Filing Date	06/14/2004	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	0
A Delays	0	PTO Manual Adjustment	1513
B Delays	0	Applicant Delay (APPL)	0
C Delays	0	Total PTA (days)	1513

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
52	09/20/2010		P026	Adjustment of PTA Calculation by PTO	1513		0
35	02/04/2010		MN/=.	Mail Notice of Allowance			0
34	02/02/2010		IREV	Issue Revision Completed			0
33	02/02/2010		DVER	Document Verification			0
32	02/02/2010		N/=.	Notice of Allowance Data Verification Completed			0
30	02/01/2010		EX.A	Examiner's Amendment Communication			0
29	02/01/2010		CNTA	Notice of Allowability			0
31	01/27/2010		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
28	11/27/2009		FWOX	Date Forwarded to Examiner			0
27	11/04/2009		A...	Response after Non-Final Action			0
26	10/05/2009		MCTNF	Mail Non-Final Rejection			0
25	10/01/2009		CTNF	Non-Final Rejection			0
20	06/10/2009		PA..	Change in Power of Attorney (May Include Associate POA)			0
19	06/05/2009		C.AD	Correspondence Address Change			0
18	10/17/2007		W525	Withdraw Flagged for 5/25			0
17	10/15/2007		F525	Flagged for 5/25			0
16	08/01/2006		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
13	09/09/2005		DOCK	Case Docketed to Examiner in GAU			0
12	08/05/2005		P574	Paralegal TD Accepted			0
11	08/05/2005		N574	Notification of Terminal Disclaimer - Accepted			0
10	08/05/2005		DOCK	Case Docketed to Examiner in GAU			0
9	07/18/2005		DIST	Terminal Disclaimer Filed			0
21	08/12/2004		IDSC	Information Disclosure Statement considered			0
15	08/12/2004		RCAP	Reference capture on IDS			0
14.7	08/12/2004		M844	Information Disclosure Statement (IDS) Filed			0
14	08/12/2004		WIDS	Information Disclosure Statement (IDS) Filed			0
8	08/04/2004		WROIPE	Application Return from OIPE			0
7	08/04/2004		ROIPE	Application Return TO OIPE			0
5	08/04/2004		COMP	Application Is Now Complete			0
6	08/03/2004		OIPE	Application Dispatched from OIPE			0
4	07/21/2004		L194	Cleared by OIPE CSR			0
3	07/21/2004		CLSS	CASE CLASSIFIED BY OIPE			0
2	06/30/2004		SCAN	IFW Scan & PACR Auto Security Review			0
1	06/14/2004		IEXX	Initial Exam Team nn			0

Export to: Excel

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EDWARDS LIFESCIENCES CORPORATION
LEGAL DEPARTMENT
ONE EDWARDS WAY
IRVINE CA 92614

MAILED

APR 11 2011

OFFICE OF PETITIONS

In re Application of :
Robert M. Vidlund et al. :
Patent No. 7,077,862 :
Issued: July 18, 2006 :
Application No. 10/866,990 :
Filed: June 15, 2004 :
Attorney Docket No. **PVI-6150C** :

NOTICE

This is a notice regarding your request filed March 2, 2011, for acceptance of a fee deficiency submission under 37 CFR 1.28.

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

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

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

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

JoAnne Burke
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 08/24/11

TO SPE OF : ART UNIT 2465

SUBJECT : Request for Certificate of Correction for Appl. No.: 10866998 Patent No.: 7724750

CofC mailroom date: 08/16/11

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580
You can fax the Directors/SPE response to 571-273-3421

Note: _____

_____

_____ Lamonte Newsome

Certificates of Correction Branch

571-272-3421

Thank You For Your Assistance

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

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

Comments: _____

_____

_____

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

/Marsha D. Banks-Harold/

2465

SPE **Art Unit**

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)
7152932	2006-12-26	10/867,251	2004-06-14	03-MTC-115

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	/Paul V. Keller/	Date (YYYY-MM-DD)	2011-02-09
Name	Paul V, Keller	Registration Number	42713

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. 7152932
Issue Date: December 26,2006
Application No. 10867251
Filed: June 14,2004
Attorney Docket No. 03-MTC-115

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

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

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of February 9,2011 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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CARGILL & ASSOCIATES, P.L.L.C.
56 MACOMB PLACE
MT. CLEMENS MI 48043

MAILED

FEB 18 2011

OFFICE OF PETITIONS

In re Application of :
McGinnis et al. :
Application No. 10/867254 :
Filing or 371(c) Date: 06/14/2004 : ON PETITION
Attorney Docket Number: McGinnis P-303 :

This is a decision on the petition under 37 CFR 1.137(b), filed November 19, 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 non-final Office action, mailed February 3, 2010. The Office action set a three (3) month period for reply from the mail date of the Office action. Extensions of time were available under 37 CFR 1.136(a). No reply having been received, the application became abandoned on May 4, 2010. A Notice of Abandonment was mailed October 7, 2010.

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

The application is being referred to Technology Center Art Unit 3728 for processing of the Amendment filed with the petition in due course.

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

/DLW/

Derek L. Woods
Attorney
Office of Petitions

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/867,316	06/15/2004	Henri Duong		3262

7590 08/31/2011

Henri Duong
316 1/2 E Glendon way
Alhambra, CA 91801

EXAMINER	
BERGIN, JAMES S	

ART UNIT	PAPER NUMBER
3641	

MAIL DATE	DELIVERY MODE
08/31/2011	PAPER

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

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

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AUG 31 2011

Henri Duong
316 ½ E. Glendon Way
Alhambra, CA 91801

In re application of : **DECISION ON PETITION**
Henri Duong : **TO MAKE SPECIAL**
Application No. 10/867,316 : **(ENVIRONMENT)**
Filed: June 15, 2004 :
For: ANESTHETIC BULLETS USING FOR GUNS AND AESTHETIC WEAPONS

This is a decision on the renewed petition filed on October 13, 2005 under 37 CFR 1.102 (c) to make the above-identified application special under the accelerated examination procedure set forth in MPEP 708.02, Section V: Environmental Quality. The delay in treating this petition is sincerely regretted.

A grantable petition to make an application special under 37 C. F. R. 1.102(c), MPEP 708.02, Section V for an invention which materially enhances the quality of the environment of mankind by contributing to the restoration or maintenance of the basic life-sustaining elements-air, water and soil, must be accompanied by affidavits or declaration under 37 CFR 1.102 by the applicant or his attorney explaining how the invention contributes to the maintenance or restoration of one of these life sustaining elements.

Applicant's invention relates to an anesthetic-type of bullet.

The thrust of applicant's renewed petition is that the use of anesthetic weapons and bullets would prevent the dropping of bombs and their associated scattering of harmful chemicals and avoid the immense pollution of air, water and soil.

The arguments by applicant are insufficient to grant a petition under 37 CFR 1.102 (c) to make the above-identified application special under the accelerated examination procedure set forth in MPEP 708.02, Section V: Environmental Quality. In this regard, petitioner's reasoning for granting on either of the grounds in the petition is considered to be speculative, at best. It is not clear that the adoption of applicant's invention would actually reduce the use of explosive bombs, nor even that the bombs currently dropped scatter harmful chemicals as alleged. As such, petitioner has failed to show a direct link between the use of the above-noted application and either a material enhancement in the quality of the environment of mankind by contributing

to the restoration or maintenance of the basic life-sustaining elements-air, water and soil, or a material contribution to the utilization and conservation of energy sources.

The petition to make special based on Environmental Quality is **DENIED.**

The application will be returned to the examiner's docket to await treatment on the merits in the normal order of examination.

Steven N. Meyers
Quality Assurance Specialist
Technology Center 3600
(571) 272-6611

snm/snm: 8/30/11

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MAY 19 2011

OFFICE OF PETITIONS

Henri Duong
316 1/2 E Glendon way
Alhambra CA 91801

In re Application of	:	
Henri Duong	:	
Application No. 10/867,330	:	DECISION ON PETITION
Filed: June 15, 2004	:	
Attorney Docket No.	:	

This is a decision on the renewed petition under 37 CFR 1.102, filed December 9, 2005, to make the above-identified application special as set forth in MPEP 708.02(I).

The petition is **GRANTED**.

This application is being referred Technology Center 2627.

Carl Friedman
Petitions Examiner
Office of Petitions

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/867,330	06/15/2004	Henri Duong		3093

7590 06/09/2011

Henri Duong
316 1/2 E Glendon way
Alhambra, CA 91801

EXAMINER	
LAMB, CHRISTOPHER RAY	
ART UNIT	**PAPER NUMBER**
2627	

MAIL DATE	DELIVERY MODE
06/09/2011	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.

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Henri Duong
316 1/2 E Glendon way
Alhambra CA 91801

In re Application of:
DUONG, HENRI
Application Serial No.: 10/867,330
Filed: June 19, 2006
For: **ALL KINDS OF PRINTING MATERIALS BE RECORDED IN ALL KINDS OF RECORDABLE MATERIALS FOR SALE**

DECISION
ON REQUEST
FOR REFUND

This is a decision on the request filed April 23, 2011 for refund of the $130.00 fee paid for a petition to make the application special originally filed October 12, 2004. The petition to make special was dismissed on December 5, 2005. Subsequently, the petition to make special was granted on May 19, 2011.

The request for refund is **DISMISSED**.

The Director of the United States Patent and Trademark Office has the authority to establish regulations which govern the conduct of proceedings as set forth in 35 USC (2)(b)(2). Petitions to make special are governed by 37 CFR 1.102, a validly promulgated regulation of the USPTO. As a condition for consideration of a petition to make special under 37 CFR 1.102, applicant is required to pay the fee set forth at 37 CFR 1.17(h). Such fee is required whether the petition is granted or not. In this instance, applicant's petition has been considered and granted. This application currently has special status which is maintained until final disposition of the application, either abandonment or issuance of a patent.

Applicant has set forth no facts to support the position that the fee was paid by mistake or in excess. Furthermore, since the petition has been considered and granted, it cannot be said that applicant has not received any benefit from the petition. Accordingly, this petition is dismissed.

The application file will be forwarded to the examiner for appropriate action in due course.

Any inquiry regarding this decision should be directed to Ken Wieder, Quality Assurance Specialist at (571) 272-2986.

John LeGuyder, Director
Technology Center 2600
Communications

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STERNE, KESSLER, GOLDSTEIN &
FOX P.L.L.C.
1100 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

MAILED
DEC 06 2010
OFFICE OF PETITIONS

In re Application of :
De Ruijter et al. :
Application No. 10/867,333 :
Filed: June 14, 2004 :
For: DETERGENT COMPOSITION :
COMPRISING LAURIC SOAP :
:

ON APPLICATION FOR
PATENT TERM ADJUSTMENT

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT DETERMINATION UNDER 37 C.F.R. §1.705(b)" filed July 28, 2010. Applicants request that the determination of patent term adjustment be corrected from zero (0) days to forty-eight (48) days.

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

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is forty-eight **(48)** 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.

On April 29, 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 0 days. The instant application for patent term adjustment was timely filed on July 28, 2010.

Applicants dispute the 134-day reduction for the submission of a response on to the Notice of Non-Compliant Amendment of December

9, 2009. Applicants contend that the Notice of Non-Compliant Amendment was mailed in error. Thus, the reduction of 134 days should be removed.

Applicants' argument has been considered and determined to be convincing. A review of the record shows that the Notice of Non Compliant Amendment was improperly mailed as is referenced by applicants' response on January 8, 2010. As such the 134 day reduction will be removed.

Applicants further state as a consequence of the removal of the 134 days, an adjustment of 123 days should be made for Office delay in mailing the Notice of Allowance in response to the August 27, 2009 response.

Pursuant to 37 CFR 1.703(a)(2), an adjustment of 123 days is warranted. The 123 days is based on the number of days, beginning on the day after the date that is four months after the date a reply under § 1.111 was filed August 27, 2009 and ending on the date of the notice of allowance April 29, 2010.

Lastly, applicants contend an additional 90 day reduction pursuant to 37 CFR 1.704(b) is required for the submission of a request for continued examination (RCE) and amendment on March 24, 2009.

A review of the application history confirms that a period of reduction of 90 days should be entered. 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.

The proper reply, a request for continued examination (RCE) was not received in the Office until March 24, 2009.

Applicants' delay prior to the mailing of the Notice of Allowance is 123 (1 + 2 + 90 + 30) days. Office delay prior to the mailing of the Notice of Allowance is 171 (48 + 123) days.

In view thereof, the correct determination of PTA at the time of the mailing of the notice of allowance is forty-eight **(48)** days.

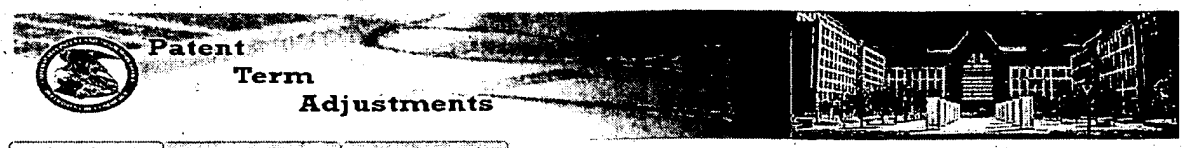
Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and **must** include payment of the required fee under 37 CFR 1.18(e).

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

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

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of REVISED PALM Screen



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

Application Number*: 10867333 Search Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application: 10867333

Application Filing Date	06/14/2004	Overlapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays	48
A Delays	48	PTO Manual Adjustment	167
B Delays	0	Applicant Delay (APPL)	167
C Delays	0	Total PTA (days)	48

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
109	12/03/2010		P028	Adjustment of PTA Calculation by PTO		4	0
108	12/03/2010		P028	Adjustment of PTA Calculation by PTO	123		0
107	12/03/2010		P028	Adjustment of PTA Calculation by PTO	48		0
99	04/29/2010		MN/=	Mail Notice of Allowance			0
98	04/27/2010		IREV	Issue Revision Completed			0
97	04/27/2010		DVER	Document Verification			0
96	04/27/2010		N/D.	Notice of Allowance Data Verification Completed			0
95	04/26/2010		CNTA	Notice of Allowability			0
91	02/13/2010		FWDX	Date Forwarded to Examiner			0
90	01/08/2010	08/27/2009	A...	Response after Non-Final Action		134	81
89	12/09/2009		MINA	Mail Notice of Informal or Non-Responsive Amendment			0
86	10/19/2009		PA.	Change in Power of Attorney (May Include Associate POA)			0
83	09/24/2009		CAD	Correspondence Address Change			0
82	09/24/2009		FWDX	Date Forwarded to Examiner			0
80	08/27/2009		IDSC	Information Disclosure Statement considered			0
85	08/27/2009		RCAP	Reference capture on IDS			0
84	08/27/2009		M844	Information Disclosure Statement (IDS) Filed			0
81.1	08/27/2009		A.I.	Informal or Non-Responsive Amendment after Examiner Action			0
81	08/27/2009	07/28/2009	A...	Response after Non-Final Action		30	78
80	08/27/2009		XT/G	Request for Extension of Time - Granted			0
79	08/27/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
78	04/28/2009		MCTNF	Mail Non-Final Rejection			0
77	04/27/2009		CTNF	Non-Final Rejection			0
70	04/02/2009		MNRAB	Mail Notice of Rescinded Abandonment			0
76	04/01/2009		FWDX	Date Forwarded to Examiner			0
74	04/01/2009		FWDX	Date Forwarded to Examiner			0
72	04/01/2009		ABN9	Disposal for a RCE / CPA / R129			0
69	04/01/2009		NRAB	Notice of Rescinded Abandonment in TCs			0
68	03/30/2009		MABN1	Mail Abandonment for Failure to Respond to Office Action			0
67	03/25/2009		ABN2	Aband. for Failure to Respond to O. A.			0
75	03/24/2009		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
73	03/24/2009		RCEX	Request for Continued Examination (RCE)			0
71	03/24/2009		XT/G	Request for Extension of Time - Granted			0
66	03/24/2009		BRCE	Workflow - Request for RCE - Begin			0
65	09/24/2008	08/07/2008	MCTFR	Mail Final Rejection (PTOL - 326)	48		62
64	07/28/2008		CTFR	Final Rejection			0
63	05/21/2008		FWDX	Date Forwarded to Examiner			0
62	04/07/2008		A...	Response after Non-Final Action			0
61	01/08/2008		MCTNF	Mail Non-Final Rejection			0
60	01/07/2008		CTNF	Non-Final Rejection			0
59	10/29/2007		FWDX	Date Forwarded to Examiner			0
57	10/29/2007		FWDX	Date Forwarded to Examiner			0
55	10/29/2007		ABN9	Disposal for a RCE / CPA / R129			0
58	10/26/2007		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
56	10/26/2007		RCEX	Request for Continued Examination (RCE)			0
54	10/26/2007		BRCE	Workflow - Request for RCE - Begin			0
53	10/05/2007		DOCK	Case Docketed to Examiner in GAU			0
52	09/13/2007		MCTAV	Mail Advisory Action (PTOL - 303)			0
51	09/12/2007		CTAV	Advisory Action (PTOL-303)			0
50	09/12/2007		FWDX	Date Forwarded to Examiner			0
49	09/11/2007		A.NE	Amendment after Final Rejection			0
48	07/26/2007		MCTFR	Mail Final Rejection (PTOL - 326)			0
47	07/23/2007		CTFR	Final Rejection			0
46	05/08/2007		FWDX	Date Forwarded to Examiner			0
45	05/07/2007		A...	Response after Non-Final Action			0
44	02/07/2007		MCTNF	Mail Non-Final Rejection			0
43	02/02/2007		CTNF	Non-Final Rejection			0
42	11/29/2006		FWDX	Date Forwarded to Examiner			0
40	11/29/2006		FWDX	Date Forwarded to Examiner			0
38	11/29/2006		ABN9	Disposal for a RCE / CPA / R129			0
41	11/21/2006		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
39	11/21/2006		RCEX	Request for Continued Examination (RCE)			0
37	11/21/2006		BRCE	Workflow - Request for RCE - Begin			0
36	08/28/2006		MCTFR	Mail Final Rejection (PTOL - 326)			0
35	08/21/2006		CTFR	Final Rejection			0
34	06/07/2006		FWDX	Date Forwarded to Examiner			0
33	06/05/2006		A...	Response after Non-Final Action			0
32	03/07/2006		MCTNF	Mail Non-Final Rejection			0
31	03/06/2006		CTNF	Non-Final Rejection			0
30	12/20/2005		FWDX	Date Forwarded to Examiner			0
28	12/20/2005		FWDX	Date Forwarded to Examiner			0
26	12/20/2005		ABN9	Disposal for a RCE / CPA / R129			0
29	12/14/2005		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
27	12/14/2005	12/12/2005	RCEX	Request for Continued Examination (RCE)		2	24
25	12/14/2005		BRCE	Workflow - Request for RCE - Begin			0
24	09/12/2005		MCTFR	Mail Final Rejection (PTOL - 326)			0
23	09/06/2005		CTFR	Final Rejection			0
20	06/22/2005		FWDX	Date Forwarded to Examiner			0
22	06/09/2005		RCAP	Reference capture on IDS			0
21.7	06/09/2005	06/09/2005	M844	Information Disclosure Statement (IDS) Filed			19
21	06/09/2005		WIDS	Information Disclosure Statement (IDS) Filed			0
19	06/09/2005	06/08/2005	A...	Response after Non-Final Action		1	18
18	03/08/2005		MCTNF	Mail Non-Final Rejection			0
17	03/07/2005		CTNF	Non-Final Rejection			0
16	01/27/2005		RCAP	Reference capture on IDS			0
15.7	01/27/2005		M844	Information Disclosure Statement (IDS) Filed			0
15	01/27/2005		WIDS	Information Disclosure Statement (IDS) Filed			0
13	09/30/2004		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
11	09/27/2004		DOCK	Case Docketed to Examiner in GAU			0
14.7	09/13/2004		M844	Information Disclosure Statement (IDS) Filed			0
14	09/13/2004		WIDS	Information Disclosure Statement (IDS) Filed			0
12	08/30/2004		RQPR	Request for Foreign Priority (Priority Papers May Be Included)			0
10	08/30/2004		RQPR	Request for Foreign Priority (Priority Papers May Be Included)			0
9	08/30/2004		RQPR	Request for Foreign Priority (Priority Papers May Be Included)			0
5	08/04/2004		COMP	Application Is Now Complete			0
8	08/03/2004		WROIPE	Application Return from OIPE			0
7	08/03/2004		RDIPE	Application Return TO OIPE			0
6	08/03/2004		OIPE	Application Dispatched from OIPE			0
4	07/22/2004		L194	Cleared by OIPE CSR			0
3	07/22/2004		CLSS	CASE CLASSIFIED BY OIPE			0
2	06/30/2004		SCAN	IFW Scan & PACR Auto Security Review			0
1	06/14/2004		IEXX	Initial Exam Team nn			0

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ELMORE PATENT LAW GROUP
484 GROTON ROAD
WESTFORD MA 01886

In re Patent No. 7,954,491 : DECISION ON
Hrkach, et al. : REQUEST FOR RECONSIDERATION
Application No. 10/867,375 : of PATENT TERM ADJUSTMENT
Issue Date: June 7, 2011 : and
Filed: June 14, 2004 : NOTICE OF INTENT TO ISSUE
Attorney Docket No. 2685.3000US1 : CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR PATENT TERM ADJUSTMENT", filed August 4, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected from one thousand six hundred sixty-nine (1669) days to one thousand six hundred ninety-five (1695) days.

The petition to correct the patent term adjustment is **GRANTED.**

On June 7, 2011, the instant application matured into U.S. Patent No. 7,954,491 with a patent term adjustment of 1669 days. The Office calculated a patent term adjustment of 1669 days based upon 241 days of "A"' delay (under 37 CFR 1.703(a)(1)), plus 608 days of "B" delay, plus 820 days of "C" delay, minus 0 days of Applicant delay.

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 June 15, 2007 and ended on June 7, 2011 (the day the patent issued), and is 1454 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 820 days, beginning on November 14, 2008, the date of filing of the notice of appeal, and ending on February 11, 2011, the date the Office mailed a Board decision. Thus, B delay is 634 (1454 - 820) days, not 608 days as reflected in PAIR.

In view thereof, the correct number of days of patent term adjustment is **one thousand six hundred ninety-five (1695)** days (241 days of "A" delay, 634 days of "B" delay, and 820 days of "C" 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 six hundred ninety-five (1695) days.**

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

Cliff Congo
Petitions Attorney
Office of Petitions

Enc: draft Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

DRAFT CERTIFICATE OF CORRECTION

PATENT : 7,954,491 B2

DATED : **June 7, 2011**

INVENTOR(S) : Hrkach 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 1669 days.

Delete the phrase "by 1669 days" and insert – by 1695 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

POLSINELLI SHUGHART PC
700 W. 47TH STREET
SUITE 1000
KANSAS CITY MO 64112-1802

MAILED

NOV 0 8 2010

OFFICE OF PETITIONS

In re Application of	:	
John M. Tomich et al	:	
Application No. 10/867,431	:	DECISION GRANTING PETITION
Filed: June 14, 2004	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 30917-CIP1	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed November 5, 2010, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on April 29, 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 1646 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the previously filed amendment.

/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

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.
10/867,435	06/14/2004	Robert E. Dudley	003168.1045	3632

11030 7590 02/24/2011

Baker Botts L.L.P.
30 Rockefeller Plaza
New York, NY 10112-4498

EXAMINER	
HUI, SAN MING R	
ART UNIT	PAPER NUMBER
1628	

MAIL DATE	DELIVERY MODE
02/24/2011	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

FEB 2 4 2011

Baker Botts L.L.P.
30 Rockefeller Plaza
New York NY 10112-4498

In re Application of:
Robert E. Dudley
Serial No.: 10/867,435
Filed: June 14, 2004
Attorney Docket No.: **003168.1045**

: PETITION DECISION

This is in response to the petition under 37 CFR § 1.59(b), filed February 16, 2011, to expunge information from the above identified application. This application has not been allowed.

Petitioner requests that the information submitted (materials filed under seal) to the Patent Office on February 16, 2011, be expunged from the record. Petitioner states either: (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR § 1.17(g) has been paid.

This is an unexamined application. As such the information provided has not been reviewed nor have proceedings in the application been terminated. As stated in M.P.E.P. 724, upon allowance or other action closing prosecution in an application, petition may be made for return of Proprietary information. The information cannot be expunged at this time.

The petition is **DISMISSED**. Petitioner may resubmit the petition subsequent to a Notice of Allowability or *ex parte Quayle* action being mailed in the application. No additional petition fee will be required at that time.

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

/MC Seidel/
Marianne C. Seidel, Quality Assurance Specialist
Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

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

CHARLES THOMASON
FROST BROWN TODD LLC
400 W. MARKET ST.
SUITE 3200
LOUISVILLE KY 40202

MAILED
JUL 18 2011
OFFICE OF PETITIONS

Patent No. 7,204,343	:	
Application No. 10/867,486	:	
Filed: June 14, 2004	:	ON PETITION
Issued: April 17, 2007	:	
Attorney Docket No. SAFT-611	:	

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

The petition is **GRANTED**.

The patent issued April 17, 2007. The last day of the grace period for paying the 3.5-year maintenance fee was April 17, 2011. Therefore, since this petition was filed within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), this petition was timely filed under the provisions of 37 CFR 1.378(c).

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

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

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 07/30/11

TO SPE OF : ART UNIT 2814

SUBJECT : Request for Certificate of Correction for Appl. No.: 10867569 Patent No.: 7329902

CofC mailroom date: 07/19/11

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580
You can fax the Directors/SPE response to 571-273-3421

Note: _____

_____ *Lamonte Newsome*

Certificates of Correction Branch

571-272-3421

Thank You For Your Assistance

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

☑ **Approved** — **All** changes apply.

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

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

Comments: _____

_____

_____

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

2814

SPE Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11/26/10

TO SPE OF : ART UNIT 2828

SUBJECT : Request for Certificate of Correction for Appl. No.: 10867853 Patent No.: 7502567

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

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

Lamonte Newsome

Certificates of Correction Branch

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: _____

_____

_____

_____

_____

MINSUN OH
PRIMARY EXAMINER

2828
Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

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)
7174672	2007-02-13	10867877	2004-06-15	2086-002

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	/Patti J. Jurkovich/	Date (YYYY-MM-DD)	2011-11-08
Name	Patti J. Jurkovich	Registration Number	44813

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. 7174672
Issue Date: February 13,2007
Application No. 10867877
Filed: June 15,2004
Attorney Docket No. 70286USNP

:
: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 PATENT AND TRADEMARK OFFICE

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

CARLSON, GASKEY & OLDS, P.C.
400 WEST MAPLE ROAD
SUITE 350
BIRMINGHAM MI 48009

MAILED

OCT 26 2010

OFFICE OF PETITIONS

In re Patent No. 7,719,127	:	
Application No. 10/868,259	:	
Filed: June 15, 2004	:	ON PETITION
Issued: May 18, 2010	:	
Attorney Docket No. 67,010-086/H2736-WE	:	

This is a decision on the petition, filed October 13, 2010, which is being treated as a request under 37 CFR 3.81(b)[1] to change the assignee on the issued patent.

The request is **DISMISSED.**

37 CFR 3.81(a) permits the patent to issue to the assignee, provided that, at the time the issue fee is paid the name and correct address of an assignee is provided. 37 CFR 3.81(b) permits the patent to issue in the name and correct address of an assignee if the assignment was submitted after payment of the issue fee ***but prior to issuance of a patent***. Patent and Trademark Office assignment records disclose that an assignment correcting the assignee's name from "HAMILTON SUNDSTRAND" to "HAMILTON SUNDSTRAND CORPORATION" was recorded on August 11, 2010, after the date of issuance of this patent.

Accordingly, since the corrective assignment was not submitted for recordation until after issuance of this patent, issuance of a certificate of correction would not be proper. See MPEP Section 307.

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

Joan Olszewski
Petitions Examiner
Office of Petitions

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

UNITED STATES 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.
10/868,259	15 June, 2004	BERTOLOTTI, FABIO PAOLO	67,010-086/H2736-WE

CARLSON, GASKEY & OLDS, P.C.
400 WEST MAPLE ROAD
SUITE 350
BIRMINGHAM, MI 48009

EXAMINER	
Tulsidas C. Patel	
ART UNIT	PAPER
2839	20111021

DATE MAILED:

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

Commissioner for Patents

See attached

/Tulsidas C Patel/
Supervisory Patent Examiner, Art Unit 2839

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20111021

DATE : October 21, 2011

TO SPE OF : ART UNIT 2839

SUBJECT : Request for Certificate of Correction on Patent No.: 7,719,127

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:

See petition decision dated 10/26/2010 related to change of assignee.

/TULSIDAS C PATEL/
Supervisory Patent Examiner.Art Unit 2839

UNITED STATES PATENT AND TRADEMARK OFFICE

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

DIEHL SERVILLA LLC (COG/CGG)
33 WOOD AVE SOUTH
SECOND FLOOR, SUITE 210
ISELIN NJ 08830

MAILED

JUL 19 2011

OFFICE OF PETITIONS

In re Application of :
Schultz et al. :
Application Number: 10/868,367 : ON PETITION
Filing Date: 06/15/2004 :
Attorney Docket Number: C 2959 :
US1 (CGG0106-00US) :

This is a decision in response to the petition under 37 CFR 1.137(b) filed on June 1, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on December 14, 2008, for failure to timely file a proper reply to the Notice of Non-Compliant Amendment (37 CFR 1.121) mailed on November 13, 2008, which set a one (1)-month shortened period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on March 19, 2009.

Receipt of the reply filed on June 1, 2011 is acknowledged.

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.[1] 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.

[1] See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1208 Off. Gaz. Pat. Office 63, 103 (October 21, 1997).

The application is referred to Technology Center Art Unit 1617 for further processing.

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

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 10-25-11

TO SPE OF : ART UNIT 2662

SUBJECT : Request for Certificate of Correction for Appl. No.: 10868407 Patent No.: 7612817

CofC mailroom date: 10-22-11

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 – 9D40-E
Palm Location 7580

Note: _

Omega Lewis

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: _____

_____

_____

_____

SJT — **SPE**

2622 — **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

LAW OFFICE OF GLENN R. SMITH
28626 BROOKHILL ROAD
TRABUCO CANYON, CA 92679-1163

MAILED

AUG 02 2011

OFFICE OF PETITIONS

In re Application of
David Blachley
Application No. 10/868,471
Filed: June 15, 2004
Attorney Docket No. BLACHLEY.1DC1

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed July 11, 2011.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others.

The request was signed by Glen R. Smith on behalf of all attorneys of record who are associated with customer No. 28222. All attorneys/agents associated with the Customer Number 28222 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address indicated below.

There are no pending Office actions at the present time.

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

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

cc: DAVID BLACHLEY
2755 EAST HILL STREET
SIGNAL HILL, CA 90755-1009

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
10/868,471	06/15/2004	David Blachley	BLACHLEY.1DC1

CONFIRMATION NO. 5029

POWER OF ATTORNEY NOTICE

28222
LAW OFFICE OF GLENN R. SMITH
28626 BROOKHILL ROAD
TRABUCO CANYON, CA 92679-1163

OC000000049031408

Date Mailed: 07/28/2011

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 07/11/2011.

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

/amwise/

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

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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MAILED
MAR 19 2012
OFFICE OF PETITIONS

FRASER CLEMENS MARTIN & MILLER LLC
28366 KENSINGTON LANE
PERRYSBURG OH 43551

In re Patent No. 7,685,964	:	
Issue Date: March 30, 2010	:	
Application No. 10/868,617	:	DECISION ON PETITION
Filed: June 15, 2004	:	
Attorney Docket No. 1-16772	:	

This is a decision on the Request For Reconsideration Of Decision On Petition Regarding Request For Certificate Of Correction Pursuant To 37 C.F.R. §1.323, filed August 9, 2010, to add --Komax Holding AG-- as the correct assignee to the Title Page of the Patent via a Certificate of Correction.

The Request For Reconsideration is **DISMISSED**.

Petitioner states "an attempt was made to correct the assignment records by re-recording the original assignment on January 10, 2005" and "the name of the receiving party was incorrectly listed on the submission form as Komax AG". Thereafter, petitioner states "the original assignment was re-recorded on May 20, 2010 to correct the assignment records to reflect Komax Holding AG as the correct assignee name". Contrary to petitioner's statement, U.S. Patent and Trademark Office (USPTO) record shows that a corrective assignment on January 10, 2005 naming **Komax AG** as the assignee. However, the corrective assignment on May 20, 2010 naming **Komax Holding AG** was **re-recorded after the date of issuance of this patent.**

Therefore, since the corrective assignment naming **Komax Holding AG** was not submitted for re-recordation **until after the issuance of this patent**, issuance of the certification of correction would not be proper. Therefore, the request for reconsideration cannot be granted as requested.

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

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

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SEP 21 2010

OFFICE OF PETITIONS

Workman Nydegger
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City UT 84111

In re Application of :
Oyadomari, et al. : DECISION ON PETITION
Application No. 10/868,631 :
Filed: June 14, 2004 :
Atty. Dkt. No.: 15436.148.2 :

This is a decision on the petition under 37 CFR 1.137(b), filed January 26, 2010.

The petition is **GRANTED**.

This application became abandoned September 5, 2009 for failure to timely reply to the Notice of Allowability (Notice) mailed June 4, 2009. The Notice set a three (3) month statutory period of time for reply. Notice of Abandonment was mailed September 16, 2009. A petition under 37 CFR 1.181 was filed October 7, 2009. Petitioner argued that the substitute oath or declaration requirement set forth in the Notice was set forth in error. The petition was dismissed December 29, 2009 on the ground that petitioner failed to timely contest the substitute oath or declaration requirement set forth in the Notice.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, in this instance, petitioner's submission that the substitute oath or declaration is not required; (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.

It is noted that by virtue of examiner's statement contained in the Interview Summary mailed January 14, 2010, a substitute oath or declaration is NOT required.

In view thereof, this application is being forwarded to the Office of Data Management for further processing with an indication in the record that the examiner has found that a substitute oath or declaration is not required.

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

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

PTO/SB/131 (02-10)
Approved for use through 07/31/2010. OMB 0651-0020
U.S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

Attorney Docket Number: 112025-0068C2	
Application Number: 10/868,720	Filing Date (or 371(b) or (f) Date): June 15, 2004
Patent Number: 7,668,166	Issue Date: February 23, 2010
First Named Inventor: Yakov Rekhter	
Title: Peer-Model Support for Virtual Private Networks Having Potentially Overlapping Addresses	

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

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

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

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

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

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

☐ *Total of _____ forms are submitted.

The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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

PTO/SB/131 (02-10)
Approved for use through 07/31/2010. OMB 0651-0020
U.S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

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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CESARI AND MCKENNA, LLP
88 BLACK FALCON AVENUE
BOSTON, MA 02210

Mail Date: 08/13/2010

Applicant	: Yakov Rekhter	: DECISION ON REQUEST FOR
Patent Number	: 7668166	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/868,720	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/15/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1083** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/868,729	06/15/2004	Peter John Gavin	08898.105005	5658

20786 7590 05/27/2011

KING & SPALDING
1180 PEACHTREE STREET , NE
ATLANTA, GA 30309-3521

EXAMINER	
HAMILTON, LALITA M	
ART UNIT	PAPER NUMBER
3691	

MAIL DATE	DELIVERY MODE
05/27/2011	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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MAY 27 2011

King & Spalding
1180 Peachtree Street, NE
Atlanta, GA 30309-3521

In re application of :
Peter Gavin et al. :
Application No. 10/868,729 :
Filed: June 15, 2004 :
For: METHOD AND SYSTEM FOR CONDUCTING INTERNATIONAL ELECTRONIC FINANCIAL TRANSACTIONS :

DECISION ON PETITION TO MAKE SPECIAL (ACCELERATED EXAMINATION)

This is in response to the petition filed on October 14, 2004 to make the above-identified application special on the basis of special examining procedure for certain new applications - accelerated examination as set forth in MPEP § 708.02 VIII. The 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.

Since all of the requirements for special status under MPEP § 708.02 VIII have been met, the petition is **GRANTED**.

Petitioner is advised that this application will continue to be special, throughout its entire prosecution and pendency, including interference or appeal, if any, only if petitioner makes a prompt ***bona fide*** effort, in response to each Office action, to place the application in condition for allowance, even if it is necessary to conduct an interview with the examiner to accomplish this purpose.

SUMMARY: Petition to Make Special **GRANTED**.

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: 05/26/11

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Paper No.

BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH VA 22040-0747

MAILED

DEC 21 2010

OFFICE OF PETITIONS

In re Patent No. 6,898,030 :
Issue Date: May 24, 2005 :
Application No. 10/868,826 : DECISION ON PETITION
Filed: June 17, 2004 :
Atty Docket No. 4459-0171PUS1 :

This is a decision on the PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN EXPIRED PATENT (37 CFR 1.378(c)), filed September 30, 2010.

The petition is **GRANTED**.

The patent issued May 24, 2005. The grace period for paying the 3-½ year maintenance fee provided in 37 CFR 1.362(e) expired at midnight on May 24, 2009, with no payment received.

This petition was timely filed within twenty-four months after the expiration of the six-month grace period. As required, petitioner submitted with the petition the required maintenance fee, the surcharge for accepting an unintentionally delayed maintenance fee after expiration, and a statement that the delay in payment of the maintenance fee was unintentional.

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.

This petition was filed by a registered patent practitioner. The address set forth on the petition differs from the correspondence address of record. A courtesy copy of this decision is being sent to the address on the petition. All future correspondence will be sent to the correspondence address presently of record, until such time, if at all, as a change of correspondence address is made of record.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

cc: Kay Yang
2030 Main Street
Suite 1300
Irvine CA 92614

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04 OCT 2010

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21839
BUCHANAN, INGERSOLL & ROONEY PC
P.O. Box 1404
Alexandria, VA 22313-1404

In re Application of :
HOLM, Sten :
Application No.: 10/869,025 :
Filing Date: June 17, 2004 :
Attorney Docket No.: 1010315-000239 : **DECISION**
For: METHOD AND ARRANGEMENT AT :
IMPLANTS PREFERABLY FOR A :
HUMAN INTERVERTEBRAL AND :
SUCH IMPLANT :

This is a decision on the "Petition Under 37 CFR 1.78(a)(3) . . ." filed May 6, 2010 which is treated as a petition under 37 CFR §§ 1.78(a)(3) to accept an unintentionally delayed claim under 35 U.S.C. §§120, and 365(c) for the benefit of the prior-filed application set forth in the concurrently filed Supplemental Application Data Sheet (ADS) and amendment to the specification.

The petition is **GRANTED**.

The present nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3) and 1.78(a)(6).

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

The petition complies with the requirements for a grantable petition under 37 CFR §§ 1.78(a)(3) in that (1) a reference to the prior-filed international application designating the United States of America was submitted in an amendment filed May 6, 2010 to the first sentence of the specification following the title, as provided by 37 CFR 1.78(a)(2)(iii);[1] (2) the surcharge fee required by 37 CFR 1.17(t) was submitted; and (3)

[1] While a Supplemental ADS was filed, this paper was not signed as required under 37 CFR 1.33(b).

Applicant's statement in the petition is construed as meaning 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."

If this is incorrect, applicant **MUST IMMEDIATELY** notify the Office of PCT Legal Administration. As so construed, then item (3) is satisfied.

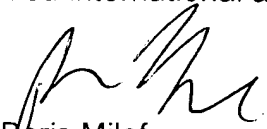
Accordingly, having found that the petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §§ 120 to the prior-filed applications satisfies the conditions of 37 CFR §§ 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR §§ 1.78(a)(3) should not be construed as meaning 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. §§120 and 365(c) and 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether this application is entitled to the benefit of the earlier filing date.

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

Any questions concerning this decision may be directed to James Thomson at (571) 272-3302.

This matter is being referred to Technology Center Art Unit 3733 for appropriate action on the amendment filed May 6, 2010, including consideration by the examiner of applicant's entitlement to claim benefit under 35 U.S.C. § 120 and 365(c) to the prior-filed international application designating the United States of America.



Boris Milef
Legal Examiner
Office of PCT Legal Administration

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

MAILED

SEP 27 2010

OFFICE OF PETITIONS

In re Patent No. 7,421,373	:
Kawaike	: DECISION ON REQUEST FOR
Issue Date: September 2, 2008	: RECONSIDERATION OF
Application No. 10/869,047	: PATENT TERM ADJUSTMENT
Filed: June 17, 2004	: AND NOTICE OF INTENT
Attorney Docket No. 044499-0214	: TO ISSUE CERTIFICATE OF
Title: Support System	: CORRECTION

This is a decision on the petition filed on August 31, 2008, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by seven hundred ninety-one (791) days. A request for reconsideration of the patent term was filed July 7, 2010, within one month of the June 8, 2010 decision.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by seven hundred ninety (790) 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 June 18, 2007 and ends on March 20, 2008, the day before the RCE was filed, and is 277 days. See 35 U.S.C. 154(b)(1)(B)(i). As such, the patent term adjustment is 790, not 791 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 application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **seven hundred ninety-one (790)** days.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required. The fee set forth in 37 CFR 1.18(e) is required and will not be refunded.

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 : 7,421,373 B2

DATED : **September 2, 2008** **DRAFT**

INVENTOR(S) : Kawaike

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 513 days

Delete the phrase "by 513 days" and insert – by 790 days--

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LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

MAILED

JUN 16 2011

OFFICE OF PETITIONS

In re Application of	:	
Clarkson et al.	:	
Application No. 10/869066	:	DECISION
Filing or 371(c) Date: 06/17/2004	:	ON PETITION
Patent No.: 7,876,838	:	
Issue Date: 01/25/2011	:	
Attorney Docket Number: 9255.0001	:	

This is a decision on the "Request Under 37 CFR 3.81(b)," filed May 6, 2011, to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The Petition is **granted**.

The petition was accompanied by a certificate of correction as required by 3.81(b), and the fee submitted with the present petition. Further, Office assignment records reflect that THE UNIVERSITY OF SYDNEY, Australia, and THE UNIVERSITY OF QUEENSLAND, Australia, are the assignees of record. As the request complies with the provisions of 37 CFR 3.81(b), it would be appropriate for a certificate of correction to be processed.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

This matter is being referred to the Certificates of Correction Branch for processing of a certificate of correction after issuance of this application into a patent.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

WONG, CABELLO, LUTSCH, RUTHERFORD
& BRUCCULERI,
L.L.P.
20333 SH 249 6th Floor
HOUSTON TX 77070

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MAY 3 1 2011

OFFICE OF PETITIONS

In re Application of :

Michael Murley et al. :

Application No. 10/869,220 : DECISION ON PETITION
Filed: June 16, 2004 : TO WITHDRAW
Attorney Docket No. 03-031-US (149-0125US) : FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed May 16, 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 a proper forwarding address was not provided. The request to change the correspondence address should be that of the: (1) the first named inventor; or (2) an assignee of the entire interest under 37 C.F.R 3.71. If an assignee has intervened in this application then a Statement under 37 CFR 3.73(b), or a copy of the actual assignment must be submitted with a renewed request.

All future communications from the Office will continue to be directed to the above-identified address until otherwise properly notified.

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272- 4618.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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AUG 3 1 2010

OFFICE OF PETITIONS

FRIEDRICH KUEFFNER
SUITE 910
317 MADISON AVENUE
NEW YORK NY 10017

In re Application of
Manfred Kürfurst et al.
Application No. 10/869,313
Filed: June 16, 2004
Attorney Docket No: **RW-165**

ON PETITION

This is a decision on the renewed petition under 37 CFR 1.137(b)[1], filed August 5, 2010, to revive the above-identified application.

The petition is **GRANTED**.

A Final Office Action mailed June 25, 2008 required the filing of a response within three months (September 25, 2008) or, with up to a three month extension of time, a response could have been filed not later than December 25, 2008. A response filed November 3, 2008 (certificate of mail date October 27, 2008 as October 25, 2008 was a Saturday), filed with a one month extension of time, did not place the application in condition for allowance. Petitioner was notified of such by way of Advisory Action mailed January 6, 2009. Therefore, no proper response having been timely filed, the application became abandoned October 28, 2008. Accordingly, a Notice of Abandonment was mailed August 18, 2009.

A petition filed December 29, 2009 was dismissed in a decision mailed June 7, 2010, because the examiner indicated that the amendment filed with the petition did not prima facie place the application in condition for allowance.

In response thereof, petitioner has submitted a Request for Continued Examination

---

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

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

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

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

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

(RCE) and an amendment as the submission required under 37 CFR 1.114.

This matter is being referred to Technology Center 1651 for processing of the RCE.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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)
7155917	2007-01-02	10869461	2004-06-15	

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
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

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

In re Patent No. 7155917
Issue Date: January 2,2007
Application No. 10869461
Filed: June 15,2004
Attorney Docket No. 26820/05

:
: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.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 1-21-11

TO SPE OF : ART UNIT 2618

SUBJECT : Request for Certificate of Correction for Appl. No.: 10869527 Patent No.: 7773950

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: _____

_____

_____

_____

_____

EDWARD F. URBAN
SUPERVISORY PATENT EXAMINER

2618
Art Unit

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)
7082834	2006-08-01	10/869,648	2004-06-16	03-012

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
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	/Paul R. Matri, Reg.# 63701/	Date (YYYY-MM-DD)	2010-08-03
Name	Paul R. Matri	Registration Number	63701

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.

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

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

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

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

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

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

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

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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In re Patent No. 7082834
Issue Date: August 1,2006
Application No. 10869648
Filed: June 16,2004
Attorney Docket No. NJIT/003

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

This is a decision on the electronic petition, filed August 3,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of August 3,2010 .
This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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OFFICE OF PETITIONS

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

In re Patent No. 7,587,695	:	DECISION ON REQUEST
Petunin, et al.	:	FOR
Issue Date: September 8, 2009	:	RECONSIDERATION OF
Application No. 10/869,923	:	PATENT TERM ADJUSTMENT
Filed: June 18, 2004	:	and
Atty Docket No.003921.00186	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on May 25, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one hundred and eighteen (118) 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 **fifty (50)** 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 June 19, 2007, and ends on September 3, 2007, the day before the RCE was filed, and is 77 (not 78) days. See 35 U.S.C. 154(b)(1)(B)(i).

Patentees state that the Office failed to adjust the patent term for the filing of Information Disclosure Statements (IDS) on December 10, 2008, and January 26, 2009. Patentees' argument is well taken. A review of the file history also revealed that the Office failed to adjust the patent term for the filing of Information Disclosure Statements on May 9, 2008, May 15, 2008, and June 2, 2008.

It is noted that the filing of Information Disclosure Statements on May 9, 2008, May 15, 2008, and June 2, 2008, warrant a reduction to the patent term under 37 CFR 1.704(c)(10). In this instance, it is undisputed that patentees filed the IDS were filed after the mailing of the notice of allowance on March 12, 2008. Subsequently, a Request for Continued Examination was filed on May 5, 2008—constituting the response under 37 CFR 1.704(b). A review of the Information Disclosure Statements revealed that they it did not include proper § 1.704(d) statements. The filing of the Information Disclosure Statements on May 9, 2008, May 15, 2008, and June 2, 2008, therefore, warrant reduction to the patent term adjustment under 37 CFR 1.704(c)(10).

The Office responded to the Information Disclosure Statements on July 14, 2008. Thus, the period of adjustment is properly reduced by the lesser period of 67 days, beginning on the date the first IDS was filed, May 9, 2008, and ending on the mailing date of the Office action or notice in response to the IDS, July 14, 2008.[1] Accordingly, a period of reduction of 67 days will be entered.

Relative to the Information Disclosure Statements filed December 10, 2008, and January 26, 2009, a review of the file history reveals that the filings warrant a reduction to the patent term adjustment under 37 CFR 1.704(c)(8). On December 10, 2008, and January 26, 2009, patentees submitted supplemental replies or paper in the form of Information Disclosure Statements (IDS) after filing a reply to the non-final Office action on November 14, 2008. The record does not support a conclusion that the examiner expressly requested the filing of the IDS'. Further, a review of the IDS' reveals that patentees did not include a statement under 37 CFR 1.704(d).[2] Thus, patentees failed to

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[1] It is noted that the period of reduction to the patent term adjustment under 37 CFR 1.704(c)(10) for the filing of the Information Disclosure Statements on May 15, 2008, and June 2, 2008, overlap with the period of reduction to the patent term adjustment for the filing of the Information Disclosure Statement on May 9, 2008. Accordingly, only the period of reduction from May 9, 2008, through July 14, 2008, was entered.

[2] 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

engage in reasonable efforts to conclude prosecution of the application. Accordingly, the period of patent term adjustment should have been reduced by 73 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 15, 2008, and ending on the date that the IDS was filed, January 26, 2009.[3] Accordingly, a period of reduction of 73 days is being entered.

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

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 **fifty (50)** days.

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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.

[3] It is noted that the period of reduction to the patent term adjustment under 37 CFR 1.704(c)(8) for the filing of the Information Disclosure Statement on December 10, 2008, overlaps with the period of reduction to the patent term adjustment for the filing of the Information Disclosure Statement on January 26, 2009. Accordingly, only the period of reduction from November 15, 2008, through January 26, 2009, was entered.

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 : 7,587,695 B2

DATED : Sep. 8, 2009

INVENTOR(S) : Petunin

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 (113) days

Delete the phrase "by 113 days" and insert – by 50 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

ANDREA Q. RYAN
SANOFI-AVENTIS U.S. LLC
1041 ROUTE 202-206
MAIL CODE: D303A
BRIDGEWATER NJ 08807

MAILED

DEC 2 1 2010

OFFICE OF PETITIONS

In re Patent No. 7,803,538 :
Issued: September 28, 2010 : LETTER REGARDING
Application No. 10/869,977 : PATENT TERM ADJUSTMENT
Filed: June 17, 2004 :
Attorney Docket No. **FRAV2003/0016** :
US NP

This is a decision on the Request for Reconsideration of the Patent Term Adjustment Under § 37 C.ER. § 1.705(b) filed on November 24, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected from 497 days to 701 days. Since the request is after issuance, the request is being treated under 37 CFR 1.705(d). Applicant requests this correction on the basis that the Office took in excess of three years to issue this patent and is being considered 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 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 June 17, 2007 and ends on December 2, 2008, the day before the RCE was filed, the B delay would be 534. See 35 U.S.C. 154(b)(1)(B)(i). However, patentee fails to account for the filing of a Notice of Appeal on May 13, 2008, and the subsequent filing of a RCE on December 3, 2008. The 534 days of the over three year period therefore would be consumed by appellate review, beginning on May 13, 2008 and ending on December 3, 2008. The time for appellate review is excluded (534 – 204); thus 330 additional days for B delay. *See* 35 U.S.C. § 154(b)(1)(B)(ii). As such, the patent term adjustment is 497 days (447 "A delay days" + 330 "B delay days" (534 - 204) - 280 Applicant delay days), not 701 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
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

Siemens Corporation
Intellectual Property Department
170 Wood Avenue South
Iselin NJ 08830

MAILED
JUN 20 2011
OFFICE OF PETITIONS

In re Application of :
Ma, et al. : DECISION ON PETITION
Application No. 10/870,092 :
Filed: June 16, 2004 :
Atty. Dkt. No.: 2004P08014US :

This is a decision on the petition under 37 CFR 1.137(b), filed June 8, 2011.

The petition is **GRANTED**.

This application became abandoned May 4, 2011 for failure to timely reply to the Notice of Allowability (Notice) mailed February 3, 2011. The Notice set a three (3) month statutory period of time for reply. Notice of Abandonment was mailed May 20, 2011.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply; (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).

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

The 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 the Office of Data Management for further processing.

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

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

UNITED STATES 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.

GLENN PATENT GROUP
3475 EDISON WAY, SUITE L
MENLO PARK CA 94025

MAILED

NOV 21 2011

OFFICE OF PETITIONS

In re Application of :
Haemer et al. :
Application No. 10/870,095 :
Patent No.: 7,349,223 :
Filed: June 16, 2004 :
Issued: March 25, 2008 :
Title: ENHANCED COMPLIANT PROBE CARD SYSTEMS HAVING IMPROVED PLANARITY :

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 September 29, 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.

37 C.F.R. § 1.28(c)(2)(ii) sets forth that the party submitting the deficient payment must include:

(a) Each particular type of fee that was erroneously paid as a small entity, (e.g., basic statutory filing fee, two-month extension of time fee) along with the current fee amount for a non-small entity;
(b) The small entity fee actually paid, and when;
(c) The deficiency owed amount (for each fee erroneously paid); and
(d) The total deficiency payment owed, which is the sum or total of the individual deficiency owed

> amounts set forth in paragraph (c)(2)(ii)(C) of this section.

Petitioner has identified the particular type of fee that was erroneously paid as a small entity, when the small entity fee was actually paid, and the small entity fee that was actually paid.

Petitioner has not identified the deficiency owed amount and the total deficiency payment owed.

The requirement that Petitioner must provide the Office with the deficiency owed amount and the total deficiency payment owed is waived, *sua sponte*.

The deficiency payment in the amount of $490 has been received concurrently with the submission of this petition. $490 was received on September 16, 2011, and as such, the total amount that has been submitted to the Office in relation to the first maintenance fee is $980. However, the current 3½-year maintenance fee is $1130, not $980. As such, an additional $150 ($1130 - $980) is owed. With this petition, Petitioner has authorized the "additional amount" to be deducted "from our deposit," however a Deposit Account Number has not been located in the petition.

It is noted in passing that the attorney of record included an authorization to charge any fee deficiencies to a Deposit Account in a submission that was received on August 13, 2010, however this petition was not submitted by the attorney of record.

Due to the fact that the proper fee was not submitted to the Office, this petition under 37 C.F.R § 1.28(c) is **DISMISSED.**

Any reply must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. § 1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition under 37 C.F.R. 1.28(c)". This is not a final agency action within the meaning of 5 U.S.C 704.,

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and any renewed petition may be submitted by mail,[1] hand-delivery,[2] or

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1 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
2 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.

facsimile.[3] Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web.[4]

It is noted that the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the address of record. If Petitioner desires to receive future correspondence regarding this patent, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to the address which appears on the petition. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence related to this patent unless Change of Correspondence Address, Patent Form (PTO/SB/123) is submitted for the above-identified patent. For Petitioner's convenience, a blank Change of Correspondence Address, Patent Form (PTO/SB/123), may be found at http://www.uspto.gov/web/forms/sb0123.pdf.

If appropriate, a change of fee address (form PTO/SB/47) and a request for customer number (form PTO/SB/125) should be filed in accordance with Manual of Patent Examining Procedure, section 2540. A blank fee address form may be found at http://www.uspto.gov/web/forms/sb0047.pdf.

It is not apparent whether the person signing the statement which asserts that small entity status was established in good faith was in a position to have firsthand or direct knowledge of the facts and circumstances of the establishment of small entity status. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such establishment. 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 establishment of small entity status was not made in good faith, Petitioner must notify the Office.

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3 (571) 273-8300- please note this is a central facsimile number.
4 https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[5]

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

cc: A J Peach
Dennemeyer & Co. LTD
Regent House Heaton Lane
Stockport Cheshire
SK4 1BB
ENGLAND

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 Petitioner's further action(s).

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No.

GLENN PATENT GROUP
3475 EDISON WAY, SUITE L
MENLO PARK CA 94025

MAILED
DEC 15 2011
OFFICE OF PETITIONS

In re Application of :
Haemer et al. :
Application No. 10/870,095 :
Patent No.: 7,349,223 : DECISION ON RENEWED PETITION
Filed: June 16, 2004 : PURSUANT TO
Issued: March 25, 2008 : 37 C.F.R. § 1.28(c)
Title: ENHANCED COMPLIANT PROBE :
CARD SYSTEMS HAVING IMPROVED :
PLANARITY :

This is a notice regarding your renewed request for acceptance of a fee deficiency submission pursuant to 37 C.F.R. § 1.28, received on November 24, 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.

37 C.F.R. § 1.28(c)(2)(ii) sets forth that the party submitting the deficient payment must include:

(a) Each particular type of fee that was erroneously paid as a small entity, (e.g., basic statutory filing fee, two-month extension of time fee) along with the current fee amount for a non-small entity;
(b) The small entity fee actually paid, and when;
(c) The deficiency owed amount (for each fee erroneously paid); and
(d) The total deficiency payment owed, which is the sum or total of the individual deficiency owed

> amounts set forth in paragraph (c)(2)(ii)(C) of this section.

An original petition was submitted on September 29, 2011, where Petitioner identified the particular type of fee that was erroneously paid as a small entity, when the small entity fee was actually paid, and the small entity fee that was actually paid. Petitioner failed to identify the deficiency owed amount and the total deficiency payment owed.

The original petition was dismissed via the mailing of a decision on November 21, 2011, which indicated that the requirement that Petitioner must provide the Office with the deficiency owed amount and the total deficiency payment owed was waived, *sua sponte*, and that Petitioner has submitted a total of $980 towards the $1130 fee that is associated with the 3½-year maintenance fee.

With this renewed petition, Petitioner has authorized the Office to charge the remaining $150 that is due to Deposit Account number 04-0750: this amount will be charged to this Deposit Account in due course.

The deficiency payment in the amount of $1130 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.

It is noted that the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the address of record. If Petitioner desires to receive future correspondence regarding this patent, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to the address which appears on the petition. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence related to this patent unless Change of Correspondence Address, Patent Form (PTO/SB/123) is submitted for the above-identified patent. For Petitioner's convenience, a

blank Change of Correspondence Address, Patent Form (PTO/SB/123), may be found at http://www.uspto.gov/web/forms/sb0123.pdf.

If appropriate, a change of fee address (form PTO/SB/47) and a request for customer number (form PTO/SB/125) should be filed in accordance with Manual of Patent Examining Procedure, section 2540. A blank fee address form may be found at http://www.uspto.gov/web/forms/sb0047.pdf.

It is not apparent whether the person signing the statement which asserts that small entity status was established in good faith was in a position to have firsthand or direct knowledge of the facts and circumstances of the establishment of small entity status. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such establishment. 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 establishment of small entity status was not made in good faith, Petitioner must notify the Office.

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

Paul Shanoski
Senior Attorney
Office of Petitions

cc: A J Peach
Dennemeyer & Co. LTD
Regent House Heaton Lane
Stockport Cheshire
SK4 1BB
ENGLAND

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : February 24, 2012

TO SPE OF : ART UNIT 3745
SUBJECT : Request for Certificate of Correction for Appl. No.: 10/870315 , Patent No.: 71506014

Co f C mailroom date: 10-28-09.

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: The third proposed correction at column 12, lines 42-43 is not approved. It is directed toward the desription of Fig. 22 which does not include "sliding films C ... on the surfaces 8c, 8d of the swash plate 8" but rather includes – sliding films C1 – and thus would be an inaccurate change.

/Edward Look/ — SPE
3745 — Art Unit

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: TI-36648	Patent Number: 7,668,199
Filing Date (or 371(b) or (f) Date): 06-17-2004	Issue Date: 02/23/2010
First Named Inventor: Markos G. Troulis	
Title: METHODS AND SYSTEMS FOR COMMUNICATING USING TRANSMITTED SYMBOLS ASSOCIATED WITH MULTIPLE TIME DURATIONS	

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 / Wade J. Brady III /	Date August 12, 2010
Name (Print/Typed) Wade J. Brady III	Registration Number 32,080

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

☑ *Total of 1 forms are submitted.

The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS, TX 75265

Mail Date: 08/17/2010

Applicant	: Markos G. Troulis	: DECISION ON REQUEST FOR
Patent Number	: 7668199	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/870,404	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/17/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1651** 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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MAILED

AUG 17 2010

OFFICE OF PETITIONS

IMB CORP (ya)
C/O YEE & ASSOCIATES PC
P.O. BOX 802333
DALLAS TX 75380.

In re Application of :
Greg R. Mewhinney et al :
Application No. 10/870,458 : DECISION ON PETITION
Filed: June 17, 2004 :
Attorney Docket No. :
AUS920040344US1

This is a decision on the petition, filed May 11, 2010, under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

This application was held abandoned for failure to file a timely reply to the Notification of Non-Complaint Appeal Brief mailed November 28, 2008. A Notice of Abandonment was mailed on March 15, 2010.

Applicant files the present petition and statement from the practitioner that the communication from the U.S.P.T.O. was not received and attesting to the fact that a search of the file jacket and docket records indicates that the communication was not received. Applicant provides a copy of the docket record for the present application.

Applicable Law, Rules and MPEP

The MPEP 711.03(c)A, Petition To Withdraw Holding of Abandonment Based on Failure To Receive Office Action, provides

> 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.
>
> 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). (Emphasis supplied).

Analysis/conclusion

Regrettably, the petition is not grantable at this time. 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,[1] 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 affidavit by Patti Ensminger, submitted with the instant petition, states that "I enter the office action on the Firm's master docket and also enter the office action on the Firm's internal docketing system which produces the Case History Report attached thereto." Therefore, the Office is not in receipt of the Firm's master docket report.

Accordingly, absent the required evidence to establish nonreceipt of the Office action of November 28, 2008, 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 $1,620.00 petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay 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).

---

[1] A ONE MONTH period for reply was set in the nonreceived Office action mailed November 28, 2008.

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

By mail:	Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450
By hand:	Customer Service Window Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(571) 273-8300 ATTN: Office of Petitions
By internet:	EFS-Web www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/Karen Creasy/
Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

IBM CORP (YA)
C/O YEE & ASOCIATES PC
P.O. BOX 802333
DALLAS TX 75380

MAILED

SEP 2 8 2010

OFFICE OF PETITIONS

In re Application of
Greg R. Mewhinney et al
Application No. 10/870,458
Filed: June 17, 2004
Attorney Docket No.
AUS920040.344US1

: DECISION ON PETITION

This is a decision on the renewed petition, filed September 7, 2010, 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 file a timely reply to the Notification of Non-Compliant Appeal Brief mailed November 28, 2008. A Notice of Abandonment was mailed on March 15, 2010.

Petitioner asserts that the Notification of Non-Compliant Appeal Brief dated November 28, 2008 was not received.

A review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner;

2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received;

3. 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, and

4. 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) 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 2162 for re-mailing the Office action of November 28, 2008. The period for reply will run from the mailing date of the Office action.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions
571-272-3208

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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FEB 10 2011

OFFICE OF PETITIONS

RATNERPRESTIA
P.O. BOX 980
VALLEY FORGE, PA 19482

In re Application of Walley et al. :
Application No. 10/870,668 : Decision on Petition
Filing Date: June 16, 2004 :
Atty. Docket No. SIFR-148US(218-US-D1) :

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

The petition is **granted**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed June 9, 2009, which set a shortened statutory period for reply of three (3) months. Neither a reply nor a request for an extension of time was filed. As a result, the application became abandoned on September 10, 2009. Notice of Abandonment was mailed on January 25, 2010.

The instant petition requests revival of the application.

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

(1) The reply required to the outstanding Office action or notice, unless previously filed,
(2) The petition fee,
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
(4) A terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

As to item (1), the petition includes a reply to the June 9, 2009 Office action.

As to item (2), the petition is accompanied by the required $1,620 petition fee.

As to item (3), the petition, signed by Attorney Kenneth Nigon, states 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.

Attorney Nigon was not an attorney or agent of record at the time the application became abandoned. Therefore, it appears Attorney Nigon may not have been in a position to have firsthand or direct knowledge of the facts and circumstances of the delay. Nevertheless, the statement by Attorney Nigon that the entire delay was unintentional is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay.[1] 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 a portion of the delay from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was intentional, petitioner must notify the Office.

As to item (4), a terminal disclaimer is not required in this case.

In view of the prior discussion, the petition satisfies the requirements of 37 CFR 1.137(b). Therefore, the petition is granted and the application is revived.

Technology Center Art Unit 2617 will be informed of the instant decision and the application will be further examined in due course.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

[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 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the Patent and Trademark Office).

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No.

MEDIMMUNE, LLC
Patrick Scott Alban
ONE MEDIMMUNE WAY
GAITHERSBURG MD 20878

MAILED

AUG 3 1 2010

OFFICE OF PETITIONS

In re Patent No. 7,566,458	:	DECISION ON REQUEST
Yang et al.	:	FOR
Issue Date: July 28, 2009	:	RECONSIDERATION OF
Application No. 10/870,690	:	PATENT TERM ADJUSTMENT
Filed: June 16, 2004	:	and
Atty Docket No. FL250US	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on September 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 **nine hundred thirteen (913)** days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.** The patent term adjustment is corrected to indicate that the term of the above-identified patent is extended or adjusted by **nine hundred twelve (912)** days.

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on June 17, 2007 and ends on September 16, 2008, the day *before* the RCE was filed. See 35 U.S.C. 154(b)(1)(B)(i). Thus, the over 3 year period is 458 not 459 days. Thus, the patent term adjustment is increased to 912 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) on March 6, 2009. No additional fees are required.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **nine hundred twelve (912)** days.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,566,458 B2

DATED : **July 28, 2009** **DRAFT**

INVENTOR(S) : Yang 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 454 days

Delete the phrase "by 454 days" and insert – by 912 days--

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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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In re Patent No. 7038774
Issue Date: May 2,2006
Application No. 10870727
Filed: June 16,2004
Attorney Docket No. IMET0040D

:
: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)
7,038,774	2006-05-02	10/870,727	2004-06-16	IMET0040D

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	/MAG/	Date (YYYY-MM-DD)	2011-01-11
Name	Michael A. Glenn	Registration Number	30176

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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SANJIVPAL S. GILL
16016 MOUNT HICKS STREET
FOUNTAIN VALLEY CA 92708

MAILED

DEC 06 2010

OFFICE OF PETITIONS

In re Application :
Alexander C. Chen et al. :
Application No. 10/870,729 : DECISION ON APPLICATION
Filed: June 17, 2004 : FOR PATENT TERM ADJUSTMENT
Attorney Docket No. MUSICX.001C1 :

This is in response to theAPPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(b) filed June 14, 2010. Applicant requests that the determination of patent term adjustment be corrected from 41 days to 504 days.

The petition is **DISMISSED**.

Patentees are given TWO (2) MONTHS from the mailing date of this decision to file a request for reconsideration. This period is not extendable under 37 CFR 1.136.

On May 4, 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 41 days. The instant application for patent term adjustment was timely filed[1] on or before payment of the issue fee.

Applicants argue that while a Restriction Requirement was mailed February 10, 2006, in an Interview on March 10, 2006, the Examiner of record agreed to withdraw the Requirement and follow up with another office action, confirmed by an Interview Summary dated March 16, 2006. On January 18, 2007, a non-Final Office Action was mailed. Applicants argue therefore, that the non-final Office Action mailed on January 18, 2007 is the first USPTO communication that qualifies as a notification under 37 CFR 1.702(a)(1). Thus, the correct delay under 37 CFR 1.702(a)(1) is 519 days, which is the time delay from the date that is fourteen months from the application filing date (i.e., August 17, 2005) to the mailing date of the non-final Office Action (i.e., January 18, 2007).

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.

[1] PALM records indicate that the issue fee was paid on June 14, 2010.

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 February 10, 2006 was mailed within fourteen months and 177 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 177 days. The fact that the Office subsequently mailed a further Office action withdrawing the February 10, 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 of 301 days for examination delay pursuant to 37 CFR 1.702(a)(1) is not warranted.

Applicants argue further that the correct amount of Applicants' delay under 37 CFR 1.704 is 144 days (33 days + 34 days + 77 days), not 265 days as calculated by the USPTO, in that a "complete" response was filed May 21, 2007 to the January 18, 2007 non-Final Office Action, then, a supplemental response was filed August 6, 2007 to which a Notice of Informal Response was mailed on November 1, 2007 referencing the August 6, 2007 response. Applicants argue therefore that the delay should have been accorded under 37 CFR 1.704(c)(8) in the amount of 77 days and not 198 days pursuant to 37 CFR 1.704(c)(7).

Applicant's argument is not persuasive. 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 May 21, 2007 however, that reply had an omission and the omission was corrected on December 5, 2007, one hundred ninety-eight (198) days after the filing of the initial response on May 21, 2007. Therefore the reduction is proper.

In view thereof, it is concluded that the determination of patent term adjustment at the time of the mailing of the Notice of Allowance is 41 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 application is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/871,260	06/18/2004	Wlodek Mandecki	MAND/001	9885

39731 7590 12/15/2010

Moser IP Law Group
1030 BROAD STREET, SUITE 203
SHREWSBURY, NJ 07702

EXAMINER	
STAPLES, MARK	

ART UNIT	PAPER NUMBER
1637	

MAIL DATE	DELIVERY MODE
12/15/2010	PAPER

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

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

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DEC 1 5 2010

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1030 BROAD STREET, SUITE 203
SHREWSBURY NJ 07702

In re Application of:	:
Wlodek Mandecki	:
Serial No.: 10/871,260	: PETITION DECISION
Filed: June 18, 2004	:
Attorney Docket No.: **MAND/001**	:

This is in response to the petition under 37 CFR § 1.181, filed July 1, 2010, requesting that the objection be reframed as a rejection under 35 USC 112, second paragraph.

BACKGROUND

Relevant parts of the prosecution history are summarized below.

Applicant argues "This matter shall soon be on appeal. To simplify issues in the application generally or for consideration on appeal, Applicant here seeks to have a rejection that was framed as an objection be deemed what it is, a rejection under 35 U.S.C. § 112, second paragraph. Indeed the Office Action dated June 2, 2010 essentially admits that the dispute is of the nature of a rejection under Section 112. Given the tight schedule for the appeal and the need not to waste the resources directed to the appeal, Applicant's appeal will ask the Board to treat the objection as a rejection - however, it would be useful to have an acknowledgement of the same from the Examining Division.

This Petition is under, in particular 37 CFR § 1.181 (a)(1), for relief from a requirement of the examiner that is not subject to appeal to the Board of Patent Appeals and Interferences. Applicant takes the view that the "objection" in question is indeed a "rejection," and hence appealable. However, per the record as of now it is the Examining Division's view that the matter is not appealable, and hence per the record the matter is subject to petition under 37 CFR §1.181(a)(1)."

On July 1, 2010, applicant submitted the petition under consideration herein.

DISCUSSION

Applicants' argument has been accorded careful consideration and is persuasive that the issue is not one of form but one of meaning. Accordingly, the Examiner's Answer of November 2, 2010 is hereby VACATED.

DECISION

The petition is subsequently **GRANTED**.

This application will be forwarded to the examiner to either issue a new Examiner's Answer adhering to the provisions set forth in MPEP § 1207.03 I for introducing a new ground of rejection in an Examiner's Answer; by issuing a corrected Examiner's Answer changing the objection to a rejection; or alternatively, to reopen prosecution to set forth said new ground of rejection.

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

JMStone

Jacqueline M. Stone
Director, Technology Center 1600

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PO BOX 1497
MADISON WI 53701-1497

MAILED

JUL 29 2011

OFFICE OF PETITIONS

In re Application of	:	
Alattar, et al.	:	
Application No. 10/871,349	:	ON REQUEST FOR
Filed: June 17, 2004	:	RECONSIDERATION OF
Attorney Docket Number: 098888-1847	:	PATENT TERM ADJUSTMENT

This is a decision on the petition under 37 CFR 1.705(b), July 7, 2011. Applicants believe that the PTA should be accorded an additional four hundred eighty-seven (487) days. Applicants request this correction on the basis that the Office will take in excess of three years to issue this patent pursuant to 37 CFR 1.702(b).

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

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

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

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

In view thereof, the correct determination of PTA prior to issuance is **four hundred fifty-five (455) days.**

Receipt of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. Applicants' request for a refund of the fee is denied.[2]

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 the undersigned at (571) 272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

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

[2] See Comment 1 in Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term; Final Rule, 1239 OG 14, 65 Fed. Reg. 54366 (Oct. 3 2000) (stating that the fee set forth in 37 CFR 1.18(e) is charged to allow the Office to recover the estimated average cost of treating applications for patent term adjustment, and is not refundable even in the event of Office error).

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/871,471	06/18/2004	Niels B. Ramsing	50287/012002	2265

21559 7590 08/03/2010

CLARK & ELBING LLP
101 FEDERAL STREET
BOSTON, MA 02110

EXAMINER	
LUNDGREN, JEFFREY S	

ART UNIT	PAPER NUMBER
1639	

NOTIFICATION DATE	DELIVERY MODE
08/03/2010	ELECTRONIC

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

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

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

patentadministrator@clarkelbing.com

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AUG 0 3 2010

Kristina Bicker-Brady, Ph.D.
CLARK & ELBING LLP
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BOSTON MA 02110

In re Application of :
Ramsing et al :
Serial No.: 10/871,471 :Decision on Petition
Filed: 18 June 2004 :
Attorney Docket No.: 5028/012002 :

This letter is in response to the Petition filed on 25 March 2010 requesting withdrawal of the finality of the Office action and withdrawal of the restriction requirement.

BACKGROUND

This application was filed under 35 U.S.C. 111(a) and as such is subject to US restriction practice.

On 20 April 2007, the examiner mailed a restriction requirement in which claims 1-79 were restricted into eight groups.

On 22 October 2007, applicants elected Group II, claims 37-38, without traverse.

On 15 January 2008, the examiner acknowledged the election of Group II. Claims 1-36, 39-79 were withdrawn as being directed to a non-elected invention. Claims 37 and 38 were rejected under 35 USC 112, 2nd paragraph and under 35 USC 102(b) as being anticipated by CAS registry number 433204-35-4, which was directed to nucleotide sequence of tttgggga, found in the 2nd column and 8th row of Table 1. The examiner also objected to claims 37 and 38 for referring to Figures and Table of the specification.

On 27 March 2008 and then 15 May 2008, applicant filed an original and then a supplemental response and amendments to the claims. In order to overcome the objection to the claims, the

amendment removed reference to Table 1, Figure 13 or Fig 14, and replaced that text with a list of nucleotide sequences which had been recited in the Table and Figures.

On 5 August 2008, the examiner set forth an election of species requirement for (i) the analogue, (ii) single detection scheme and (iii) Tm of each probe.

On 4 February 2009, applicants elected the analogue of LNA, the detection scheme of dual label by 5' nuclease assay and the arrangement of detection moieties of a fluorophore quencher pair and the Tm of 60 degrees C for the probe that undergoes PCR without traverse.

On 28 April 2009, the examiner set forth a third restriction requirement wherein each group was represented by a different oligonucleotide pair. (This third restriction requirement is under consideration by this petition decision.)

On 28 September 2009, applicant elected the nucleotide sequence of "cagcctcc" with traverse.

On 25 January 2010, the examiner considered the traversal and made the restriction requirement final. Claims 2, 5, 10-14, 16-18, 25-30, 37, 38 and 80-82 were rejected under 35 USC 103 over references directed to nucleotide sequence of "cagcctcc." Although the pending claims still recited the sequence of "tttgggga", the Office action was silent as to whether the anticipation rejection was withdrawn or maintained. Applicants arguments concerning the anticipation rejection set forth in the first Office action on the merits were not addressed in this Office action. The examiner then made the Office action final in view of applicants' amendment to the claims. (The finality of this Office action is also under consideration by this petition decision.)

On 25 March 2010, applicants submitted this petition.

DISCUSSION

The petition and file history have been carefully considered. The Petition makes two requests. First, the petition requests that the finality of the Office action mailed 20 April 2010 be withdrawn. Second, the petition requests that the requirement to elect a single sequence (the third restriction requirement mailed 28 April 2009) be withdrawn.

Reconsideration of Finality

Originally filed claim 37 (now cancelled) is forth below.

> 37. An oligonucleotide probe useful in a library according to any one of the preceding claims, said probe being selected from probes complementary to or identical with the sequences set forth in Table 1, Fig. 13, or Fig 14.

Originally filed claim 37 referred to sequences in Table 1, Fig 13 or Fig 14. In the first Office action on the merits, the examiner objected to claims 37 and 38 for referring to figures and tables. In response to that objection, on 15 May 2008, applicant amended the claims to recite the sequences listed in Table 1 and Figures 13 and 14.

While the newly added limitation of "comprising a detection moiety and a sequence with at least one modified monomer analog" did alter the scope of claim 37, the addition of dual oligonucleotide probes did not change the scope of claim 37. In the first Office action on the merits, the examiner applied prior art teaching tttgggga. Original Claim 37 read upon the nucleic acid sequence of tttgggga, which is found in Table 1, second column and eighth row down. Relevant portion of Table 1 (found on page 41 of the specification) is set forth below, with sequence "tttgggga" present on the last line.

TABLE 1 Dual label oligonucleotide probes

cagcctcc	cagagcca	agctgtga	aggaggga
aggaggag	ctggaagc	cagagagc	tgtggaga
cccaggag	cagccaga	tgaggaga	ctggggaa
ctccagcc	cttctggg	acagtgga	ctcctgca
ctcctcca	ttctgcca	acagccat	tgaggtgg
ctgctgcc	aggagaga	tttctcca	aaggcagc
ctccagca	ttcctgca	cagtggtg	ctgtggca
ctgctggg	tttgggga	aaagggga	agaagggc

This same sequence is present in amended claim 37, relevant portion of which is set forth below. The sequence "tttgggga" is found on the last line, second from left.

37. (Currently Amended) An oligonucleotide probe ~~useful in a library according to any one of the preceding claims, said probe being selected from probes complementary to or identical with the sequences set forth in Table 1, Fig. 13, or Fig 14.~~ comprising a detection moiety and a sequence with at least one modified monomer analogue replacing at least one nucleotide in a sequence complementary to or identical to cagcctcc, cagagcca, agctgtga, aggaggga, aggaggag, ctggaagc, cagagagc, tgtggaga, cccaggag, cagccaga, tgaggaga, ctggggaa, ctccagcc, cttctggg, acagtgga, ctcctgca, ctcctcca, ttctgcca, acagccat, tgaggtgg, ctgctgcc, aggagaga, tttctcca, aaggcagc, ctccagca, ttcctgca, cagtggtg, ctgtggca, ctgctggg, tttgggga, aaagggga, agaagggc, cttcctgg, caggcaga, tgtgggaa, tggatgga, acagcagc.

The rejection under 35 USC 102 made in the first Office action on the merits is neither repeated or withdrawn in the Final action nor mentioned in the intervening two restriction requirements. Further, the Final Office action is incomplete for not addressing applicants' arguments concerning the rejection of claims 37-38 under 35 USC 102 over the CAS registry number

433204-35-4. See page 11, second and third full paragraphs of the response filed 15 May 2008. Moreover, the final rejection contained a new grounds of rejection directed to a sequence "cagcctcc" which was encompassed by the original claims as the first sequence listing in Table 1.

MPEP 706.06(a) states that

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

Similarly, MPEP 707.07(g) cautions against piecemeal examination. Here, the new grounds of rejection are directed to an embodiment encompassed by the originally filed claims. Applicants have not removed the initially rejected embodiment of "tttgggga" from the scope of the claims nor have applicants added a new embodiment of "cagcctcc." Further, the newly applied prior art did not originate from a newly filed Information Disclosure Statement. For these reasons, the finality of the Office action mailed 25 January 2010 is improper. The amended claims contain the same limitation which had been examined previously.

Request to Withdraw the Restriction Requirement mailed 28 April 2009.

At the onset, it is noted that the claims are directed various oligonucleotide probes defined by their nucleic acid sequence. Applicant has requested to have ten sequences examined per MPEP 803.04. See third full paragraph pf page 8 of the petition.

In support of this request, applicant has pointed to MPEP 803.04. MPEP § 803.04 provides guidance on restriction involving nucleotide sequences and indicates in most cases, examination of up to ten sequences per application. However, on March 27, 2007[1], the Office published an Official Gazette Notice superseding MPEP § 803.04. The Office Gazette Notice indicates that for national applications filed under 35 USC 111(a), sequences will be considered for independence, relatedness, distinction and burden as for any other type of molecule. Because of this change in policy, the request to have ten sequences examined is not persuasive.

If an election of species requirement were warranted, the oligonucleotide probes claimed here will be considered for independence, distinction and burden as for any other type of product.

It is noted that all the original and currently amended claims were/are generic with respect to the particular oligonucleotide sequences. MPEP 808.01(a) states

> If applicant presents species claims to more than one patentably distinct species of the invention after an Office action on only generic claims, with no restriction requirement, the Office may require the applicant to elect a single species for examination.

[1] available at http://www.uspto.gov/go/og/2007/week13/patsequ.htm,

MPEP 808.01(a) only permits an election of species (not a restriction to invention) amongst embodiments of already examined generic claims. In this case, the examiner has required an restriction to groups, not warranted by MPEP 808.01(a). Also, the claim amendment submitted 15 May 2008 did not add any single species claims, so the election of species requirement was unwarranted.

Finally, because claim 37, for example, is currently drafted in Markush claim format, the following examination practice from MPEP 803.02 applies:

> Following election, the Markush-type claim will be examined fully with respect to the elected species and further to the extent necessary to determine patentability. If the Markush-type claim is not allowable, the provisional election will be given effect and examination will be limited to the Markush-type claim and claims to the elected species, with claims drawn to species patentably distinct from the elected species held withdrawn from further consideration.
>
> ...
>
> If on examination the elected species is found to be anticipated or rendered obvious by prior art, the Markush-type claim and claims to the elected species shall be rejected, and claims to the nonelected species would be held withdrawn from further consideration. A second action on the rejected claims can be made final unless the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p). See MPEP § 706.07(a).
>
> On the other hand, should the examiner determine that the elected species is allowable, the examination of the Markush-type claim will be extended. If prior art is then found that anticipates or renders obvious the Markush-type claim with respect to a nonelected species, the Markush-type claim shall be rejected and claims to the nonelected species held withdrawn from further consideration.

DECISION

The petition **GRANTED-IN-PART** for the reasons set forth above.

The finality of the Office action mailed 25 January 2010 is withdrawn as improper.

Applicants request to have ten sequences examined has been denied.

The restriction requirement mailed 28 April 2009 has been withdrawn as improper in view of the fact that the generic claims have already been examined on the merits and applicants have not presented single species claims. Should applicants present a series of single species claims, each directed to a single sequence, at that time, it would be proper for the examiner to consider whether an election of a single species is appropriate in view of MPEP 808.02(a).

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

The application will be forwarded to the examiner for further action consistent with this decision and for the preparation of an Office action which fully addresses applicants' response, continues examination of the already examined oligonucleotides of "tttgggga" and "cagcctcc" and which follows the examination practice set forth in MPEP 803.02 for the Markush–type claims.

Any request for reconsideration should be mailed within two (2) months of the mail date of this decision.

Should there be any questions about this decision, please contact Quality Assurance Specialist Julie Burke, by letter addressed to Director, Technology Center 1600, at the address listed above, or by telephone at 571-272-0512 or by facsimile sent to the general Office facsimile number, 571-273-8300.

JMStone

Jacqueline Stone
Director, Technology Center 1600

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Marek Alboszta
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MAR 21 2011

OFFICE OF PETITIONS

In re Patent of Buermann et al. :
Patent No. 7,113,270 :
Issue Date: September 26, 2006 : Decision on Petition
Application No. 10/871,496 :
Filing Date: June 18, 2004 :
Attorney Docket No. PEN-111/US :

This is a decision on the petition filed November 29, 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.**

The patent issued September 26, 2006. The last day of the grace period for paying the 3.5 year maintenance fee was September 26, 2010. This petition was filed within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e). Therefore, this petition was timely filed under the provisions of 37 CFR 1.378(c).

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

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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In re Application of	:	
Toshiaki Kakutani	:	
Application No. 10/871,507	:	DECISION GRANTING PETITION
Filed: June 18, 2004	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. MIPFP096	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, March 4, 2011 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on February 8, 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 2625for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

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

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OFFICE OF PETITIONS

In re Application of	:	
Toshiaki Kakutani	:	
Application No. 10/871,507	:	DECISION GRANTING PETITION
Filed: June 18, 2004	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. MIPFP096	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, March 4, 2011 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on February 8, 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 2625for 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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Paper No.

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JAN 03 2011

OFFICE OF PETITIONS

In re Application of :
Vainola et al. : DECISION ON PETITION
Application No. 10/871,594 :
Filed: June 21, 2004 :
Atty Docket No. 042933/374141 :

This is a decision on the "Petition Under 37 C.F.R. 1.181 To Withdraw Holding Of Abandonment In Accordance With MPEP §711.03(c) AND 1156 O.G. 53" filed September 27, 2010.

The above-identified application became abandoned for failure to file a reply to the final Office action mailed January 4, 2010. This Office action set a three-month shortened statutory period for reply, with extensions of time obtainable under §1.136(a). No reply timely filed and no extension of time obtained, the application became abandoned effective April 5, 2010. A courtesy Notice of Abandonment was mailed on August 2, 2010.

In response, applicant promptly filed the instant petition to withdraw the holding of abandonment based on nonreceipt of the Office action mailed January 4, 2010. The petition includes statements from the practitioner attesting to a search of the file jacket, and that this search supports a conclusion that the Office action was not received. Further, attorney for applicant describes the docketing system, states where the Office action would have been entered had it been received and provides copies of the relevant portions of their docket record showing where all replies docketing for the relevant dates were entered (and where the non-received Office action would have been entered had it been received).

A review of the application file reveals no irregularities in the mailing of the Office action mailed January 4, 2010. Thus, there is a strong presumption that the correspondence was properly mailed to the applicant at the correspondence address of record. In the absence of demonstrated irregularities in mailing of this Notice, petitioner must submit evidence to overcome this presumption. The following showing is required:

> 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 submitted the proper showing of non-receipt. In view thereof, the holding of abandonment is hereby **WITHDRAWN**.

The petition under § 1.181 is **GRANTED**.

No fee is required on petition under § 1.181.

Technology Center Art Unit 2618 has been advised of this decision. The application is, thereby, forwarded to the Technology Center Art Unit's technical support staff to withdraw the holding of abandonment and for re-mailing of the final Office action mailed January 4, 2010 and for restarting of the period for reply.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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AUG 16 2010

OFFICE OF PETITIONS

In re Application of
ALEXANDER G. PLETNEV ET AL.
Application No. 10/871,775
Filed: June 18, 2004
Attorney Docket No. **NIH225.001C1**

DECISION ON PETITION

This is a decision on the petition, filed June 4, 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 November 9, 2009, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on February 10, 2010.

Petitioner asserts that the Office action dated November 9, 2009, was not received.

A review of the written record indicates an irregularity in the mailing of the Office action of November 9, 2009. In this regard, the Office received a Power of Attorney on September 30, 2009, prior to the mailing of the Office action of November 9, 2009. However, the Power of Attorney was not accepted until November 16, 2009. Therefore, the Office records were not updated to reflect this new change of address. Accordingly, as the Office action was mailed to an incorrect address, the Notice of Abandonment mailed May 21, 2010, is hereby vacated and the holding of abandonment withdrawn.

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

This application is being referred to the Technology Center technical support staff of Art Unit 1648 for remailing the Office action of November 9, 2009, and resetting the period for reply.

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

PATTERSON & SHERIDAN, LLP/CISC
3040 POST OAK BLVD.
SUITE 1500
HOUSTON, TX 77056-6582

Mail Date: 08/04/2010

Applicant	: Paul Thomas Bradley	: DECISION ON REQUEST FOR
Patent Number	: 7657915	: RECALCULATION of PATENT
Issue Date	: 02/02/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/871,884	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/18/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1446** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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

MAILED

SEP 30 2010

OFFICE OF PETITIONS

In re Patent No.7,758,497 :
Hern :
Issue Date: July 20, 2010 :
Application No. 10/872,231 :
Filed: June 18, 2004 :
Attorney Docket No. **60117.000011** :

DECISION FOR REQUEST
FOR RECONSIDERATION
OF PATENT TERM
ADJUSTMENT

This is a decision on the "Request for Reconsideration of Patent Term Adjustment under 37 CFR 1.705(d)," filed September 20, 2010. Patentees request that the patent term adjustment indicated on the face of the Letters of Patent be corrected from five hundred and ninety-two (592) days, to six hundred and fifty-four (654) days.

The request for reconsideration of the patent term adjustment under 37 CFR 1.705(d) is **DISMISSED**.

Patentee's are given TWO (2) MONTHS from the mail date of this decision to respond. No extension of time will be granted under 37 CFR 1.136.

On July 20, 2010, the above-identified application matured into U.S. Patent No. 7,758,497, with a revised patent term adjustment of 592 days. By the instant petition, patentees assert that the patent term should be adjusted by 61 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 filed on July 18, 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 61 days, beginning on the date on which the notice of appeal to the Board of Patent Appeals and Interferences was filed, July 18, 2008, and ending on the day before the date the Request for Continued Examination was filed, September 16, 2008. Thus, the B delay is 395 days (456 – 61). Accordingly, the patent term adjustment is 592 days (518 days of A delay + 395 days of B delay – 0 days of overlap - 321 days of applicant delay).

In view thereof, no change to the patent term adjustment of 592 days 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 is in receipt of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

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

By Mail: Mail Stop Petition
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

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

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

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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United States Patent and Trademark Office
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NOV 03 2010

OFFICE OF PETITIONS

WOODCOCK WASHBURN LLP
CIRA CENTRE, 12TH FLOOR
2929 ARCH STREET
PHILADELPHIA PA 19104-2891

In re Application of :
Chao et al. :
Application No. 10/872,332 :
Filed: June 18, 2004 :
Attorney Docket No. **19-0069 :

DECISION ON APPLICATION FOR PATENT TERM ADJUSTMENT

This is a decision on the APPLICATION FOR PATENT TERM ADJUSTMENT, filed May 24, 2010, which is being treated as a petition under 37 CFR 1.705(b). Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from 574 days to 686 days.

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

On March 22, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 574 days. On May 24, 2010, applicants timely submitted the instant application for patent term adjustment.

Applicants dispute the reduction pursuant to 37 CFR 1.704(c)(8) of 112 days. Specifically, applicants assert: "The USPTO incorrectly notes that applicant delayed 112 days of Patent Term Adjustment for time between a Notice of Allowance mailed November 16, 2009 and an Information Disclosure Statement filed October 19, 2009. This time calculation is not possible." *Petition, 05/24/10, p. 2.*

Applicants' characterization of the basis for the 112-day period of reduction is incorrect. Applicants were properly assessed a delay under 37 CFR 1.704(c)(8) for submission of a supplemental reply or paper after a reply had been filed, without the express request of the examiner.

Pursuant to 37 CFR 1.704(c)(8):

> Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed[.]

It is undisputed that applicants submitted an Information Disclosure Statement (IDS) on October 19, 2009, after filing a response on June 29, 2009, to the non-final Office action. The record does not support a conclusion that the examiner expressly requested the IDS. Further, a review of the IDS, filed October 19, 2009, 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.

In accordance with 37 CFR 1.704(c)(8), the period of adjustment was correctly reduced by 112 days, the number of days beginning on the day after the date the initial reply was filed, June 30, 2009, and ending on the date that the IDS was filed, October 19, 2009.

---

[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.

In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance will remain **574 days**.

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

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

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

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: Mailaender 13 (LE)-US-NP	Patent Number: 7,660,340
Filing Date (or 371(b) or (f) Date): June 22, 2004	Issue Date: February 9, 2010
First Named Inventor: Laurence Mailaender	
Title: Method of receiver processing of CDMA signals in a CDMA system	

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

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

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

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

Signature /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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HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 8910
Reston, VA 20195

Mail Date: 08/13/2010

Applicant	: Laurence Mailaender	: DECISION ON REQUEST FOR
Patent Number	: 7660340	: RECALCULATION of PATENT
Issue Date	: 02/09/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/872,359	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/22/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1605** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO IL 60610

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MAR 05 2012
OFFICE OF PETITIONS

In re Application of	:	
Mario Cane	:	
Application No. 10/872423	:	
Filing or 371(c) Date: 06/22/2004	:	LETTER
Pat. Num.: 7407493	:	
Issue Date: 08/05/2008	:	
Attorney Docket Number: 12706-47	:	

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

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

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

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

/DLW/

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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OLTMAN, FLYNN & KUBLER
915 MIDDLE RIVER DRIVE
SUITE #415
FORT LAUDERDALE, FL 33304

MAILED
MAY 17 2011
OFFICE OF PETITIONS

In re Patent No. 7,117,954 :
Issue Date: October 10, 2006 :
Application No. 10/872,631 : ON PETITION
Filed: June 21, 2004 :
Attorney Docket No. 45946-0100 :

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

The petition is **DISMISSED**.

The patent issued October 10, 2006. The first maintenance fee could have been paid from October 10, 2009 through April 10, 2010, or with a $65 surcharge during the period from April 10, 2010 through October 10, 2010. Accordingly, the patent expired at midnight October 10, 2010, for failure to timely submit, the (first) 3 ½ year maintenance fee.

A petition to accept the unintentionally delayed payment of a maintenance fee under 35 U.S.C. 41(c) and 37 CFR 1.378(c) must be accompanied by: (1) a statement that the delay was unintentional; (2) payment of the appropriate maintenance fee, unless previously submitted; (3) payment of the surcharge set forth in 37 CFR 1.20(i)(2). This petition lacks item (3) above.

Finance records show that petitioner submitted $490 for the 3 ½ year maintenance fee and the unintentional late payment surcharge of $1,410 on January 21, 2011. However, the maintenance fee surcharge payment was insufficient. If petitioner intends to submit a renewed petition or a request for reconsideration the fee petitioner is required to submit an additional $230 is required to meet the fee requirements of the petition.

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.

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 Director.

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

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

cc: BRYAN VIPOND
282 YOSEMITE WAY
SAN JANCINTO, CA 92583

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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AUG 01 2011

OFFICE OF PETITIONS

RON HARRINGA
38980 RECORD ROAD
SAN JACINTO CA 92583

In re Patent No. 7,117,954 :
Issue Date: October 10, 2006 :
Application No. 10/872,631 : ON PETITION
Filed: June 21, 2004 :
Attorney Docket No. 45946-0100 :

This is a decision on the renewed petition under 37 CFR 1.378(c), filed June 30, 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 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.

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

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

The patent file is being forwarded to Files Repository.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Bryan Vipond
282 Yosemite Way
San Jancinto, CA 92583

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 4/25/2011

TO SPE OF : ART UNIT 3736 Hinden Borg Max (Spe)

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/872945 Patent No.: 7766845

CofC mailroom date: 8/12/2010

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

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: _____

_____

_____

_____

_____

_____ _____

SPE Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 4/25/2011

TO SPE OF : ART UNIT 3736 Hinden Borg Max (Spe)

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/872945 Patent No.: 7766845

CofC mailroom date: 8/12/2010

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

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: Marshall Reference okay to be included

_____ SPE _____ Art Unit

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Alexandria, VA 22313-1450
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MCGLINCHEY STAFFORY, PLLC
ATTN: IP GROUP
301 MAIN STREET, 14TH FLOOR
BATON ROUGE, LA 70802

MAILED

NOV 22 2010

OFFICE OF PETITIONS

In re Patent No. 7,205,424 :
Issue Date: April 17, 2007 :
Application No. 10/873,026 : NOTICE
Filed: June 21, 2004 :
Attorney Docket No. S-1021-A

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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Alexandria, VA 22313-1450
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LITMAN LAW OFFICES, LTD.
PATENT LAW BUILDING
8955 CENTER STREET
MANASSAS VA 20110

MAILED

SEP 21 2010

OFFICE OF PETITIONS

Patent No. 7,008,429 :
Application No. 10/873,135 :
Filed: June 23, 2004 : ON PETITION
Issued: March 7, 2006 :
Attorney Docket No. 24951.00 :

This is a decision on the petition under 37 CFR 1.378(c), filed July 3, 2010, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **DISMISSED**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). This is **not** final agency action within the meaning of 5 U.S.C. § 704.

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) above.

Petitioner submitted $1640.00 towards payment of the maintenance fee and the surcharge. However, the surcharge alone is $1640.00. The 3.5-year maintenance fee due is $490.00.

Any petition for reconsideration of this decision must be accompanied by the petition fee of $400.00 as set forth in 37 CFR 1.17(h). 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.

Petitioner should note that if this petition is not renewed, or if renewed and not granted, then the maintenance fees and post expiration surcharge are refundable. Petitioner may request a refund of the fees submitted on July 3, 2010. Please send all requests for refunds to the following address:

Mail Stop 16
Director of the US Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

A copy of this decision should accompany petitioner's request.

Petitioner asks for intervening rights to be explained. As stated in MPEP § 2591,

> Intervening rights in reinstated patents are provided by 35 U.S.C. 41(c)(2) which is reproduced in MPEP § 2501. No patent, the term of which has been maintained as a result of the acceptance of a late payment of a maintenance fee, shall abridge or affect the right of any person or his or her successors in business who made, purchased, imported, or used after the 6-month grace period

but prior to the acceptance of the late maintenance fee anything protected by the patent, to continue the use or importation of, or to sell to others to be used or sold, the specific things made, purchased, imported, or used. A court before which such matter is in question may provide for the continued manufacture, use, importation, or sale of the thing made, purchased, imported, or used as specified, or for the manufacture, use, importation, or sale of which substantial preparation was made after the 6-month grace period but before the acceptance of the late maintenance fee, and it may also provide for the continued practice of any process, practiced, or for the practice of which substantial preparation was made, after the 6-month grace period but prior to the acceptance of the late maintenance fee, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced after the 6-month grace period but before the acceptance of the late maintenance fee.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a request to change the address of record should be filed. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record. Petitioner should note that a change of correspondence address would not affect the fee address. Therefore, if petitioner desires to receive future correspondence, which **may** be mailed regarding maintenance fees for the above-identified patent, the "fee address" and/or "customer number" forms should be submitted.

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 Window located at: U.S. Patent and Trademark Office Customer Service Window Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(571) 273-8300 ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (571) 272-3206.

Liana Walsh
Petitions Examiner
Office of Petitions

cc: DONALD GOLOBEK
70 MEADE STREET
WELLSBORO, PA 16901

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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LITMAN LAW OFFICES, LTD.
PATENT LAW BUILDING
8955 CENTER STREET
MANASSAS VA 20110

MAILED
NOV 02 2010
OFFICE OF PETITIONS

Patent No. 7,008,429	:	
Application No. 10/873,135	:	
Filed: June 23, 2004	:	ON PETITION
Issued: March 7, 2006	:	
Attorney Docket No. 24951.00	:	

This is a decision on the renewed petition under 37 CFR 1.378(c), filed September 23, 2010, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The patent issued March 7, 2006. The last day of the grace period for paying the 3.5-year maintenance fee was March 7, 2010. Therefore, since this petition was filed within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), this petition was timely filed under the provisions of 37 CFR 1.378(c).

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

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a request to change the address of record should be filed. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record. Petitioner should note that a change of correspondence address would not affect the fee address. Therefore, if petitioner desires to receive future correspondence, which **may** be mailed regarding maintenance fees for the above-identified patent, the "fee address" and/or "customer number" forms should be submitted. The appropriate forms are enclosed for petitioner's convenience.

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

Liana Walsh
Petitions Examiner
Office of Petitions

cc: DONALD GOLOBEK
70 MEADE STREET
WELLSBORO, PA 16901

Enclosures: PTO/SB/123: Change of Correspondence Address, Patent; PTO/SB/47: Fee Address Indication Form; PTO/SB/125: Request for Customer Number; Privacy Act Statement

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 4/18/11

TO SPE OF : ART UNIT 2159

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/873,173 Patent No. 7,860,834

CofC mailroom date 4/4/11

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: _____

_____

_____

_____

_____ 2159

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

UNISONE CORPORATION
SUITE 204
510 S. CONGRESS AVENUE
AUSTIN TX 78704

MAILED

SEP 03 2010

OFFICE OF PETITIONS

In re Application of :
Michael T. LUCAS :
Application No. 10/873,183 : ON PETITION
Filed: June 23, 2004 :
Attorney Docket No. 26512Y :

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed June 28, 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 February 10, 2009. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is May 11, 2009. A Notice of Abandonment was mailed on November 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 a Request for Continued Examination (RCE) and fee of $405, and the submission required by 37 CFR 1.114; (2) the petition fee of $810 and (3) a proper statement of unintentional delay.

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

All other inquiries should be directed to the Technology Center at (571) 272-3600.

This application is being referred to Technology Center AU 3687 for processing of the RCE and submission required by 37 CFR 1.114.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

PATRICK D. KELLY
11939 MANCHESTER #403
ST. LOUIS MO 63131

MAILED

APR 20 2011

OFFICE OF PETITIONS

In re US Patent 7,282,603 :
Inventor: Alan K. Richards :
Issued: October 16, 2007 : DECISION ON PETITION
Application No.: 10/873,361 :
Filed: June 21, 2004 :

This is a decision on the petition filed October 15, 2009, and resubmitted with a request for an interview on April 14, 2011, under the provisions of 37 CFR 1.182. The $400 petition fee has been received.

The petition is **DISMISSED**.

The relief requested in the petition filed October 15, 2009, as set forth in "Attachment 1", has been reviewed. However, the requested relief pertains to an entirely separate matter and not to the prosecution of this application that has matured into the instant patent – US 7,282,603. The Office lacks the statutory authority to grant the relief requested. Accordingly, neither the requested relief nor the request for an interview will be granted.

Telephone inquiries with regards to this decision should be directed to the undersigned at (571) 272 – 3687.

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
www.uspto.gov

MAILED

AUG 27 2010

OFFICE OF PETITIONS

QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO CA 92121

In re Patent No. 7,602,840	:	DECISION ON REQUEST
Joshi et al.	:	FOR
Issue Date: 10/13/2009	:	RECONSIDERATION OF
Application No. 10/873,431	:	PATENT TERM ADJUSTMENT
Filed: 06/21/2004	:	
Atty Docket No.	:	
010172C1	:	

This is a decision on the petition filed on May 20, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand two hundred ninety-six (1296) days.

The petition to correct the patent term adjustment is **DISMISSED** with respect to making any change in the patent term adjustment determination under 35 U.S.C. § 154(b) of one thousand two hundred ninety-five (1295) days.

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on June 22, 2007, and ends on May 13, 2009, the day before the RCE was filed, and is 692 days. See 35 U.S.C. 154(b)(1)(B)(i). Considering the overlapping period of 230 days, beginning on June 22, 2007, the day after the date three years after the application was filed, and ending on February 6, 2008, the date the first Office action was mailed, the "B" delay is 462 (692 – 230) days.

Accordingly, no change will be made to the patent term adjustment of 1295 (899 days Office delay + 462 days three years delay – 66 days of applicant delay) days indicated in the Decision on Request for Recalculation of Patent Term Adjustment in View of *Wyeth* and Notice of Intent to Issue Certificate of Correction, mailed on April 20, 2010.

No fee is due for the subject request for reconsideration of the Decision on Request for Recalculation. The $200.00 fee will be credited to counsel's deposit account.

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

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

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Louis J. WIlle
Bristol Myers Squibb Compny
Patent Department
PO Box 4000
Princeton NJ 08543-4000

MAILED

AUG 03 2010

OFFICE OF PETITIONS

In re Patent No. 7,452,678 :
Durham et al. : DECISION UPON REMAND AND
Issue Date: November 18, 2008 : RECONSIDERATION OF
Application No. 10/873,595 : PATENT TERM ADJUSTMENT
Filed: June 22, 2004 : AND NOTICE OF INTENT
Attorney Docket No. D0325 NP : TO ISSUE CERTIFICATE OF
Title: Identification of : CORRECTION
Biomarkers for Liver Toxicity :

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 eight hundred eighty-four (884) 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 eighty-four (884) days.

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

/Kery A. Fries/

Kery Fries

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

Enclosure: Copy of DRAFT Certificate of Correction
Copy of Adjusted PTA calculation

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,452,678

DATED : **November 18, 2008** **DRAFT**

INVENTOR(S) : Durham 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 456 days

Delete the phrase "by 456 days" and insert – by 884 days--

Day : Monday
Date: 7/26/2010

PALM INTRANET

Time: 15:35:26

PTA Calculations for Application: 10/873595			
Application Filing Date:	06/22/2004	PTO Delay (PTO):	571
Issue Date of Patent:	11/18/2008	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	115
Post-Issue Petitions:	0	Total PTA (days):	884
PTO Delay Adjustment:	428		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
84	07/26/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	428		
77.5	10/29/2008	PTA 36 MONTHS			
77	11/18/2008	PATENT ISSUE DATE USED IN PTA CALCULATION			
76	10/23/2008	EXPORT TO FINAL DATA CAPTURE			
75	10/22/2008	FINISHED INITIAL DATA CAPTURE			
74	10/22/2008	DISPATCH TO FDC			
73	09/08/2008	APPLICATION IS CONSIDERED READY FOR ISSUE			
72	09/08/2008	WORKFLOW - QUERY REQUEST - FINISH			
71	08/26/2008	ISSUE FEE PAYMENT VERIFIED			
70	08/26/2008	ISSUE FEE PAYMENT RECEIVED			
69	08/21/2008	EMAIL NOTIFICATION			
68	08/21/2008	EMAIL NOTIFICATION			
67	08/21/2008	MAIL EXAMINER'S AMENDMENT			
66	08/21/2008	MAIL EXAMINER'S AMENDMENT			
65	08/18/2008	EXAMINER'S AMENDMENT COMMUNICATION			
64	08/14/2008	EXAMINER'S AMENDMENT COMMUNICATION			
63	08/02/2008	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
62	06/24/2008	PUBS CASE REMAND TO TC			
61	06/27/2008	WORKFLOW - QUERY REQUEST - BEGIN			
60	06/13/2008	SEQUENCE FORWARDED TO PUBS ON TAPE			
58	06/03/2008	ELECTRONIC REVIEW			
54	06/02/2008	MAIL NOTICE OF ALLOWANCE			
53	05/27/2008	ISSUE REVISION COMPLETED			
52	05/27/2008	DOCUMENT VERIFICATION			

51	05/27/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
50	05/27/2008	CASE DOCKETED TO EXAMINER IN GAU			
49	05/27/2008	EXAMINER'S AMENDMENT COMMUNICATION			
48	05/27/2008	NOTICE OF ALLOWABILITY			
47	05/27/2008	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
45	04/03/2008	DATE FORWARDED TO EXAMINER			
44	03/12/2008	AMENDMENT AFTER FINAL REJECTION			
43	02/01/2008	ELECTRONIC REVIEW			
42	01/31/2008	EMAIL NOTIFICATION			
41	01/29/2008	MAIL FINAL REJECTION (PTOL - 326)	87		31
40	01/22/2008	FINAL REJECTION			
39	07/03/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
38	10/02/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
37	12/13/2007	CASE DOCKETED TO EXAMINER IN GAU			
36	10/02/2007	REFERENCE CAPTURE ON IDS			
35	10/02/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		91	31
34	10/02/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
33	07/03/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
32	07/17/2007	DATE FORWARDED TO EXAMINER			
31	07/03/2007	RESPONSE AFTER NON-FINAL ACTION			
30	07/03/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
29	07/03/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
28	05/02/2007	CASE DOCKETED TO EXAMINER IN GAU			
27	04/05/2007	MAIL NON-FINAL REJECTION			
26	04/02/2007	NON-FINAL REJECTION			
25	02/12/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
24	02/12/2007	REFERENCE CAPTURE ON IDS			
23.7	02/12/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		24	21
23	02/12/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

22	01/29/2007	DATE FORWARDED TO EXAMINER			
21	01/19/2007	RESPONSE TO ELECTION / RESTRICTION FILED			
20	12/19/2006	MAIL RESTRICTION REQUIREMENT	484		-1
19	12/11/2006	REQUIREMENT FOR RESTRICTION / ELECTION			
18	11/23/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
17	12/08/2004	CASE DOCKETED TO EXAMINER IN GAU			
16	09/21/2004	APPLICATION RETURN FROM OIPE			
15	09/21/2004	APPLICATION RETURN TO OIPE			
14	09/20/2004	APPLICATION RETURN FROM OIPE			
13	09/21/2004	APPLICATION IS NOW COMPLETE			
12	09/20/2004	APPLICATION RETURN TO OIPE			
11	09/17/2004	APPLICATION DISPATCHED FROM OIPE			
10	09/20/2004	APPLICATION IS NOW COMPLETE			
9	08/19/2004	ADDITIONAL APPLICATION FILING FEES			
8	08/19/2004	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
7	08/11/2004	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
6	07/29/2004	CLEARED BY OIPE CSR			
5	07/29/2004	CASE CLASSIFIED BY OIPE			
4	07/12/2004	IFW SCAN & PACR AUTO SECURITY REVIEW			
3	07/06/2004	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
2	06/22/2004	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
1	06/22/2004	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

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

MAILED
SEP 30 2011
OFFICE OF PETITIONS

In re Application of :
Stanfill :
Application No. 10/873,681 :
Filed: June 22, 2004 :
Attorney Docket No. 07470-0069001 :

DECISION ON APPLICATION
FOR PATENT TERM ADJUSTMENT

This is in response to the "Application for Patent Term Adjustment" filed September 23, 2011, which is being treated as a petition under 37 C.F.R. § 1.705(b) requesting the initial determination of patent term adjustment be corrected from five hundred fifty-six (556) days to five hundred ninety-one (591) days.

The petition is **granted**.

The Office has updated the Office's PALM system to reflect that the correct patent term adjustment determination at the time of the mailing of the Notice of Allowance is 591 days. A copy of the updated PALM screen, showing the correct determination, is enclosed.

The Office issued a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) on July 26, 2011, which advised Applicant of a patent term adjustment to date of 556 days. In response, Applicant timely filed this application for patent term adjustment with payment of the issue fee on September 23, 2011.

Applicant argues the Office's entry of a 35-day reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(8) based on the submission of an information disclosure statement ("IDS") on May 27, 2009, was improper.

Applicant state the May 27, 2009 IDS was accompanied by a statement in compliance with 37 C.F.R. § 1.704(d), which states,

> A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any

communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.

In essence, 37 C.F.R. § 1.704(d) indicates a reduction in patent term adjustment will not be warranted under 37 C.F.R. §§ 1.704(c)(6), (c)(8), (c)(9), and (c)(10), if the IDS is accompanied by statement asserting:

(1) Each item of information contained in the IDS was first cited in a communication from a foreign patent office in a counterpart application, and
(2) The communication in (1) was not received by any individual designated in 37 C.F.R. § 1.56(c) more than thirty-days prior to the filing of the IDS.

The May 27, 2009 IDS asserts,

(1) Each item of information contained in this statement was first cited in a communication from a foreign patent office,
(2) The communication in (1) is dated April 28, 2009,
(3) The date of April 28, 2009, is not more than three months before the filing date of the IDS.

The instant application for patent term adjustment argues the May 27, 2009, complied with the requirements set forth in 37 C.F.R. § 1.704(d).

The communication from the foreign patent office is dated April 28, 2009, and the IDS at issue was filed May 27, 2009. Based on these facts, one can determine no individual designated in 37 C.F.R. § 1.56(c) would have received the communication more than 30 days prior to the submission of the IDS. However, providing facts that allow a party to reach a conclusion is not the equivalent of explicitly setting forth the conclusion. In other words, a statement in an IDS identifying the date the communication was mailed, which happens to be 30 days or less before the date of submission of the IDS, is not necessarily the equivalent of a statement explicitly asserting the communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the submission of the IDS.

Based on the *entire* record, including assertions regarding the May 27, 2009 IDS set forth in the application for patent term adjustment, and the specific facts in this case, the Office has determined removal of the 35-day reduction in patent term adjustment is warranted.

The Office's initial patent term adjustment determination has been increased 35 days, from 556 days to 591 days.

Submission of the $200.00 fee set forth in 37 C.F.R. § 1.18(e) is acknowledged. No additional fee is required.

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

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

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PALM screen

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

Application Number*: 10873681 Search Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application: 10873681

Application Filing Date	06/22/2004	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	935
A Delays	935	PTO Manual Adjustment	35
B Delays	0	Applicant Delay (APPL)	379
C Delays	0	Total PTA (days)	591

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
159	09/28/2011		P028	Adjustment of PTA Calculation by PTO	35		0
151	07/26/2011		MN/=.	Mail Notice of Allowance			0
150	07/21/2011		OAR	Office Action Review			0
149	07/21/2011		IREV	Issue Revision Completed			0
148	07/21/2011		DVER	Document Verification			0
147	07/21/2011		N/=.	Notice of Allowance Data Verification Completed			0
146	07/20/2011		CNTA	Allowability Notice			0
144	06/24/2011		FWDX	Date Forwarded to Examiner			0
141	06/24/2011		ABN9	Disposal for a RCE / CPA / R129			0
143	06/20/2011		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
142	06/20/2011		RCEX	Request for Continued Examination (RCE)			0
140	06/20/2011		BRCE	Workflow - Request for RCE - Begin			0
139	05/09/2011		FIDC	Finished Initial Data Capture			0
138	03/23/2011		EIDC	Export to Initial Data Capture			0
137	03/22/2011		ELC_RVW	Electronic Review			0
136	03/22/2011		EML_NTR	Email Notification			0
135	03/22/2011		EML_NTF	Email Notification			0
134	03/22/2011		MEX.A	Mail Examiner's Amendment			0
133	03/22/2011		MN/=.	Mail Notice of Allowance			0
132	03/16/2011		IREV	Issue Revision Completed			0
131	03/16/2011		DVER	Document Verification			0
130	03/16/2011		N/=.	Notice of Allowance Data Verification Completed			0
129	03/16/2011		EX.A	Examiner's Amendment Communication			0
128	03/16/2011		CNTA	Allowability Notice			0
126	03/01/2011		FWDX	Date Forwarded to Examiner			0
125	02/24/2011	12/24/2010	A...	Response after Non-Final Action		62	118
124	02/24/2011		XT/G	Request for Extension of Time - Granted			0
123	02/24/2011		EML_NTR	Email Notification			0
122	02/24/2011		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
121	02/17/2011		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
120	09/27/2010		ELC_RVW	Electronic Review			0
119	09/24/2010		EML_NTF	Email Notification			0
118	09/24/2010		MCTNF	Mail Non-Final Rejection			0
117	09/21/2010		CTNF	Non-Final Rejection			0
116	08/26/2010		FWDX	Date Forwarded to Examiner			0
113	08/26/2010		ABN9	Disposal for a RCE / CPA / R129			0
115	08/23/2010		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
114	08/23/2010	06/25/2010	RCEX	Request for Continued Examination (RCE)		59	88
112	08/23/2010		XT/G	Request for Extension of Time - Granted			0
111	08/23/2010		BRCE	Workflow - Request for RCE - Begin			0
110	08/19/2010		EML_NTR	Email Notification			0
109	08/19/2010		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
108	08/13/2010		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
107	07/30/2010		EML_NTR	Email Notification			0
106	07/30/2010		MCTAV	Mail Advisory Action (PTOL - 303)			0
105	07/28/2010		CTAV	Advisory Action (PTOL-303)			0
104	07/27/2010		FWDX	Date Forwarded to Examiner			0
103	07/23/2010		A.NE	Amendment after Final Rejection			0
102	07/23/2010		XT/G	Request for Extension of Time - Granted			0
101	07/21/2010		EML_NTR	Email Notification			0
100	07/21/2010		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
99	07/16/2010		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
98	07/09/2010		EML_NTR	Email Notification			0
97	07/09/2010		MCTAV	Mail Advisory Action (PTOL - 303)			0
96	07/06/2010		CTAV	Advisory Action (PTOL-303)			0

95	06/30/2010		EML_NTR	Email Notification			0
92	06/30/2010		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
94	06/28/2010		FWDX	Date Forwarded to Examiner			0
93	06/25/2010		A.NE	Amendment after Final Rejection			0
91	06/24/2010		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
90	03/25/2010		ELC_RVW	Electronic Review			0
89	03/25/2010		EML_NTF	Email Notification			0
88	03/25/2010		MCTFR	Mail Final Rejection (PTOL - 326)			0
87	03/19/2010		CTFR	Final Rejection			0
86	02/24/2010		FWDX	Date Forwarded to Examiner			0
85	01/25/2010	11/09/2009	A...	Response after Non-Final Action		77	80
84	12/31/2009		EML_NTR	Email Notification			0
83	12/31/2009		NINA	Mail Notice of Informal or Non-Responsive Amendment			0
81	11/19/2009		FWDX	Date Forwarded to Examiner			0
82	11/09/2009		C614	New or Additional Drawing Filed			0
80.1	11/09/2009		A.I.	Informal or Non-Responsive Amendment after Examiner Action			0
80	11/09/2009	09/10/2009	A...	Response after Non-Final Action		60	74
79	11/09/2009		XT/G	Request for Extension of Time - Granted			0
76	06/10/2009		ELC_RVW	Electronic Review			0
75	06/10/2009		EML_NTF	Email Notification			0
74	06/10/2009		MCTNF	Mail Non-Final Rejection			0
73	06/05/2009		CTNF	Non-Final Rejection			0
78	05/27/2009		RCAP	Reference capture on IDS			0
77	05/27/2009	04/22/2009	M844	Information Disclosure Statement (IDS) Filed		35	64
72	05/27/2009		IDSC	Information Disclosure Statement considered			0
71	05/27/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
67	04/25/2009		FWDX	Date Forwarded to Examiner			0
65	04/25/2009		FWDX	Date Forwarded to Examiner			0
63	04/25/2009		ABN9	Disposal for a RCE / CPA / R129			0
70	04/22/2009		IDSC	Information Disclosure Statement considered			0
68	04/22/2009		M844	Information Disclosure Statement (IDS) Filed			0
66	04/22/2009		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
64	04/22/2009	02/26/2009	RCEX	Request for Continued Examination (RCE)		55	48
62	04/22/2009		XT/G	Request for Extension of Time - Granted			0
61	04/22/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
59	04/22/2009		BRCE	Workflow - Request for RCE - Begin			0
58	02/05/2009		EML_NTR	Email Notification			0
57	02/05/2009		MCTAV	Mail Advisory Action (PTOL - 303)			0
56	02/02/2009		CTAV	Advisory Action (PTOL-303)			0
55	01/30/2009		FWDX	Date Forwarded to Examiner			0
54	01/26/2009		A.NE	Amendment after Final Rejection			0
53	01/22/2009		EML_NTR	Email Notification			0
52	01/22/2009		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
51	01/15/2009		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
50	11/26/2008		ELC_RVW	Electronic Review			0
49	11/26/2008		EML_NTF	Email Notification			0
48	11/26/2008		MCTFR	Mail Final Rejection (PTOL - 326)			0
47	11/21/2008		CTFR	Final Rejection			0
45	10/20/2008		FWDX	Date Forwarded to Examiner			0
46	09/15/2008		C614	New or Additional Drawing Filed			0
44	09/15/2008	08/15/2008	A...	Response after Non-Final Action		31	42
43	09/15/2008		XT/G	Request for Extension of Time - Granted			0
42	05/15/2008		MCTNF	Mail Non-Final Rejection			0
41	05/12/2008		CTNF	Non-Final Rejection			0
40	04/07/2008		FWDX	Date Forwarded to Examiner			0
39	04/02/2008		ELC.	Response to Election / Restriction Filed			0
38	03/14/2008	08/22/2005	MCTRS	Mail Restriction Requirement	935		0.5
37	03/06/2008		CTRS	Restriction/Election Requirement			0
30	02/21/2008		DOCK	Case Docketed to Examiner in GAU			0
29	10/17/2007		W525	Withdraw Flagged for 5/25			0
28	10/16/2007		F525	Flagged for 5/25			0
27	10/03/2007		DOCK	Case Docketed to Examiner in GAU			0
26	09/28/2007		DOCK	Case Docketed to Examiner in GAU			0
25	09/26/2007		TI1050	Transfer Inquiry to GAU			0
24	09/25/2007		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
23	09/10/2007		TI1050	Transfer Inquiry to GAU			0
22	08/30/2007		TI1050	Transfer Inquiry to GAU			0
36	08/17/2007		IDSC	Information Disclosure Statement considered			0
21	08/17/2007		RCAP	Reference capture on IDS			0
20	08/17/2007		M844	Information Disclosure Statement (IDS) Filed			0
19	08/17/2007		WIDS	Information Disclosure Statement (IDS) Filed			0
18	06/22/2006		A.PE	Preliminary Amendment			0
35	07/05/2005		IDSC	Information Disclosure Statement considered			0
17	07/05/2005		RCAP	Reference capture on IDS			0
16.7	07/05/2005		M844	Information Disclosure Statement (IDS) Filed			0
16	07/05/2005		WIDS	Information Disclosure Statement (IDS) Filed			0
15	05/04/2005		A.PE	Preliminary Amendment			0
34	04/11/2005		IDSC	Information Disclosure Statement considered			0
14	04/11/2005		RCAP	Reference capture on IDS			0
13.7	04/11/2005		M844	Information Disclosure Statement (IDS) Filed			0
13	04/11/2005		WIDS	Information Disclosure Statement (IDS) Filed			0
12	02/28/2005		TI1050	Transfer Inquiry to GAU			0
11	11/03/2004		WROIPE	Application Return from OIPE			0
10	11/03/2004		ROIPE	Application Return TO OIPE			0
9	11/03/2004		OIPE	Application Dispatched from OIPE			0
8	11/03/2004		COMP	Application Is Now Complete			0
7	10/20/2004		ADDFLFEE	Additional Application Filing Fees			0
6	10/20/2004		OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic			0

5	08/17/2004	INCD	Notice Mailed--Application Incomplete--Filing Date Assigned	0
4	08/12/2004	L194	Cleared by OIPE CSR	0
3	08/12/2004	CLSS	CASE CLASSIFIED BY OIPE	0
2	07/25/2004	SCAN	IFW Scan & PACR Auto Security Review	0
1	06/22/2004	IEXX	Initial Exam Team nn	0
0.5	06/22/2004	EFILE	Filing date	0

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MINNEAPOLIS, MN 55440-1022

In re Patent of Craig W. Stanfill :
Patent No. 8,059,125 :
Issue Date: November 15, 2011 : DECISION ON REQUEST
Application No. 10/873,681 : FOR RECONSIDERATION OF
Filing Date: June 22, 2004 : PATENT TERM ADJUSTMENT
Attorney Docket No. 07470-069001 :

This is a decision on the petition filed January 13, 2012, which is being treated as a petition under 37 C.F.R. § 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by 1,107 days.

The petition is **DISMISSED.**

BACKGROUND

On November 15, 2011, the application matured into U.S. Patent No. 8,059,125, with a revised patent term adjustment of 994 days. On January 13, 2012, Patentee timely submitted this request for reconsideration of patent term adjustment and the required fee. The request asserts the correct number of days of patent term adjustment is 1,107 days.

Patentee maintains the Office incorrectly calculated Office delay pursuant to 37 C.F.R. § 1.702(b). Patentee contends the Office erred in subtracting from the period of "B delay" a period of time that was not "consumed by continued examination of the application." Specifically, Patentees argue that (after the filing of a request for continued examination) the Office issued a Notice of Allowance on July 26, 2011, thereby closing examination of the application on that date. Thus, Patentee argues no continued examination took place during the 113-day period from July 26, 2011 (the issuance date of the Notice of Allowance) until November 15, 2011 (the date the patent was issued). As such, Patentee maintains the period of "B delay" should include the 113 days and be increased from 669 days to 782 days. Patentee concludes the correct patent term adjustment is 1,107 days (the sum of 935 days of "A delay" and 782 days of "B delay" reduced by 266 days of overlap between "A delay" and "B delay" and 344 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:

> Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including —
>
> (i) any time consumed by continued examination of the application requested by the applicant under section 132(b);
> (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or
> (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 C.F.R. § 1.702(b), provides:

> Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:
>
> (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);
> (2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);
> (3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;
> (4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or
> (5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

Patentee's arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 35 U.S.C. § 154(b)(1)(B)(i) and 37 C.F.R. § 1.702(b)(1) as 669 days based on the application having been filed under 35 U.S.C. § 111(a) on June 22, 2004, and the patent not having issued as of the day after the three year date, June 23, 2007-, and a request for continued examination under 35 U.S.C. § 132(b) having been filed on April 22, 2009. In other words, the 113-day period beginning on the date of mailing of the notice of allowance to

the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. § 132(b) and was not included in the "B delay."

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b).[1] So, with respect to calculating the "B delay" where an applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. § 111(a) or the national stage commenced under 35 U.S.C. § 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. § 132(b) was filed and ending on the date the patent was issued.

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

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[1] **Error! Main Document Only.**Pursuant to 35 U.S.C. § 132(b), 37 C.F.R. § 1.114 provides for continued examination of an application, as follows:

> (a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:
> (1) Payment of the issue fee, unless a petition under § 1.313 is granted;
> (2) Abandonment of the application; or
> (3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.
>
> (b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

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 as follows:

1. 35 U.S.C. § 154(b)(1)(B) states the provisions of the section are "Subject to the limitations of paragraph (2)."

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

2. 35 U.S.C. § 154(b)(1)(B) includes the following language: "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States."

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

3. 35 U.S.C. § 154(b)(1)(B) includes the following language: "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C)."

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

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

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

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[2] **Error! Main Document Only.**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.

4. 35 U.S.C. § 154(b)(1)(B) includes the following language: "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued."

The language quoted directly above means the consequence of a failure to issue the patent within the 3-year period is that, after "the end of that 3-year period," an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

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

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

35 U.S.C. § 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. § 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

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

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 C.F.R. § 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). *See* 37 C.F.R. § 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 C.F.R. §§ 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. *See* 37 C.F.R. § 1.97(d). In addition, 37 C.F.R. § 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[3] permit the filing of a request for continued examination under 37 C.F.R. § 1.114 even after the issuance of a notice of allowance under 35 U.S.C. § 151. *See* 37 C.F.R. § 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by 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 C.F.R. § 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. § 154(b)(1)(B)'s guarantee of a total application pendency of no more than three

[3] **Error! Main Document Only.**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.

years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. § 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 C.F.R. § 1.53(b).

In this case, a request for continued examination was filed April 22, 2009, and the patent issued by virtue of that request on November 15, 2011. Pursuant to 35 U.S.C. § 154(b)(1)(B)(i), the period beginning April 22, 2009, and ending November 15, 2011, is not included in calculating B delay.

CONCLUSION

In view of the prior discussion, it is concluded the patent term adjustment of 994 days indicated on the patent is correct.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20120404

DATE : January 23, 2012

TO SPE OF : ART UNIT 2628

SUBJECT : Request for Certificate of Correction on Patent No.: 8059125

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:

/XIAO M. WU/
Supervisory Patent Examiner, Art Unit 2628

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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Infineum USA L.P.
Law Department
1900 East Linden Avenue
P.O. Box 710
Linden NJ 07036-0710

MAILED

MAR 22 2012

OFFICE OF PETITIONS

In re Application of :
Lin et al. :
Application No. 10/873,714 : ON PETITION
Filed: June 22, 2004 :
Attorney Docket No. 2003M005 :
For: OIL COMPOSITIONS

This is a decision on the petition under 37 CFR 1.137(b), filed on February 10, 2012, to revive the above-identified application.

This application became abandoned as a result of applicants' failure to take appropriate action in a timely manner after the decision of September 29, 2011 by the Board of Patent Appeals and Interferences. Therefore, the proceedings as to the rejected claims were terminated. *See* 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on November 30, 2011. *See* MPEP 1214.06. A Notice of Abandonment was mailed on December 12, 2011.

Applicants have submitted a RCE and required $930.00 fee and amendment, an acceptable statement of the unintentional nature of the delay in responding to the September 29, 2011 Board decision, and the $1,860.00 petition fee.

The petition is **GRANTED**.

After the mailing of this decision the application will be forwarded to Technology Center AU 1771 for consideration of the RCE and amendment filed on February 10, 2012.

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
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PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7057835	2006-06-06	10873813	2004-06-21	

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	/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.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Patent No. 7057835
Issue Date: June 6,2006
Application No. 10873813
Filed: June 21,2004
Attorney Docket No. 155634-0160 (P134)

:
: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)
7052941	2006-05-30	10873969	2004-06-21	BESA.13399

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	/Greg L. Martinez/	Date (YYYY-MM-DD)	2010-11-10
Name	Greg L. Martinez	Registration Number	53276

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Patent No. 7052941
Issue Date: May 30,2006
Application No. 10873969
Filed: June 21,2004
Attorney Docket No. BESA.13399

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

This is a decision on the electronic petition, filed November 10,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of November 10,2010 . 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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Wyeth LLC/MH2 Technology Law Group,
LLP
1951 Kidwell Drive
Suite 550
Tysons Corner VA 22181

MAILED

JAN 13 2011

OFFICE OF PETITIONS

In re Application of	:	DECISION ON
Li et al.	:	APPLICATION FOR
Patent Number: 7,638,604	:	PATENT TERM ADJUSTMENT -
Issue Date: 12/29/2009	:	POST GRANT
Application No. 10/873972	:	and
Filing or 371(c) Date: 06/22/2004	:	NOTICE OF INTENT TO ISSUE
Attorney Docket Number: WYT-108	:	CERTIFICATE OF CORRECTION

This is a decision on the renewed petition filed on January 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 sevenhundred fifty-two (752) 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 sixty-eight (868) 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 June 23, 2007 and ends on October 30, 2008, the day before the RCE was filed, but not including 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, and ending on the day before the RCE was filed, or 212 days. See, 35 U.S.C. 154(b)(1)(C)(iii). Thus, the "B" delay period is 284 days (496 days – 212 days), not 498 days.

As to Applicant delay, a further review of Office records reveals that the Office mailed a final Office action on October 1, 2007. Applicant filed the Notice of Appeal in reply to the final Office action on April 1, 2008, three months and 91 days after the mailing of the final Office action. Accordingly, a reduction of 91 days (not 90 days), pursuant to 37 CFR 1.704(b) is properly attributed to Applicant.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days,**

whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

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

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

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by five hundred thirty-eight **(538)** days.

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

/DLW/

Derek L. Woods
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

CC: LATIMER & MAYBERRY IP LAW, LLP
13973 PARK CENTER ROAD
SUITE 106
HERNDON, VA 20171

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,638,604 B2

DATED : **December 29, 2009**

INVENTOR(S) : Li 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 407 days.

Delete the phrase "by 407 days" and insert – by 538 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

JOHN LEZDEY & ASSOCIATES
2401 WEST BAY DRIVE
SUITE 118
LARGO, FL 33770

MAILED

AUG 30 2010

OFFICE OF PETITIONS

In re Application of
Lou Paradise
Application No. 10/874,122
Filed: June 22, 2004
Attorney Docket No.: 3084-1A

ON PETITION

This is a decision in response to the petition filed July 21, 2010, which is being treated under the provisions of 37 CFR 1.181 (no fee) to withdraw the holding of abandonment of the above-identified application.

The petition is **DISMISSED**.

The application was held abandoned for a failure to submit a new oath or declaration in compliance with 37 CFR 1.67(a) in a timely manner in reply to the Notice of Allowability, mailed April 1, 2010, which set a period for reply of three (3) months. Accordingly, this application became abandoned on July 2, 2010. A Notice of Abandonment was mailed on July 13, 2010.

On July 21, 2010, the present petition was filed. Petitioner argues that the abandonment should be withdrawn. Petitioner explain that a new oath or declaration is not required since the originally filed oath complied with duty of disclosure language as defined in37 CFR 1.56. It is noted that petitioner indicates that the language used in the declaration was copies over 20 years ago from a Patent and Trademark form.

Petitioner is advised that in 1992, the Office amended 37 CFR 1.63 to conform to amendments made in 37 CFR 1.56. See Duty of Disclosure, 57 FR 2021 (January 17, 1992) (final rule). The amendments to 37 CFR 1.63(b)(3) resulted in "material to patentability as defined in § 1.56" replacing "material to the examination of the application in accordance with § 1.56(a)." Despite this amendment to 37 CFR 1.63(b)(3), some applicants in their oaths or declarations continue to use "material to the examination of the application" in place of "material to patentability," and "in accordance with § 1.56(a)" in place of "as defined in § 1.56."

However, in response to proper objections made during the examination of pending patent applications, practitioners argued that the outdated language should be accepted because the

Office has not routinely enforced strict compliance with current 37 CFR 1.63, as evidenced by the number of pending patent applications and issued patents containing oaths or declarations with the outdated "material to examination" and "in accordance with 37 CFR 1.56(a)," language.

On February 12, 2008 patent practitioners were put on notice that compliance with the express language of 37 CFR 1.63 was now required. Specifically stating, if an oath or declaration filed on or after June 1, 2008 does not include the express language set forth in 37 CFR 1.63(b)(3), the Office will object to the oath or declaration as failing to comply with 37 CFR 1.63. A supplemental oath or declaration pursuant to 37 CFR will then be required. See 1327 OG 113.

It is noted for pending applications, where the oath or declaration was filed prior to June 1, 2008, the requirement for the express language of 37 CFR 1.63(b)(3) was waived sua sponte. The original declaration for this application was filed on June 22, 2004. The requirement for a new oath or declaration was made in the Notice of Allowability of April 1, 2010.

When an Office communication contains some defect, this error should be brought to the attention of the office before the expiration of the period for reply (MPEP 710.06). A review of the written record confirms that, while the requisite issue fee was filed in response to the Notice of Allowance, there was no reply to the accompanying Notice of Allowability of April 1, 2010. In fact, petitioner does not dispute that a timely reply was not filed to the Notice of Allowability of April 1, 2010.

37 CFR 1.135 states: "[p]rosecution 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**. Emphasis added.

Moreover, 35 U.S.C 133 states: [u]pon 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.

In the instant application petitioner failed to comply with 35 U.S.C. 133 and 37 CFR 1.135 in that petitioner has failed to include such complete and proper reply as the condition of the application may require., *i.e.*, petitioner has failed to respond to the Notice of Allowability mailed April 1, 2010.

The evidence of record does not demonstrate that such delay in filing a response was unavoidable within the meaning of the rule. Consequently, the application was properly held abandoned and will remain abandoned until petitioner takes some other action in the above application.

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).

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 requisite 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).

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

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

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

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

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

JOHN LEZDEY & ASSOCIATES
2401 WEST BAY DRIVE
SUITE 118
LARGO, FL 33770

MAILED

AUG 30 2010

OFFICE OF PETITIONS

In re Application of
Lou Paradise
Application No. 10/874,122
Filed: June 22, 2004
Attorney Docket No.: 3084-1A

ON PETITION

This is a decision in response to the "Petition to Expedite" filed August 16, 2010, requesting expedited consideration of a petition filed July 20, 2010 under the provisions of 37 CFR 1.181. The present petition is properly being treated under the provisions of 37 CFR 1.182.

The petition is **DISMISSED**.

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing certain petitions. In this instance, the fee required for treatment of this petition is $400.

The petition in the above-identified application was not accompanied by payment of the required fee. Accordingly, no expedited consideration of the petition will be given.

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

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

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

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

By Internet: EFS-Web[1]

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

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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

UNITED STATES 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 LEZDEY & ASSOCIATES
2401 WEST BAY DRIVE
SUITE 118
LARGO, FL 33770

MAILED

DEC 15 2010

OFFICE OF PETITIONS

In re Application of
Lou Paradise
Application No. 10/874,122
Filed: June 22, 2004
Attorney Docket No.: 3084-1A

ON PETITION

This is a decision in response to the petition, filed November 1, 2010, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is GRANTED.

A review of the record discloses that this application became abandoned for failure to submit a substitute oath or declaration on or before July 1, 2010, as required by the Notice of Allowability mailed April 1, 2010. A Notice of Abandonment was mailed on July 13, 2010. On November 1, 2010 the present petition was filed.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a substitute declaration; (2) the petition fee of $810; and (3) an adequate statement of unintentional delay.

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

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

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES 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 19 2010

OFFICE OF PETITIONS

MAIER & MAIER, PLLC
1000 DUKE STREET
ALEXANDRIA VA 22314

In re Application of :
Blaine M. Schena et al. :
Application No. 10/874,294 : DECISION ON PETITION
Filed: June 21, 2004 :
Attorney Docket No. **SCHENA-001-US** :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 16, 2010, 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 April 29, 2010, which set a period for reply of three (3) months. Accordingly, this application became abandoned on 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 corrected formal drawings, (2) the petition fee of $810, and (3) a proper statement of unintentional delay. Accordingly, the failure to timely submit corrected formal drawings as required is accepted as being unintentionally delayed.

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

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

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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

MAILED

SEP 27 2010

OFFICE OF PETITIONS

In re Application of :
Jeyhan Karaoguz, et al. :
Application No. 10/874,430 : ON PETITION
Filed: June 30, 2008 :
Attorney Docket No. 15205US02 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 13, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of November 24, 2009. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is February 10, 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 2179 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 McGuire

April M. Wise
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : October 31, 2011

TO SPE OF : ART UNIT 2179

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/874829 Patent No.: 7761811 B1

CofC mailroom date: 10-31-11

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Note: _____

_____

Magdalene Talley
Certificates of Correction Branch
571-272-0423 _____

Thank You For Your Assistance

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

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

Comments: All requested changes are approved.

/Weilun Lo/ — SPE

2179 — 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

VENABLE LLP
P.O. BOX 34385
WASHINGTON DC 20043-9998

MAILED

JAN 3 1 2011

OFFICE OF PETITIONS

In re Application of :
RUDOLPH :
Application No. 10/874,839 : ON PETITION
Filed: June 23, 2004 :
Attorney Docket No. 17960 USA :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 19, 2007, to revive the above-identified application.

The petition is **DISMISSED**.

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed November 17, 2006, which set a shortened statutory period for reply of **three (3) months**. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on February 18, 2007.

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

With respect to item (1): In the petition filed July 19, 2007, petitioner stated a continuation was enclosed, however, no continuation is enclosed nor does petition indicate a continuation serial number and filing date for clarification.. Accordingly, the required reply is considered incomplete and does not meet the requirements as set forth in 37 CFR 1.137(b).

With respect to item (3): Petitioner indicates in the petition filed July 19, 2007, an affidavit was enclosed stating the entire delay was unintentional. In this regard, a review of the file record shows no affidavit has been received.

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.

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

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

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

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

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

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

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

cc: **JAMES T. CARMICHAEL**
MILES & STOCKBRIDGE, P.C.
1751 PINNACLE DRIVE
SUITE 500
MCLEAN, VA 22102-3833

UNITED STATES PATENT AND TRADEMARK OFFICE

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

BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO IL 6061

MAILED
OCT 14 2010
OFFICE OF PETITIONS

In re Application of	:	
Boatman et al.	:	
Application No. 10/875,088	:	ON PETITION
Filed: June 23, 2004	:	
Attorney Docket No. 8627/599	:	

This is a decision on the petition under 37 C.F.R. § 1.182, filed September 13, 2010, to change the name of an inventor.

The petition is **GRANTED.**

The name will be changed from Kimberly D. BRUMMETT to Kimberly D. ROBERTS. A Corrected Filing Receipt, reflecting the name change, is enclosed.

This matter is being directed to Technology Center AU 3734.

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

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
10/875,088	06/23/2004	3734	1976	8627/599	46	4

CONFIRMATION NO. 7456

757
BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, IL 60610

CORRECTED FILING RECEIPT

Date Mailed: 10/13/2010

Receipt is acknowledged of this reissue 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)

Scott E. Boatman, Bloomington, IN;
Kimberly D. Roberts, Springville, IN;

Power of Attorney: The patent practitioners associated with Customer Number 00757

Domestic Priority data as claimed by applicant

This application is a REI of 08/748,669 11/13/1996 PAT 6,409,752
which is a CON of 08/378,073 01/25/1995 PAT 5,632,771
which is a CON of 08/097,392 07/23/1993 ABN

Foreign Applications

If Required, Foreign Filing License Granted: 10/12/2010

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/875,088**

Projected Publication Date: None, application is not eligible for pre-grant publication

Non-Publication Request: No

Early Publication Request: No

Title

FLEXIBLE STENT HAVING A PATTERN FORMED FROM A SHEET OF MATERIAL

Preliminary Class

623

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

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 : August 22, 2011

TO SPE OF : ART UNIT 3734

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/875088 Patent No.: RE42244

CofC mailroom date: 07/22/11

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Note: Should the changes be made?

RoChaun Hardwick
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: _____

/Gary Jackson/ 3734 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

David R. Kemeny
Buchanan, Ingersoll & Rooney PC
P. O. Box 1404
Alexandria, VA 22313-1404

(For Patent Owner)

MAILED

NOV 05 2010

CENTRAL REEXAMINATION UNIT

In re Reissue Application of
Robert Kling *et al.*
Application No.: 10/875,090
Filed: June 24, 2004
For: U.S. Patent No. 5,855,574

In re Robert Kling *et al.*
Reexamination Proceeding
Control No.: 90/006,782
Filed: September 24, 2003
For: U.S. Patent No.: 5,855,574

: SUPPLEMENT TO
: PRIOR DECISION
: TO MERGE
: REISSUE AND
: REEXAMINATION
: PROCEEDINGS

This decision is supplemental to the Office's prior merger decision mailed July 21, 2005, which *sua sponte* merged reissue application No. 10/875,090 and reexamination control No. 90/006,782 into a single proceeding.

The above-identified prior merger decision continues to be in effect, and all further examination in the merged proceeding should continue to be conducted in accordance with the above-identified prior merger decision, except as it is supplemented by this decision – as follows:

If a request for continued examination (RCE) is filed under 37 CFR 1.114, as is permitted for the reissue application, then the merged proceeding will be automatically severed, and the reissue application may then be suspended. Patent owner is put on notice that, in such event, a request for continued examination (RCE) is not available in the reexamination proceeding, and any response to the outstanding Office action (e.g., response to a final rejection) at that stage in the reexamination proceeding must be made taking into account the non-availability of RCE practice. Any failure to timely respond would result in the termination of the prosecution pursuant to 37 CFR 1.550(d).

In addition, if a final Office action should be issued subsequent to the mail date of this decision in this merged proceeding, any request for extension for time (to respond to any such subsequent final action) must be filed under 37 CFR 1.136(b) where an extension is permitted by rule. No extension of time will be permitted under 37 CFR 1.136(a) after any final Office action issued in the present merged proceeding

Copied from 90006782 on 12/15/2010

subsequent to the mail date of this decision.

The merged proceeding will otherwise continue as per the above-identified prior merger decision.

CONCLUSION

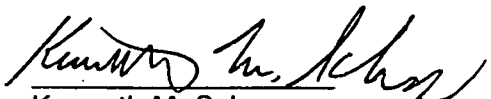
1. Reissue application No.10/875,090 and reexamination control No. 90/006,782 remain merged as a single proceeding.

2. If a request for continued examination (RCE) is filed under 37 CFR 1.114, the merged proceeding will be automatically severed. Patent owner is put on notice that, in such event, a request for continued examination (RCE) is not available in the reexamination proceeding, and any response to the outstanding Office action (e.g., response to a final rejection) at that stage in the reexamination proceeding must be made taking into account the non-availability of RCE practice. Any failure to timely respond would result in the termination of the prosecution pursuant to per 37 CFR 1.550(d).

3. In addition, if a final Office action should be issued in this merged proceeding subsequent to the mail date of this decision, then any request for extension for time (to respond to any such subsequent action) must be filed under 37 CFR 1.136(b) where an extension is permitted by rule. No extension of time will be permitted under 37 CFR 1.136(a) after any final Office action issued subsequent to the mail date of this decision.

4. All further examination in the merged proceeding is to continue to be conducted in accordance with the above-identified prior merger decision.

5. Telephone inquiries related to this decision should be directed to Colleen Dunn at (571) 272-1170, or in her absence to Eric Keasel at (571) 272-4929 or to Mark Reinhart at (571) 272-1611.



Kenneth M. Schor
Senior Legal Advisor
Office of Patent Legal Administration

11/04/10

Copied from 90006782 on 12/15/2010

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PO BOX 747
FALLS CHURCH VA 22040-0747

MAILED

SEP 12 2011

OFFICE OF PETITIONS

In re Patent No. 7,630,545
Issued: December 8, 2009
Application No. 10/875,237
Filed: June 25, 2004
Attorney Docket No. 1906-0137PUS1

: 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 CFR § 1.705 (d)" filed January 20, 2010, requesting that the patent term adjustment determination for the above-identified patent be changed from 677 days to 1330 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 three hundred thirty (1330) days is **GRANTED to the extent indicated herein**.

Patentee has miscalculated the total patent term adjustment as patentee's calculation fails to take into account that a Notice of Appeal was filed September 2, 2008. 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 39 days, beginning on September 2, 2008 and ending on October 10, 2008. The Office has also determined that the period of overlap is 4 days. Thus, B delay is 854 days. The 187 days accorded at issuance was for B delay. The 187 days is being removed and corrected to 854 days.

Additionally, the record supports a conclusion that after the filing on January 31, 2008 of a response to the August 1, 2007 non-Final Office Action, a Supplemental Amendment was also filed on February 13, 2008, fourteen days after the initial response. Thus, the filing of the response on February 13, 2008 is considered a failure to engage under 1.704(c)(8).

Accordingly, pursuant to 37 CFR 1.704(c)(8) a period of reduction of 14 days counting the number of days in the period beginning on the day after the response was filed,

January 31, 2008 and ending on the date of filing of the Supplemental response on February 13, 2008 should have and is being entered.

As such, the patent term adjustment is 1330 (710 "A delay" days, plus 858 "B delay" days, minus 4 overlap days, minus 234 applicant delay days) not 1332.

Receipt of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. 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, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand three hundred thirty (1330)** 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 : 7,630,545 B2

DATED : December 8, 2009

INVENTOR(S) : Leszek Cieplinski

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 1330 days--

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 10/06/10

TO SPE OF : ART UNIT 1654

SUBJECT : Request for Certificate of Correction for Appl. No.: 10875382 Patent No.: 7056883

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (C of C)
Randolph Square 9D40-D
Palm Location 7580
You can fax the Directors/SPE response to 571-270-9990

Lamonte Newsome
Certificates of Correction Branch
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: _____

_____

_____

_____

_____

Carlos Tay SPE 1654

UNITED STATES PATENT AND TRADEMARK OFFICE

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SUITE 900, SOUTH BLDG
WASHINGTON DC 20004

MAILED

JAN 17 2012

OFFICE OF PETITIONS

In re Application of :
Saito, et al. :
Application No. 10/875,585 : DECISION
Filed/Deposited: 25 June, 2004 :
Attorney Docket No. NAK-069-USA-P :

This is a decision on the papers filed on 3 October, 2011, resubmitted with explanation on 14 October, 2011, for revival of an application abandoned due to unintentional delay pursuant to 37 C.F.R. §1.137(b).

NOTE:

The record (including the petitions filed on 28 June, 2011, and on 3 and 14 October, 2011,) does not necessitate a finding that the delay between midnight 7 January, 2009 (the date of abandonment), and 3 and 14 October, 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 Donald E. Townsend (Reg. No. 22,069) when accepting Petitioner's representation that the delay in filing the response was unintentional.[1]

The petition pursuant to 37 C.F.R. §1.137(b) is **GRANTED**.

[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).

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(II).

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the final Office action mailed on 7 October, 2008, with reply due absent an extension of time on or before 7 January, 2009.

The application went abandoned by operation of law after midnight 7 January, 2009.

The Office mailed the Notice of Abandonment on 26 May, 2009.

On 28 June, 2011, more than:

- twenty-nine (29) months after abandonment, and
- twenty-five (25) months after Notice thereof,

Petitioner filed, *inter alia*, a petition pursuant to 37 C.F.R. §1.137(b), with fee, and a statement of unintentional delay, but no proper reply—Petitioner filed an filed an amendment after final, which the Examiner had not agreed to enter and Petitioner, as one registered to practice before the Office, knew was not as of right and not a proper reply[2] if it did not *prima facie* place the application in condition for allowance. The petition was dismissed on 8 August, 2011.

On 23 September, 2011, Petitioner filed, *inter alia*, a petition (with fee) pursuant to 37 C.F.R. §1.137(b) with a reply in the form of a request for continued examination (RCE) and fee and a submission under the provisions of 37 C.F.R. §1.114 in the form of an amendment and statement of unintentional delay.

---

[2] A proper reply is an amendment *prima facie* placing the application in condition for allowance, a Notice of Appeal, or an RCE (with fee and submission under 37 C.F.R. §1.114). (See: MPEP §711.03(c).)

As noted above, record (including the petitions filed on 28 June, 2011, and on 3 and 14 October, 2011,) does not necessitate a finding that the delay between midnight 7 January, 2009 (the date of abandonment), and 3 and 14 October, 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 Donald E. Townsend (Reg. No. 22,069) when accepting Petitioner's representation that the delay in filing the response was unintentional.[3]

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c) as to the showing regarding unintentional delay and a petition pursuant to 37 C.F.R. §1.137(b).

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[4]

STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994). And the regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application.[5],[6]

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[3] See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 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).

[4] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §11.18, formerly §10.18, to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

[5] See: Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. at 53158-59 (October 10, 1997), 1203 Off. Gaz. Pat. Office at 86-87 (October 21, 1997).

[6] The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition. (Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.) Delays in responding properly raise the question whether delays are

Moreover, the Office has set forth in the Commentary at MPEP §711.03(c)(I) the showing and timeliness requirements for a proper showing for relief under 37 C.F.R. §1.181 in these matters.

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

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[7]

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.

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 3731 for further processing in due course.

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unavoidable. Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) And the Petitioner must be diligent in attending to the matter. Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care. (By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.))

[7] 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).

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[8]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

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

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

§1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal 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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SUITE 900, SOUTH BLDG
WASHINGTON DC 20004

MAILED

AUG 08 2011

OFFICE OF PETITIONS

In re Application of :
Saito, et al. :
Application No. 10/875,585 : DECISION
Filed/Deposited: 25 June, 2004 :
Attorney Docket No. NAK-069-USA-P :

This is a decision on the papers filed on 28 June, 2011, for revival of an application abandoned due to unintentional delay pursuant to 37 C.F.R. §1.137(b).

The petition pursuant to 37 C.F.R. §1.137(b) is **DISMISSED**.

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

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

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee

Petitioner does not appear to have satisfied the requirements under the Rule.

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(II).

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the final Office action mailed on 7 October, 2008, with reply due absent an extension of time on or before 7 January, 2009.

The application went abandoned by operation of law after midnight 7 January, 2009.

The Office mailed the Notice of Abandonment on 26 May, 2009.

On 28 June, 2011, more than:

- twenty-nine (29) months after abandonment, and
- twenty-five (25) months after Notice thereof,

Petitioner filed, *inter alia*, a petition pursuant to 37 C.F.R. §1.137(b), with fee, and a statement of unintentional delay, but no proper reply—Petitioner filed an filed an amendment after final, which the Examiner thusfar has refused to enter and Petitioner, as one registered to practice before the Office, knew was not as of right and not a proper reply[1] if it did not *prima facie* place the application in condition for allowance

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).

Petitioner has failed to satisfy the requirements under the Rule and discussed above.

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.[2]

---

[1] A proper reply is an amendment *prima facie* placing the application in condition for allowance, a Notice of Appeal, or an RCE (with fee and submission under 37 C.F.R. §1.114). (See: MPEP §711.03(c).)

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

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[3] The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority.

Unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[4]))

Again, Petitioner's attentions are directed to the guidance in the Commentary at MPEP §711.03(c).

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

Petitioner failed to satisfy the requirements under the Rule.

CONCLUSION

Accordingly, the petition under 37 C.F.R. §1.137(b) is **dismissed**.

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

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[3] 35 U.S.C. §133 provides:

35 U.S.C. §133 Time for prosecuting application.

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

[4] Therefore, by example, an 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.

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

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

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

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[5]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

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

[5] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

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Paper No.

MCKEE, VOORHEES & SEASE,
P.L.C.
801 GRAND AVENUE
SUITE 3200
DES MOINES IA 50309-2721

MAILED

SEP 13 2010

OFFICE OF PETITIONS

In re Patent No. 6,988,446	:	
Rosazza et al.	:	DECISION ON REQUEST
Issue Date: January 24, 2006	:	FOR
Application No. 10/875,661	:	CERTIFICATE OF CORRECTION
Filed: June 24, 2004	:	
Atty Docket No. P00297US02	:	

This is in response to the "PETITION TO SUSPEND RULES PURSUANT TO 37 C.F.R. § 1.183," filed February 2, 2009, requesting the reinstatement of Serial Number 10/875,661 to pending and awaiting examination.

The relief requested reinstatement of the issued patent to a pending and awaiting examination status is not a remedy provided for in the rules. This request is being treated by the Office as a request to reconsider the decision by the Office mailed February 25, 2008, denying patentee's earlier request for a certificate of correction to correct Office mistake (37 CFR §1.322(a)) filed August 11, 2006.

The request for issuance of a certificate of correction is **granted**.

It is clearly disclosed in the records of the Office that a mistake in the patent, incurred through the fault of the Office. *See* Notice of Allowability mailed April 6, 2005. The Certificate of Correction filed August 11, 2006 is directed to correcting that mistake. However, it is noted that under the

circumstances of this case further action by the Office to fully correct the mistake may be undertaken.

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 Certificates of Correction branch has been advised of this decision. The application is thereby forwarded to the Certificates of Correction branch for issuance of the Certificate of Correction filed August 11, 2006 after the expiration of the period for response to this decision.

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

Registered users of EFS-Web may alternatively submit their response to this decision via EFS-Web.

Telephone inquiries regarding this matter may be directed to the undersigned at 571-272-3219.

Nancy Johnson
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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NOV 04 2010

OFFICE OF PETITIONS

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

In re Patent No. 7,604,626	:	
Issue Date: October 20, 2009	:	
Application No. 10/876,147	:	NOTICE
Filed: June 24, 2004	:	
Attorney Docket No. 37272-520C01US	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed September 23, 2010. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

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

Your fee deficiency submission under 37 CFR 1.28 is hereby 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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 09/02/10

TO SPE OF : ART UNIT 2834

SUBJECT : Request for Certificate of Correction for Appl. No.: 10876201 Patent No.: RE41232

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

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

Lamonte Newsome
Certificates of Correction Branch
703-756-1574

Thank You For Your Assistance

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

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

Comments: Approved. /BM/ 9/2/10

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No.

(Apple) WONG, CABELLO, LUTSCH, RUTHERFORD
& BRUCCULERI, LLP
20333 Tomball Parkway
SUITE 600
HOUSTON TX 77070

MAILED

DEC 23 2011

OFFICE OF PETITIONS

In re Patent No. 8,068,103	:	DECISION ON REQUEST
Zimmer et al.	:	FOR RECONSIDERATION
Issue Date: 11/29/2011	:	OF
Application No. 10/876,298	:	PATENT TERM ADJUSTMENT
Filed: 06/24/2004	:	AND
Atty Docket No.	:	NOTICE OF INTENT TO ISSUE
P3318US1 (119-0037US)	:	CERTIFICATE OF CORRECTION

This is a decision on the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT, filed on November 29, 2011, which is treated as a request for reconsideration 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 five (455) days. The petition is treated as a petition requesting that the term of the above-identified patent is extended or adjusted by three hundred forty-two (342) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by three hundred forty-two (342) days is **GRANTED to the extent indicated herein.**

Patentee asserts that the "A" delay period should be 321 days rather than 1152 days. Patentee is correct that the 831 day period of adjustment in connection with the decision on appeal mailed on August 16, 2010, is not warranted. The 831 day period of adjustment is not warranted and will be removed.

As to the "B" delay, the period of adjustment is the period beginning on June 25, 2007, 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 ending on October 12, 2010, the day before

the date a request for continued examination was filed, or 1206 days. Any time consumed by appellate review, however, is not included in the calculation of 37 CFR 1.702(b). See 35 U.S.C. 154(b)(1)(B)(ii). On March 6, 2007, a notice of appeal was filed. On August 7, 2007, 155 days after the date the notice of appeal was filed, a final Office action was mailed. On November 7, 2007, a notice of appeal was filed. On August 16, 2010, 1014 days after the date the notice of appeal was filed, a Board of Patent Appeals and Interferences decision affirming the examiner was mailed. Accordingly, the excluded period for appeal is 1169 (1014 + 155) days, and the "B" delay period is 37 (1206 - 1169) days.

The patent term adjustment at the time of issuance of the patent is 342 days (321 days of Office delay + 37 days of over three years delay - 16 days of applicant delay).

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

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 patentees for their good faith and candor in bringing this to the attention of the Office.

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 three hundred forty-two **(342)** days.

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

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 8,068,103 B2

DATED : **Nov. 29, 2011** **DRAFT**

INVENTOR(S) : Zimmer 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 1173 days.

Delete the phrase "by 1173 days" and insert – by 342 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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OLIFF & BERRIDGE, PLC
P.O. BOX 320850
ALEXANDRIA, VA 22320-4850

Mail Date: 08/11/2010

Applicant	: Hideo Hoshuyama	: DECISION ON REQUEST FOR
Patent Number	: 7656458	: RECALCULATION of PATENT
Issue Date	: 02/02/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/876,566	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/28/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1275** 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.

OK TO ENTER: /SD/

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent of	:	**Attn: Certificate of Correction Branch**
Tsunehito TSUSHIMA et al.	:	Attorney Docket No. 2004_1013A
Patent No. 7,707,418	:	**Confirmation No. 3064**
Issued April 27, 2010	:	

COMMUNICATION SYSTEM, COMMUNICATION METHOD, BASE STATION APPARATUS, CONTROLLER, DEVICE, AND RECORDING MEDIUM STORING CONTROL PROGRAM

REQUEST FOR CERTIFICATE OF CORRECTION UNDER 37 CFR 1.322

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 CFR 1.322, it is respectfully requested that a Certificate of Correction issue to correct the following:

On the Cover Page

In Section (57) Abstract, please replace the Abstract as follows:

- -A communication system is constructed in such a manner that a user is allowed to designate a controller and a wireless device simultaneously to start authentication for connection with a wireless base station to specify the device to be connected, and to establish connection authentication without a password for the first time. Thereafter, the controller distributes a password to the wireless base station and to the wireless device to cancel the connection authentication. Next, connection authentication with the distributed password is established. Thus, the communication system makes it possible to automatically establish connection authentication, thereby eliminating a cumbersome operation by the user in implementing the connection authentication process - -

The USPTO is hereby authorized to charge any fees under 37 C.F.R. §§ 1.16, 1.17, and 1.492, which may be required by this paper to Deposit Account No. 23-0975.

REMARKS

The errors listed above apparently arose due to PTO Mistakes. Form PTO-1050 accompanies this request.

Respectfully submitted,

Tsunehito TSUSHIMA et al.

/Andrew L. Dunlap/
2010.07.30 09:39:30 -04'00'

By _____

Andrew L. Dunlap
Registration No. 60,554
Attorney for Patentees

ALD/led
Washington, D.C. 20005-1503
Telephone (202) 721-8200
Facsimile (202) 721-8250
July 30, 2010

Modified PTO/SB/44 (2007-09)

(Also form PTO-1050)

To: The Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO	:	7,707,418
DATED	:	April 27, 2010
INVENTOR(S)	:	Tsunehito TSUSHIMA 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

In Section (57) Abstract, please replace the Abstract as follows:

- -A communication system is constructed in such a manner that a user is allowed to designate a controller and a wireless device simultaneously to start authentication for connection with a wireless base station to specify the device to be connected, and to establish connection authentication without a password for the first time. Thereafter, the controller distributes a password to the wireless base station and to the wireless device to cancel the connection authentication. Next, connection authentication with the distributed password is established. Thus, the communication system makes it possible to automatically establish connection authentication, thereby eliminating a cumbersome operation by the user in implementing the connection authentication process - -

Wenderoth, Lind & Ponack, L.L.P.
1030 15th Street, N. W., Suite 400 East
Washington, D.C. 20005-1503

PATENT NO. 7,707,418

No. of additional copies: None

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : August 23, 2010

TO SPE OF : ART UNIT 2435
SUBJECT : Request for Certificate of Correction for Appl. No/10/876577 pat. 7707418

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

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: Please replace the original abstract with the abstract submitted my the applicant on 07/30/2010. /SD/

/Kimyen Vu/ — **SPE**

2435 — **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED

DEC 14 2011

OFFICE OF PETITIONS

In re Patent No. 8,030,312	: DECISION ON
Jordan, et al.	: REQUEST FOR RECONSIDERATION
Application No. 10/876,605	: of PATENT TERM ADJUSTMENT
Issue Date: October 4, 2011	: and
Filed: June 28, 2004	: NOTICE OF INTENT TO ISSUE
Attorney Docket No. 01197.0227-01	: CERTIFICATE OF CORRECTION

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT-POST GRANT", filed December 2, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected from two hundred nine (209) days to one thousand two hundred twenty (1220) days, or in the alternative, eight hundred thirty-six (836) days.

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

On October 4, 2011, the instant application matured into U.S. Patent No. 8,030,312 with a patent term adjustment of two hundred nine (209) days. The Office determined a patent term adjustment of 209 days based upon 418 days of "A" delay and 432 days of "B" delay, reduced by 641 days of Applicant delay.

Patentees argue that even though they filed an RCE on January 30, 2009, they should be awarded 37 CFR 1.703(b) "over three year" delay from the day after three years from filing, June 29, 2007, until the issue date of the patent, for a total "B" delay period of 1559 days. Alternatively, Patentees argue that no continued examination occurred during the time periods

between when the Office mailed various Office actions and when applicants' respective replies were filed. In other words, Patentees argue that no continued examination took place during these time periods, and the Office should be accorded 1175 days of "B" delay pursuant to 37 CFR 1.703(b). Patentees' arguments have been considered, but are not persuasive.

RELEVANT STATUTE AND REGULATIONS

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

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

> (i) any time consumed by continued examination of the application requested by the applicant under section 132(b);
>
> (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or
>
> (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

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

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

> (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);
> (2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);
> (3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;
> (4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or
> (5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

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 432 days based on the application having been filed under 35 U.S.C. 111(a) on June 28, 2004 and a request for continued examination under 132(b) having been filed on January 30, 2009. In other words, the period beginning on the date the RCE was filed up until 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." Rather, "B" delay consisted of the period from June 29, 2007 to January 29, 2009, or 581 days.

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 149 days, beginning on September 3, 2008, the date of filing of the notice of appeal, and ending on January 29, 2009, the date before the RCE filing date. Thus, B delay is 432 (581 - 149) days.

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1]. So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage

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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.

commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

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

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

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

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

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

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

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

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)[2]. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days.. "Consumed by" means used by or used in the course of. Websters Collegiate Dictionary, (11th ed.). The "any" signifies that the days consumed by are

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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.

"any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

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

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

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

35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

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

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[3] permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

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

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

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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.

requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, a request for continued examination was filed on January 30, 2009, and the patent issued by virtue of that request on October 4, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on January 30, 2009 and ending on October 4, 2011 is not included in calculating Office delay.

Lastly, Patentees also point out that the assessment of Applicant delay was incorrect. In the first instance, Patentees point out that they filed a supplemental IDS on July 21, 2010, after an RCE had previously been filed on April 22, 2010. In view thereof, 90 days of Applicant delay should have been assessed under 37 CFR 1.704(c)(8) for the filing of this supplemental IDS. In addition, Patentees argue that they were erroneously assessed 41 days of Applicant delay under 37 CFR 1.704(c)(10) for filing a Rule 312 Amendment on August 25, 2011. Patentees point out that they Office mailed a response to the Rule 312 Amendment on September 1, 2011, and as such, only 8 days of Applicant delay should have been assessed. Patentees' argument has been considered and found to be persuasive.

In view thereof, the correct number of days of patent term adjustment is **one hundred fifty-two (152)** days (418 days of "A" delay plus 432 days of "B" delay, reduced by 698 (92+63+92+62+74+44+90+91+69+13+8) 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 hundred fifty-two (152) days.**

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

Cliff Congo
Petitions Attorney
Office of Petitions

Enc: draft Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

DRAFT CERTIFICATE OF CORRECTION

PATENT : 8,030,312 B2

DATED : **October 4, 2011**

INVENTOR(S) : Jordan 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 152 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
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CROWELL & MORING LLP
INTELLECTUAL PROPERTY GROUP
P.O. BOX 14300
WASHINGTON, DC 20044-4300

Mail Date: 08/04/2010

Applicant	: Takeshi Mori	: DECISION ON REQUEST FOR
Patent Number	: 7645111	: RECALCULATION of PATENT
Issue Date	: 01/12/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 10/876,655	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 06/28/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **540** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
www.uspto.gov

CHARLES ERWIN
21600 WEST EL GRANDE TRAIL
WICKENBURG AZ 85390

MAILED

SEP 2 0 2010

OFFICE OF PETITIONS

In re Application of :
Charles Erwin :
Application No. 10/876,752 : DECISION ON PETITION
Filed: June 25, 2004 :
Attorney Docket No. :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 20, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, August 18, 2008, which set a shortened statutory period for reply of three (3) months. A three (3) months extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on February 19, 2009.

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

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 Technology Center AU 1652 for appropriate action by the Examiner in the normal course of business.

JoAnne Burke
Petitions Examiner
Office of Petitions

cc: James W. Proscia
BROOKS KUSHMAN P.C.
1000 Town Center, 22nd Floor
Southfield, MI 48075-1238

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	10876998
Filing Date	25-Jun-2004
First Named Inventor	Anthony Kihm
Art Unit	1632
Examiner Name	JOANNE HAMA
Attorney Docket Number	026038.0207PTUS
Title	Cartilage and bone repair and regeneration using postpartum-derived cells

◉ Please withdraw me as attorney or agent for the above identified patent application and the practitioners of record associated with Customer Number: 32042

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

10.40(b)(4)

10.40(c)(5)

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: 27777

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

Signature	/Scott A. Chambers/
Name	Scott A. Chambers
Registration Number	37573

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Decision Date : February 14, 2012

In re Application of :

Anthony Kihm

Application No : 10876998

Filed : 25-Jun-2004

Attorney Docket No : 026038.0207PTUS

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 February 14, 2012

The request is **APPROVED**

The request was signed by Scott A. Chambers (registration no. 37573) on behalf of all attorneys/agents associated with Customer Number 32042 . All attorneys/agents associated with Customer Number 32042 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 27777 .

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

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PATTON BOGGS LLP
8484 WESTPARK DRIVE
SUITE 900
MCLEAN VA 22102

MAILED

AUG 27 2010

OFFICE OF PETITIONS

In re Patent of Harmon et al.	:	
Patent No. 7,560,276	:	
Issue Date: July 14, 2009	:	DECISION ON
Application No. 10/877,009	:	REQUEST FOR RECONSIDERATION
Filed: June 25, 2004	:	OF
Docket No. 026038.0206PTUS	:	PATENT TERM ADJUSTMENT

This is a decision on the correspondence entitled, "REQUEST FOR CERTIFICATE OF CORRECTION PURSUANT TO 37 CFR 1.322," filed March 5, 2010. Patentees request that the revised patent term adjustment indicated on the patent be corrected from three hundred fifty-nine (359) days to four hundred seventy-seven (477) days. The correspondence will be treated as a petition under 37 CFR 1.705(d).

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

Patentees are given **one (1) month or thirty (30) days**, whichever is longer, to respond to this decision. No extensions of time will be granted under § 1.136(a).

Patentees are advised that § 1.705(d) provides the avenue before the Office for requesting reconsideration of the revised patent term adjustment indicated in the patent. *See* § 1.702-1.705. Moreover, pursuant to § 1.705(b), this section requires payment of:

> (1) The fee set forth in § 1.18(e) ...

However, neither the fee under § 1.18(e) nor a general authorization to charge any required fees, accompanied the request. As payment of the fee is a prerequisite to consideration of the request for reconsideration of patent term adjustment, the request is dismissed for failure to comply with the requirement of paragraph (b)(1) to submit the fee under § 1.18(e).

The Office published a Notice in the Federal Register on February 1, 2010 addressing the decision in *Wyeth v. Kappos*, 591 F.3d 1364, 93 U.S.P.Q. 2d (BNA) 1257 (Fed. Cir. 2010). *See Interim Procedure for Patentees to Request a Recalculation of the Patent Term Adjustment to Comply With the Federal Circuit Court Decision in Wyeth v. Kappos Regarding the Overlapping Delay Provision of 35 U.S.C. 154(b)(2)(A),*

Regarding the Overlapping Delay Provision of 35 U.S.C. 154(b)(2)(A), 75 Fed. Reg. 5043 (February 1, 2010) ("Notice"). The Notice set forth procedures for requesting recalculation of the patent term adjustment in an issued patent. The Notice explained that a timely request must be submitted no later than 180 days after the patent has issued and that the patent must have issued prior to March 2, 2010.

The present request for recalculation was filed on March 5, 2010, which is more than 180 days after the patent issued on July 14, 2009. Therefore, patentees are not eligible for consideration under the procedure outlined in the Notice.

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

Correspondence may also be submitted electronically via EFS-Web.

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

COMMISSIONER FOR PATENTS
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PATTON BOGGS LLP
8484 WESTPARK DRIVE
SUITE 900
MCLEAN VA 22102

MAILED
NOV 04 2010
OFFICE OF PETITIONS

In re Patent of Harmon et al.
Patent No. 7,560,276
Issue Date: July 14, 2009
Application No. 10/877,009
Filed: June 25, 2004
Docket No. 026038.0206PTUS

ON PETITION

This is a decision on the correspondence entitled, "RENEWED REQUEST FOR CERTIFICATE OF CORRECTION PURSUANT TO 37 CFR 1.322," filed September 27, 2010. Patentees request that the revised patent term adjustment indicated on the patent be corrected from three hundred fifty-nine (359) days to four hundred seventy-seven (477) days.

The request is **DISMISSED**.

Patentees are given **THIRTY (30) DAYS** to respond to this decision. Extensions of time will NOT be granted under 37 C.F.R. § 1.136(a).

On July 14, 2009, the above-identified application matured into U.S. Patent No. 7,560,276 with a revised patent term adjustment of 359 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.

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

> The USPTO ... has determined that it is not appropriate to provide a patent term adjustment recalculation via a certificate of correction under 35 U.S.C. 254 or 255. A certificate of correction is permissible under 35 U.S.C. 254 only for a mistake in a patent that "is clearly disclosed by the records of the Office." *See* 35 U.S.C. 254. While the applicable patent term adjustment is ascertainable from the records of the USPTO, a revised patent term adjustment determination requires a complex calculation that is not

[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).

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

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

> If the applicant or patentee wants the USPTO to reconsider its patent term adjustment determination, the applicant must use the procedures set forth in 37 CFR 1.705 for requesting reconsideration of the patent term adjustment determination, whether the USPTO's patent term adjustment determination is greater 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 477 days is dismissed.

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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[2] Id. at 42079-42080.

[3] Id. at 42080.

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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Ted A. Bulter
1508 3rd Street
Daphne AL 36526

MAILED

NOV 21 2011

OFFICE OF PETITIONS

In re Patent No. 6,964,407 :
Issue Date: November 15, 2005 :
Application No. 10/877,168 : ON PETITION
Filed: June 28, 2004 :
Attorney Docket No. :

This is a decision on the petition under 37 CFR 1.378(c), filed October 24, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

This patent expired at midnight November 15, 2005, 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 **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 JoAnne Burke at (571) 272-4584.

JoAnne Burke
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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CHOATE, HALL & STEWART / CITRIX SYSTEMS, INC.
TWO INTERNATIONAL PLACE
BOSTON MA 02110

MAILED

SEP 20 2010

OFFICE OF PETITIONS

In re Application of	:	
Abhishek Chauhan	:	
Application No.: 10/877362	:	DECISION VACATING
Filing or 371(c) Date: 06/25/2004	:	PRIOR DECISION AND
Attorney Docket Number:	:	NOTICE OF ABANDONMENT
2006579-0034 (CTX-147)	:	

This is a decision "Petition to Withdraw Holding of Abandonment," filed April 25, 2008. The petition is properly treated under 37 CFR 1.181(a).

The petition is hereby GRANTED.

Background

The above-identified application became abandoned for failure to timely and properly reply to the "Notice of Panel Decision from Pre-Appeal Brief Review," ("Notice"), mailed October 25, 2007. The Notice informed Applicant that the application remains under appeal, and set the case to proceed to the Board of patent Appeals and Interferences. The time period for filing an appeal brief was reset to one month from the mail date of the decision, or the balance of the two month time period running from receipt of the Notice of Appeal, whichever was greater. Extensions of time under 37 CFR 1.136(a) were available. A Notice of Abandonment was mailed March 5, 2008.

The present petition

Applicant files the present petition and asserts that a timely reply to the Notice, to wit – an Appeal Brief and extension of time request and fee – were timely filed on April 25, 2007.

Office records

A review of Office records confirms that the Office received an Appeal Brief, and a request and fee for a five (5) month extension of time with the present petition on April 25, 2008.

Conclusion

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

No petition fee has been charged and none is due.

The application will be referred to Technology Center Art Unit 2157 for processing of the Appeal Brief in the normal course of business.

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

/DLW/

Derek L. Woods
Attorney
Office of Petitions

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Alexandria, VA 22313-1450
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Teresa L. Barr
1908 Orchard Road
Hood River OR 97031

MAILED

MAR 22 2011

OFFICE OF PETITIONS

In re Application of :
Torchia :
Application No. 10/877,370 : DECISION ON PETITION
Filed: June 25, 2004 :
For: POLARIZED LUBRICANT AND :
METHOD OF USE

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

The petition is **DISMISSED.**

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

This above-identified application became abandoned for failure to timely file a proper response to a final Office Action, which was mailed on April 20, 2010. The final Office Action set a three (3) month shortened statutory period for reply. No timely request for extension of time was obtained under the provisions of 37 CFR §1.136(a). Accordingly, this application became abandoned on July 21, 2010. A Notice of Abandonment was mailed on November 9, 2010.

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d). The instant petition lacks item (s) (1) and (3).

As to item (1), petitioner has failed to submit a response to final Office action. 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).

As to item (3), the showing of record is not sufficient to establish to the satisfaction of the Director that the delay was unavoidable within the meaning of 37 CFR §1.137(a).

The Office may revive an abandoned application if the delay in responding to the relevant outstanding office requirement is shown to the satisfaction of the Commissioner to have been "unavoidable." See, 37 CFR § 1.137(a)(3). Decisions on reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887) (the term "unavoidable" is applicable to ordinary human affairs, and requires no more greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business."); In re Mattullath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913). In addition, decisions on revival are made on a "case by case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). A petition to revive an application as unavoidably abandoned cannot be granted where petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay. Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2D 1130 (N.D. Ind. 1987).

Petitioner asserts illness/incapacitation as the cause of unavoidable delay. Petitioner states that he was in the hospital with pneumonia from December 22-28 2009. In January 2010 he had an MRI due to pain in his back, legs and shoulders. In March of 2010 he had shoulder surgery. In April 2010 he suffered from shaking and twitching. Petitioner states that he has visited 7 different doctors based on problems with his back, legs, arms and shoulders. Petitioner contends that he has arthritis in 85% of his body. Petitioner argues that he has been unable to work on his invention due his illnesses.

A showing of "unavoidable" delay based upon illness must establish that petitioner's incapacitation was of such nature and degree as to render petitioner unable to conduct business (*e.g.*, correspond with the Office) during the period between April 20, 2010 and July 20, 2010. Further, the Office will review the time period until the filing of a grantable petition. Such a showing must be supported by a statement from petitioner's treating physician, and such statement must provide the nature and degree of petitioner's illness during this above-mentioned period.

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned

application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

If petitioner cannot provide the evidence necessary to establish unavoidable delay, or simply does not wish to, petitioner may wish to consider filing a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the $810.00 petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay 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).

The address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition. However, the Office will mail all future correspondence solely to the address of record.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:
Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand:
U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By facsimile:
(571) 273-8300
Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3215.

Charlema Grant
Petitions Attorney
Office of Petitions

Cc Patrick Torchia
19826 Westside Forest Drive
Houston, Texas 77094

Doc Code: PET.AUTO Document Description: Petition automatically granted by EFS-Web	PTO/SB/64 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)
Application Number	10877414
Filing Date	25-Jun-2004
First Named Inventor	Stuart Cheshire
Art Unit	2161
Examiner Name	THU NGUYEN
Attorney Docket Number	APL-P3448
Title	METHOD AND APPARATUS FOR UPDATING RESOURCE RECORDS IN A NAME-SERVER DATABASE

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:
(1) Petition fee;
(2) Reply and/or issue fee;
(3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995; and for all design applications;
(4) Statement that the entire delay was unintentional.

Petition fee
The petition fee under 37CFR 1.17(m) is attached.

☐ Applicant claims SMALL ENTITY status. See 37 CFR 1.27.

☐ Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

☐ Applicant(s) status remains as SMALL ENTITY.

☒ Applicant(s) status remains as other than SMALL ENTITY.

Issue Fee and Publication Fee :

Issue Fee and Publication Fee must accompany ePetition.

☒ Issue Fee Transmittal is attached

Drawing corrections and/ or other deficiencies.

◉ Drawing corrections and/ or other deficiencies are not required

○ I certify, in accordance with 37 CFR 1.4.(D)(4), that drawing corrections and/ or other deficiencies have previously been filed on

○ Drawing corrections and/ or other deficiencies are attached.

☒ STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

I certify, in accordance with 37 CFR 1.4(d)(4) that I am:

◉ An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application.

○ An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity.

○ A sole inventor

○ A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors.

○ A joint inventor; all of whom are signing this e-petition.

○ The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71.

Signature	/A. Richard Park/
Name	A. Richard Park
Registration Number	41241

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Decision Date : March 7, 2012

In re Application of :

Stuart Cheshire

Application No : 10877414

Filed : 25-Jun-2004

Attorney Docket No : APL-P3448

DECISION ON PETITION

UNDER CFR 1.137(b)

This is an electronic decision on the petition under 37 CFR 1.137(b), filed March 7, 2012 , to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Allowance and Issue Fee(s) Due. The date of abandonment is the day after the expiration date of the period set for reply in the Notice.

The electronic petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of payment of the Issue Fee and the Publication Fee (if necessary); (2) the petition fee as set forth in 37 CFR 1.17 (m); (3) the drawing correction and/or other deficiencies (if necessary); and (4) the required statement of unintentional delay have been received. Accordingly, the Issue Fee payment is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

This application file is being directed to the Office of Data Management.

Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

CHARLES D. GAVRILOVICH, JR.,
GAVRILOVICH, DODD & LINDSEY, LLP
985 PASEO LA CRESTA, SUITE B
CHULA VISTA, CA 91910-6729

MAILED

AUG 02 2010

OFFICE OF PETITIONS

In re Patent No. 7,173,538	:	
Issue Date: February 6, 2007	:	
Application No. 10/877,417	:	ON PETITION
Filed: June 25, 2004	:	
Attorney Docket No. RM2100US	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

The Office no longer investigates or rejects original or reissue patent under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-6059.

A. Kelley

Alicia Kelley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Decision Date : February 14, 2012

In re Application of :

Ian Harris

Application No : 10877445

Filed : 25-Jun-2004

Attorney Docket No : 026038.0204PTUS

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 February 14, 2012

The request is **APPROVED**

The request was signed by Scott A. Chambers (registration no. 37573) on behalf of all attorneys/agents associated with Customer Number 32042 . All attorneys/agents associated with Customer Number 32042 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 27777 .

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	10877445
Filing Date	25-Jun-2004
First Named Inventor	Ian Harris
Art Unit	1636
Examiner Name	JENNIFER DUNSTON
Attorney Docket Number	026038.0204PTUS
Title	Postpartum-derived cells for use in treatment of disease of the heart and circulatory system

◉ Please withdraw me as attorney or agent for the above identified patent application and the practitioners of record associated with Customer Number: 32042

The reason(s) for this request are those described in 37 CFR:

10.40(b)(4)

10.40(c)(5)

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: 27777

I am authorized to sign on behalf of myself and all withdrawing practitioners.

Signature	/Scott A. Chambers/
Name	Scott A. Chambers
Registration Number	37573

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	10877446
Filing Date	25-Jun-2004
First Named Inventor	Anthony Kihm
Art Unit	1653
Examiner Name	LORA DRISCOLL
Attorney Docket Number	026038.0202PTUS
Title	POSTPARTUM CELLS DERIVED FROM PLACENTAL TISSUE, AND METHODS OF MAKING AND USING THE SAME

◉ Please withdraw me as attorney or agent for the above identified patent application and the practitioners of record associated with Customer Number: 32042

The reason(s) for this request are those described in 37 CFR:

10.40(b)(4)

10.40(c)(5)

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: 27777

I am authorized to sign on behalf of myself and all withdrawing practitioners.

Signature	/Scott A. Chambers/
Name	Scott A. Chambers
Registration Number	37573

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Decision Date : February 14, 2012

In re Application of :

Anthony Kihm

Application No : 10877446

Filed : 25-Jun-2004

Attorney Docket No : 026038.0202PTUS

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 February 14, 2012

The request is **APPROVED**

The request was signed by Scott A. Chambers (registration no. 37573) on behalf of all attorneys/agents associated with Customer Number 32042 . All attorneys/agents associated with Customer Number 32042 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 27777 .

As a reminder, requester is required to inform the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71 of the electronically processed petition.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

KENNETH J. HOVET
NORDMAN CORMANY HAIR & COMPTON LLP
P.O. BOX 9100
1000 TOWN CENTER DRIVE
OXNARD CA 93031-9100

MAILED

JAN 05 2011

OFFICE OF PETITIONS

In re Patent No. 7,108,510 :
Issue Date: September 19, 2006 :
Application No. 10/877,460 : ON PETITION
Filed: June 25, 2004 :
Attorney Docket No: **D9462** :

This is a decision on the petition filed November 22, 2010, 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 September 19, 2006. The first maintenance fee due could have been paid during the period from September 19, 2009 to March 19, 2010 or, with a surcharge during the period from March 20, 2010 to September 19, 2010. Accordingly, this patent expired on September 19, 2010 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).

This petition lacks item (1) above.

Petitioner, asserts that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely. Specifically, petitioner argues that the patent was docketed for timely payment of the maintenance fee, but was inadvertently overlooked and thus the maintenance fee was not paid and the patent expired.

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

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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).

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. § 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.

The system of having the patent docketed was not reliable as it did not prevent the patent from lapsing for failure to pay the maintenance fees. As prudent and careful practitioners, adequate steps should have been taken in the docketing of this patent and to prevent the delay in the payment of the maintenance fees.

In view thereof, no evidence has been provided to establish that the delay in payment of the maintenance fee was unavoidable. Petitioner is reminded that in the absence of an adequate showing of the diligence of their representatives in this matter throughout the period in question, the actions or inactions of their agents will remain imputed to the assignees.[6]

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.

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

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[4] Ray, 55 F.3d at 609, 34 USPQ2d at 1788.

[5] Id.

[6] See In re Lonardo, 17 USPQ2d 1455 (Comm'r Pat. 1990).

Attn: Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES 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 J. HOVET
NORDMAN CORMANY HAIR & COMPTON LLP
P.O. BOX 9100
1000 TOWN CENTER DRIVE
OXNARD CA 93031-9100

MAILED
MAR 15 2011
OFFICE OF PETITIONS

In re Patent No. 7,108,510
Issue Date: September 19, 2006
Application No. 10/877,460
Filed: June 25, 2004
Attorney Docket No: D9462

ON PETITION

This is a decision on the petition filed February 15, 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 GRANTED.

The patent issued on September 19, 2006. The first maintenance fee due could have been paid during the period from September 19, 2009 to March 19, 2010 or, with a surcharge during the period from March 20, 2010 to September 19, 2010. Accordingly, this patent expired on September 19, 2010 for failure to timely remit the first maintenance fee. A petition filed November 22, 2010 to accept the delayed payment of the maintenance fee, under 37 CFR 1.378(b), was dismissed in a decision mailed January 5, 2011.

Accordingly, the maintenance fee in this case is hereby accepted and the above-identified patent is hereby reinstated as of the mail date of this decision. Fees in the amount of $490.00 for the first maintenance fee and $1640.00 for the surcharge were previously 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(I)(2); and
(3) A statement that the delay in payment of the maintenance fee was unintentional.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : October 14, 2011

TO SPE OF : ART UNIT 2175

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/877509 Patent No.: 7865834

CofC mailroom date: 10-3-11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Note: _____

_____

Magdalene Talley
Certificates of Correction Branch
571-272-0423 _____

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

X Approved	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: _____

_____

_____

_____

_____

/William Bashore/ _____ AU2175 _____
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

PVF -- APPLE INC.
c/o PARK, VAUGHAN, FLEMING & DOWLER LLP
2820 FIFTH STREET
DAVIS, CA 95618-7759

MAILED

DEC 29 2010

OFFICE OF PETITIONS

In re Application of	:	
Kiren R. SEKAR, et *al.*	:	
Application No. 10/877,518	:	DECISION GRANTING PETITION
Filed: June 25, 2004	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **APL-P3447**	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed December 28, 2010, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on December 16, 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]

There is no indication that the petition is signed by a patent attorney of record. However, in accordance with 37 CFR 1.34, the signature of Mr. Anthony Jones 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. Jones desires to receive correspondence regarding this file, the appropriate power of attorney documents must be submitted.

Telephone inquiries should be directed to the undersigned at (571) 272-7253.

This application is being referred to Technology Center AU 2453 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed amendment.

/Monica A. Graves/
Petitions Examiner, Office of Petitions

---

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form* ***must*** *be completed and timely submitted to avoid abandonment of the application.*

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

JEFFREY L. THOMPSON
THOMPSON & THOMPSON, P.A.
P.O. BOX 166
SCANDIA KS 66966

MAILED

SEP 14 2010

OFFICE OF PETITIONS

In re Application of :
Matt D. Pursley :
Application No. 10/877,524 : DECISION ON PETITION
Filed: June 25, 2004 :
Attorney Docket No. PUR-018 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 14, 2010, to revive the above-identified application.

The petition is **GRANTED**.

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. A Notice of Abandonment was mailed July 14, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,510.00 and the publication fee of $300.00, (2) the petition fee of $1,620.00; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This application is being referred to the Office of Data Management for processing into a patent.

Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

MAILED

SEP 22 2010

OFFICE OF PETITIONS

KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE CA 92614

In re Patent No. 7,736,644
Issued: June 15, 2010
Application No. 10/877,774
Filed: June 25, 2004
Dkt. No.: ABGENIX.087A2

: DECISION ON APPLICATION FOR
: PATENT TERM ADJUSTMENT and
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION
:

This is a decision on the petition filed August 13, 2010 requesting that the patent term adjustment be increased from 194 days to 290 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 229 days.

The period of adjustment of 578 days pursuant to 37 CFR 1.702 is not in dispute. Accordingly, the instant decision focuses on the period of applicant delay, which the record establishes totals 349 days.

The reduction of four days pursuant to 37 CFR 1.704(b) in connection with the reply filed August 18, 2004 is not in dispute.

The reduction of 47 days in accordance with 37 CFR 1.704(c)(8) in connection with the reply filed September 6, 2006 is not in dispute.

The reduction of 95 days in accordance with 37 CFR 1.704(b) in connection with the reply filed April 16, 2007 is not in dispute.

The reduction of five days in accordance with 37 CFR 1.704(b) in connection with the reply filed February 21, 2008 is not in dispute.

The reduction of 35 days in accordance with 37 CFR 1.704(c)(7) in connection with the reply filed March 27, 2008 is not in dispute.

The reduction of one day in accordance with 37 CFR 1.704(c)(8) in connection with the reply filed August 13, 2008 is not in dispute.

Patentee asserts a reduction of two days in connection with the request for continued examination (RCE) and petition filed April 23, 2009. However, as previously set forth in the petition decision mailed March 26, 2010, the correct period of reduction in this regard is 63 days pursuant to 37 CFR 1.704(c)(10). The reduction commenced April 23, 2009, the date that the RCE was filed, and ended June 24, 2009, the date that the Notice of Allowance was mailed in response thereto.

The reduction of 11 days in accordance with 37 CFR 1.704(c)(10) in connection with the post allowance submission filed July 20, 2009 is not in dispute.

Patentee has advised the Office that the patent is subject to an additional reduction of eight days in accordance with 37 CFR 1.704(c)(10) in accordance with 37 CFR 1.704(c)(10) in connection with the post allowance submission filed February 12, 2010.

The reduction of eight days pursuant to 37 CFR 1.704(c)(10) in connection with the post allowance submission filed April 5, 2010 is not in dispute.

The reduction of 72 days pursuant to 37 CFR 1.704(c)(10) in connection with the post allowance submission filed April 5, 2010 is not in dispute.

In view thereof, the patent is entitled to an overall adjustment of 229 days (578 days under § 1.702 – 349 days of applicant delay under § 1.704).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136. See 37 CFR 1.323(a)(4).

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 229 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
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,736,644

DATED : **June 15, 2010** **DRAFT**

INVENTOR(S) : Weber, 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 194 days

Delete the phrase "by 194 days" and insert – by 229 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

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AUG 13 2010

OFFICE OF PETITIONS

In re Application of :
Taher H. Haveliwala et al. :
Application No. 10/877,776 : DECISION ON PETITION
Filed: June 24, 2004 : UNDER 37 CFR 1.137(b)
Attorney Docket No. **16113-1444001 / GP-263-00** :

This is a decision on the renewed petition, filed July 1, 2010, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen-month publication country on June 24, 2005 and July 12, 2005. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen-month publication country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing.

A petition to revive an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

(1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
(2) the petition fee as set forth in 37 CFR 1.17(m); and
(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of November 18, 2010, accompanies this decision on petition.

37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required notice of a foreign or international filing from the due date for the required notice until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Since the statement appearing in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the required statement. Petitioner must notify the Office if this is **not** a correct reading of the statement appearing in the petition.

Telephone inquiries concerning this decision should be directed to JoAnne Burke at (571) 272-4584.

This application is being forward to Technology Center Art Unit 3688 for examination in due course.

JoAnne Burke
Petitions Examiner
Office of Petitions

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/877,776	06/24/2004	Taher H. Haveliwala	16113-1444001 / GP-263-00

CONFIRMATION NO. 1473

26192
FISH & RICHARDSON P.C.
PO BOX 1022
MINNEAPOLIS, MN 55440-1022

NONPUBLICATION RESCISSION LETTER

OC000000043018581

Date Mailed: 08/12/2010

Communication Regarding Rescission Of Nonpublication Request and/or Notice of Foreign Filing

Applicant's rescission of the previously-filed nonpublication request and/or notice of foreign filing is acknowledged. The paper has been reflected in the Patent and Trademark Office's (USPTO's) computer records so that the earliest possible projected publication date can be assigned.

The projected publication date is 11/18/2010.

If applicant rescinded the nonpublication request before or on the date of "foreign filing,"[1] then no notice of foreign filing is required.

If applicant foreign filed the application after filing the above application and before filing the rescission, and the rescission did not also include a notice of foreign filing, then a notice of foreign filing (not merely a rescission) is required to be filed within 45 days of the date of foreign filing. See 35 U.S.C. § 122(b)(2)(B)(iii), and Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. § 122(b)(2)(B)(ii)-(iv), 1272 Off. Gaz. Pat. Office 22 (July 1, 2003).

If a notice of foreign filing is required and is not filed within 45 days of the date of foreign filing, then the application becomes abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii). In this situation, applicant should either file a petition to revive or notify the Office that the application is abandoned. See 37 CFR 1.137(f). Any such petition to revive will be forwarded to the Office of Petitions for a decision. Note that the filing of the petition will not operate to stay any period of reply that may be running against the application.

Questions regarding petitions to revive should be directed to the Office of Petitions at (571) 272-3282.

[1] Note, for purpose of this notice, that "foreign filing" means "filing an application directed to the same invention in another country, or under a multilateral international agreement, that requires publication of applications 18 months after filing".

/jlburke/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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ONE LANDMARK SQUARE 10TH FLOOR
STAMFORD CT 06901-2682

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SEP 27 2010

OFFICE OF PETITIONS

In re Application	:	
Gus Labrasciano	:	DECISION ON APPLICATION FOR
Application No. 10/877,784	:	PATENT TERM ADJUSTMENT
Filed: June 25, 2004	:	
Attorney Docket No.	:	
0001396USU/2221USU	:	

This letter is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR §1.705", filed July 6, 2010. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from five hundred fifteen (515) days to five hundred twenty-five (525) days.

The application for patent term adjustment is **DISMISSED**.

On April 6, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date is five hundred fifteen (515) days. On July 6, 2010, Applicant timely[1] submitted an application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is five hundred twenty-five (525) days.

[1] Applicant filed the application for patent term adjustment on the same date as the issue fee.

Applicant states that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of five hundred fifteen (515) days based on an adjustment for PTO delay of five hundred eighty-seven (587) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), reduced by Applicant's delays of three (3), thirty-six (36), and thirty-three (33) days, all pursuant to 35 U.S.C. 154(b)(2)(C)(iii) and 37 C.F.R. § 1.704(b). The three instances of Applicant delay are at issue.

Applicant argues that in each instance, he filed a reply on a date earlier than that recognized by the Office. Applicant argues he "timely mailed" a reply to an August 9, 2004 Notice to File Missing Parts on November 9, 2004, and should not have been accorded 3 days of delay. Office records indicate that while Applicant's reply included a Certificate of Mailing dated November 9, 2004, Applicant's reply was not filed (i.e. received in the Office) until November 12, 2004. Similarly, Applicant argues that he "filed" a reply to a April 4, 2007 Office action on August 6, 2007, and should have only been assessed Applicant delay of 33 days, not 36 as accorded by the Office. However, Office records indicate that while Applicant included a Certificate of Mailing dated August 6, 2007, Applicant's reply was not filed until August 9, 2007. Lastly, Applicant argues that he filed a reply to a October 31, 2007 Office action on February 29, 2008, and as such should have only been assessed Applicant delay of 29 days, not 33 days as accorded by the Office. Again, a review of the file reveals that Applicant's reply included a Certificate of Mailing dated February 29, 2008, but that Applicant's reply was not filed until March 4, 2008.

37 CFR 1.703(f) states that the date indicated on any Certificate of Mailing or Transmission under 37 CFR 1.8 shall not be taken into account in the patent term adjustment calculation. While the date indicated on any Certificate of Mailing or Transmission will be taken into account as to timeliness so as to avoid abandonment of the application, the date of filing will be the date used in the patent term adjustment calculation. See MPEP 2731.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **five hundred fifteen (515)** days (587 days of PTO delay reduced by 72 days of applicant delay).

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e).

The application file is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

Anthony Knight
Director
Office of Petitions

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CUPERTINO CA 95015-1687

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AUG 13 2010

OFFICE OF PETITIONS

In re Patent No. 7,462,208
Issued: December 9, 2008
Application No. 10/877,804
Filed: June 25, 2004
Attorney Docket No. ULTRP007

: 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 INDICATED IN GRANTED PATENT UNDER 37 C.F.R. § 1.705(d) filed on January 28, 2009 and resubmitted March 17, 2010, requesting that the patent term adjustment be corrected from 644 to 1120 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 of Appeals for the Federal Circuit's decision in *Wyeth v. Kappos*, 2009-1120 (Fed. Cir. 1-7-2010).

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 one hundred nineteen 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 727 days and the "B" delay period, the over three year period begins on June 25, 2007 and ends on December 9, 2008 and is 533 days. However, while Applicants agree that the period of overlap begins on June 25, 2007, Applicant argues the period ends on August 20, 2007 and therefore that the period of overlap is 57 days. Applicants are advised that as the period of overlap begins on June 25, 2007 and ends on August 22, 2007 as the non-Final Office Action was mailed August 22, 2007, not August 20, 2007 and the period of overlap is 58 days, and therefore, considering the 58 days of overlap, the "B" delay is 533 days. As such, the patent term adjustment is 1119 days (727 plus 533 minus 58 overlap minus 83 applicant delay), not 1120 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 one hundred nineteen (1119)** 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 : 7,462,208 B2

DATED : December 9, 2008

INVENTOR(S) : Ian W. Kaye

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 (644) days

Delete the phrase "by 644 days" and insert – by 1119 days--

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OFFICE OF PETITIONS

FISH & RICHARDSON PC
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MINNEAPOLIS MN 55440-1022

In re Patent No. 7,895,263	: DECISION ON
Kirchmeier, et al.	: REQUEST FOR RECONSIDERATION
Application No. 10/877,821	: of PATENT TERM ADJUSTMENT
Issue Date: February 22, 2011	: and
Filed: June 25, 2004	: NOTICE OF INTENT TO ISSUE
Attorney Docket No. 24292-0004001	: CERTIFICATE OF CORRECTION

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)", filed April 21, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected from one thousand one hundred fifty-nine (1159) days to one thousand one hundred sixty-seven (1167) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.**

On February 22, 2011, the instant application matured into U.S. Patent No. 7,895,263 with a patent term adjustment of one thousand one hundred fifty-nine (1159) days. The Office determined a patent term adjustment of 1159 days based upon 1027 days of Office delay pursuant to 37 CFR 1.703(a)(1) and 584 days of Office delay pursuant to 37 CFR 1.703(b), reduced by 94 days of Applicant delay and 358 days of overlap between "A" and "B" delay.

Patentees argue that even though they filed an RCE on January 30, 2009, they should be awarded 37 CFR 1.703(b) "over three year" delay from the time the Office mailed a Notice of Allowance on January 5, 2011 until the issue date of the patent on February 22, 2011. In other words, Patentee argue that no continued examination took place during this time period, and the Office should be accorded 49 additional days of delay pursuant to 37 CFR 1.703(b). Patentee's argument has been considered, but is not persuasive.

RELEVANT STATUTE AND REGULATIONS

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including —

> (i) any time consumed by continued examination of the application requested by the applicant under section 132(b);
>
> (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or
>
> (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 CFR 1.702(b) provides that:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:

> (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);
> (2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);
> (3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;
> (4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or
> (5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

Patentee's arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 584 days based on the application having been filed under 35 U.S.C. 111(a) on June 25, 2004 and a request for continued examination under 132(b) having been filed on January 30, 2009. In other

words, the 49 day period beginning on the date of mailing of the notice of allowance on January 5, 2011 to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay."

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1]. So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

---

[1] Pursuant to 35 U.S.C. 132(b), 37 CFR 1.114 provides for continued examination of an application, as follows:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, (580 F. Supp. 2d 138), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than

three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)2. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. *Websters Collegiate Dictionary*, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

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[2] Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures3 permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

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[3] Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, a request for continued examination was filed on January 30, 2009, and the patent issued by virtue of that request on February 22, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on January 30, 2009 and ending on February 22, 2011 is not included in calculating Office delay.

In addition, Patentees also point out that they should have been assessed forty-one (41) days of Applicant delay pursuant to 37 CFR 1.704(c)(8). A review of the record reveals that Applicants filed an RCE on January 30, 2009. Subsequently, Applicants filed an IDS on March 12, 2009. Accordingly, pursuant to 37 CFR 1.704(c)(8), 41 days of Applicant delay should have been assessed.

In view thereof, the correct number of days of patent term adjustment is **one thousand one hundred eighteen (1118)** days (1027 days of "A" delay and 584 days of "B" delay, reduced by 135 (41+61+33) days of Applicant delay and 358 days of overlap).

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 one hundred eighteen (1118) days.**

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

DRAFT CERTIFICATE OF CORRECTION

PATENT : 7,895,263 B2

DATED : **February 22, 2011**

INVENTOR(S) : Kirchmeier 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 1159 days.

Delete the phrase "by 1159 days" and insert – by 1118 days--

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OFFICE OF PETITIONS

In re Patent No. 7,895,263	: DECISION ON
Kirchmeier, et al.	: REQUEST FOR RECONSIDERATION
Application No. 10/877,821	: of PATENT TERM ADJUSTMENT
Issue Date: February 22, 2011	: and
Filed: June 25, 2004	: NOTICE OF INTENT TO ISSUE
Attorney Docket No. 24292-0004001	: CERTIFICATE OF CORRECTION

This is a decision on the "RESPONSE TO DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT AND NOTICE TO ISSUE CERTIFICATE OF CORRECTION", filed September 16, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected from one thousand one hundred fifty-nine (1159) days to one thousand one hundred sixty-seven (1167) days.

Insofar as the petition to correct the patent term adjustment indicated on the above-identified patent requests additional 37 CFR 1.703(b) "over three year" delay, the petition is **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.

On February 22, 2011, the instant application matured into U.S. Patent No. 7,895,263 with a patent term adjustment of one thousand one hundred fifty-nine (1159) days. The Office determined a patent term adjustment of 1159 days based upon 1027 days of Office delay pursuant to 37 CFR 1.703(a)(1) and 584 days of Office delay pursuant to 37 CFR 1.703(b), reduced by 94 days of Applicant delay and 358 days of overlap between "A" and "B" delay.

Patentees argue that even though they filed an RCE on January 30, 2009, they should be awarded 37 CFR 1.703(b) "over three year" delay from the time the Office mailed a Notice of Allowance on January 5, 2011 until the issue date of the patent on February 22, 2011. In other words,

Patentee argue that no continued examination took place during this time period, and the Office should be accorded 49 additional days of delay pursuant to 37 CFR 1.703(b). Patentee's argument has been considered, but is not persuasive.

RELEVANT STATUTE AND REGULATIONS

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including —

> (i) any time consumed by continued examination of the application requested by the applicant under section 132(b);
>
> (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or
>
> (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 CFR 1.702(b) provides that:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:

> (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);
> (2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);
> (3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;
> (4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or
> (5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

Patentee's arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 584 days based on the application having been filed under 35 U.S.C. 111(a) on June 25, 2004 and a request for continued examination under 132(b) having been filed on January 30, 2009. In other words, the 49 day period beginning on the date of mailing of the notice of allowance on January 5, 2011 to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay."

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1]. So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is

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[1] Pursuant to 35 U.S.C. 132(b) , 37 CFR 1.114 provides for continued examination of an application, as follows:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified

actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, (580 F. Supp. 2d 138), 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.

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[2] Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

The "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 January 30, 2009, and the patent issued by virtue of that request on February 22, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on January 30, 2009 and ending on February 22, 2011 is not included in calculating Office delay.

In addition, Patentees also point out that they should have been assessed forty-one (41) days of Applicant delay pursuant to 37 CFR 1.704(c)(8). A review of the record reveals that Applicants filed an RCE on January 30, 2009. Subsequently, Applicants filed an IDS on March 12, 2009. Accordingly, pursuant to 37 CFR 1.704(c)(8), 41 days of Applicant delay should have been assessed.

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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.

In view thereof, the correct number of days of patent term adjustment is **one thousand one hundred eighteen (1118)** days (1027 days of "A" delay and 584 days of "B" delay, reduced by 135 (41+61+33) days of Applicant delay and 358 days of overlap).

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 one hundred eighteen (1118) days.**

Telephone inquiries specific to this matter should be directed to Petitions Attorney Cliff Congo at (571) 272-3207.

Anthony Knight
Director
Office of Petitions

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In re Patent No. 7,895,263	:	
Kirchmeier, et al.	:	FINAL AGENCY DECISION
Application No. 10/877,821	:	ON REQUEST TO INVOKE THE
Issue Date: February 22, 2011	:	SUPERVISORY AUTHORITY
Filed: June 25, 2004	:	OF THE DIRECTOR
Attorney Docket No. 24292-0004001	:	

This is a decision on the petition captioned "PETITION UNDER 37 C.F.R. § 181(a)(3) TO INVOKE THE SUPERVISORY AUTHORITY OF THE DIRECTOR", filed Monday, November 28, 2011, requesting that the Director review the Final Agency Decision on Request for Reconsideration of Decision on Application for Patent Term Adjustment ("Decision") mailed by the Office of Petitions on September 27, 2011.

The Decision maintains that the above-identified patent is entitled to one thousand one hundred eighteen (1118) days of patent term adjustment ("PTA"). Patentee requests that the Director review the decision and modify the PTA calculation to one thousand one hundred sixty-seven (1167) days.

The decision of the Director of the Office of Petitions has been reviewed. However, because no error has been found in the decision, the petition under 37 CFR §1.181 is **DENIED**.

The patent term adjustment remains 1118 days, as indicated in the final agency action of September 27, 2011. The patent is being referred to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand one hundred eighteen (1118)** days.

Andrew Hirshfeld
Associate Commissioner for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

NOVOZYMES NORTH AMERICA, INC.
500 FIFTH AVENUE
SUITE 1600
NEW YORK, NY 10110

MAILED

SEP 22 2010

OFFICE OF PETITIONS

In re Application of :
Hiroaki Udagawa, et al. :
Application No.: 10/877,849 : ON PETITION
Filed: June 25, 2004 :
Attorney Docket No.: 10490.500-US :

This is a decision on the petition, filed September 21, 2010, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on August 19, 2010, cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 1652 for further processing of the Request for Continued Examination (RCE) under 37 CFR 1.114, including consideration of the concurrently filed Renewed Petition to Correct Inventorship Under 37 CFR 1.48(a).

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B - Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 4/1/2011

TO SPE OF : ART UNIT: 2622

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/877,852 Patent No.: 7,411,609

C of C Mailroom date: 3/18/2011

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
703-756-1814

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 specification states the relationship and the relationship to the parent application was cited in the application data sheet filed 6/24/2004 /JMH/

/Jason Chan/ 2622

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

SPE Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MAILED

SEP 07 2010

OFFICE OF PETITIONS

GREENBERG TRAURIG, LLP
MET LIFE BUILDING
200 PARK AVENUE
NEW YORK, NY 10166

In re Application of	:	
Jeffrey B. Levering, et al.	:	
Application No. 10/877,904	:	DECISION GRANTING PETITION
Filed: June 25, 2004	:	UNDER 37 CFR 1.313(c)(3)
Attorney Docket No. 104424.010200	:	

This is a decision on the petition, filed September 3, 2010, under 37 CFR 1.313(c)(3) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

Petitioner requests that the above-identified application be withdrawn from issue for express abandonment. *See* 37 CFR 1.313(c)(3).

The application is hereby withdrawn from issue, and the abandonment is hereby recognized.

Telephone inquiries regarding this decision should be directed to undersigned at (571) 272-1642. All other inquiries regarding this application should be directed to the Technology Center.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAILED

MAR 10 2011

OFFICE OF PETITIONS

AEON LAW / REAL NETWORKS, INC
1525 4TH AVE
SUITE 800
SEATTLE, WA 98101

In re Application of :
Randy Meyerson :
Application No. 10/877,955 : ON PETITION
Filed: June 24, 2004 :
Attorney Docket No.: REAL-2006065 (RN101) :

This is a decision on the petition, filed January 25, 2011, to revive the above-identified application under 37 CFR 1.137(b).

This application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of June 16, 2010, which set a shortened statutory period for reply of three (3) months. This decision precedes the mailing of a Notice of Abandonment. On January 25, 2011, the present petition was filed, along with a Notice of Appeal (with fee) and a Pre-Appeal Brief Request for Review.

The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2).

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Notice of Appeal and appeal fee of $540; (2) the petition fee of 1,620; and (3) an adequate statement of unintentional delay.

Accordingly, the petition is GRANTED.

In view of the submission of the Pre-Appeal Brief Request for Review, the period of time for filing the appeal brief will be the later of the two-month period set in 37 CFR 41.37(a) or one month from the mail date of the decision on the request. **The two-month period for filing an appeal brief under 37 CFR 41.37 (accompanied by the fee required by 37 CFR 41.20(b)(2)), runs from the date of this decision.**

This application is being referred to Technology Center AU 2434 for appropriate action.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3204. Inquiries relating to the prosecution of the application should be referred to the Technology Center.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

JIAN CHUN WANG
14001 SADDLE RIVER DR
NORTH POTOMAC MD 20878

MAILED
FEB 24 2011
OFFICE OF PETITIONS

In re Application of :
WANG :
Application No. 10/878,069 : DECISION ON PETITION
Filed: June 28, 2004 :
Attorney Docket No. :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 29, 2010, to revive the above-identified application.

The petition is **DISMISSED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, February 21, 2008, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on May 22, 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 lacks item(s) (1).

With respect to item (1): A review of the Office record shows that the reply that accompanied the petition dated December 29, 2010, could not be accepted because the Amendment is not in the proper format. Please see the Office Action dated February 21, 2008, and 37 CFR 1.121 and direct any inquiries to the Examiner at (571) 272-7604. Accordingly, the petition filed December 29, 2010, does not meet the requirements set out in 37 CFR 1.137(b).

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:
Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand:
U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300.**

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

August 15, 2011

Patent No. : 7,502,300 B2
Appl. No. : 10/878,343
Inventor(s) : Hideaki Hirai, et al.
Issued : March 10, 2009
Title : **OPTICAL PICKUP AND OPTICAL DATA PROCESSING APPARATUS**
Docket No. : **R2184.0321/P321**

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule 1.323.

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid,* including after issuance of the patent.

In view of the foregoing, your request, in this mater, is hereby denied.

All petitions for correction of Assignees' names under rule 3.81(b) should:

(A) state that the assignment was submitted for recordation as set forth in 37 CFR 3.11 before issuance of the patent;

(B) include a request for a certificate of correction under 37 CFR 1.323 along with the fee set forth in 37 CFR 1.20(a); (unless fee (currently $100) was previously paid for consideration of request for certificate of correction)

(C) include the processing fee set forth in 37 CFR 1.17(i).

The petition 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
(Hours of operation are 8:30 a.m. to midnight, Eastern Standard Time, Monday through Friday)

By fax: (571) 273-8300
ATTN: Office of Petitions

Antonio Johnson
For Mary F. Diggs
Decisions & Certificates
of Correction Branch
(571)272-0483

DICKSTEIN SHAPIRO LLP
1825 EYE STREET NW
Washington DC 20006-5403

UNITED STATES 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. 7216018
Issue Date: May 8,2007
Application No. 10878669
Filed: June 28,2004
Attorney Docket No. MIT 10541 US

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed November 10,2011 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of November 10,2011 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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)
7216018	2007-05-08	10878669	2004-06-28	

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity			Small Entity		
	Fee	Code		Fee	Code
○	3 ½ year	(1551)	◉	3 ½ year	(2551)
○	7 ½ year	(1552)	○	7 ½ year	(2552)
○	11 ½ year	(1553)	○	11 ½ year	(2553)

SURCHARGE

The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition.

STATEMENT

THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

◉ An attorney or agent registered to practice before the Patent and Trademark Office

○ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

○ A joint patentee; all of whom are signing this e-petition

○ The assignee of record of the entire interest

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	/Sam Pasternack/	Date (YYYY-MM-DD)	2011-11-10
Name	Sam Pasternack	Registration Number	29576

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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MUETING RAASCH & GEBHARDT, P.A.
P.O. BOX 581336
MINNEAPOLIS, MN 55458-1336

MAILED

NOV 08 2010

OFFICE OF PETITIONS

In re Patent No. 7,326,568 :
Issue Date: February 5, 2008 :
Application No. 10/878,694 : ON PETITION
Filed: June 28, 2004 :
Attorney Docket No. 235.0010 0120 :

This is a decision on the renewed petition filed November 2, 2010, under 37 CFR 3.81(b)[1] to correct the assignee's name on the front page of the above-identified patent by way of a Certificate of Correction.

The petition is **granted.**

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3210. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificates of Correction Branch at (703) 305-8309.

This application is being forwarded to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Irvin Dingle
Petitions Examiner
Office of Petitions

[1] See Official Gazette of June 22, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Date Mailed : March 24, 2011

Patent No. :7636857
Inventor :10/878729
Patent Issued : Dec. 22, 2009
Title : DATA-MOVER CONTROLLER WITH PLURAL REGISTERS FOR SUPPORTING :CIPHERING OPERATIONS

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.

Review of the application file reveals that correspondence to support entry of reference data, item (56) of Title page. as noted in applicants' request for correction is not found in the records of the Patent and Trademark office. Accordingly, a signed and dated copy of applicants 1449 or PTO-892 reflecting the requested references considered by the examiner is required for further consideration. If omitted references were submitted by applicant, a copy of the receipt obtained from this office should be included.

In view of of the foregoing, applicants request is hereby denied. Any telephone inquiries concerning this communication should be directed to Ms. A. Green at (571) 272-9005.

Mary Diggs, Supervisor
Decisions and Certificates of
Correction Branch
(703) 756-1580 or (571) 272-9015

Volpe and Koenig P.C.
United Plaza, Suite 1600
30 South 17th Street
Philadelphia, PA 19103

/arg

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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SYNTRIX BIOSYSTEMS, INC.
215 CLAY STREET NW
SUITE B-5
AUBURN, W WA 98001

MAILED
OCT 04 2011
OFFICE OF PETITIONS

In re Application of
Barton A. Kamen, et al.
Application No. 10/878,733
Filed: June 28, 2004
Attorney Docket No.: 7.001

ON PETITION

This is a decision in response to the petition, filed September 26, 2011, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is not signed by a registered practitioner of record. However, in accordance with 37 CFR 1.34(a), the signature of Jeffrey B. Oster appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed March 22, 2011, which set a period for reply one (1) month or thirty days. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on April 23, 2011. A Notice of Abandonment was subsequently mailed on September 29, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) a proposed reply in the form of an amendment; (2) the petition fee of $930; and (3) an adequate statement of unintentional delay[1].

The application is being referred to Technology Center AU 1613 for appropriate action by the Examiner in the normal course of business on the response filed September 26, 2011.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204. Inquiries relating to further prosecution should be directed to the Technology Center.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

[1] 37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. While the statement is not made by an attorney of record, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Casimir Jones, S.C.
2275 DEMING WAY, SUITE 310
MIDDLETON WI 53562

MAILED

NOV 08 2010

OFFICE OF PETITIONS

In re Patent No. 7,469,426 :
Issue Date: December 30, 2008 :
Application No. 10/878,813 : ON PETITION
Filed: June 28, 2004 :
Attorney Docket No. **KNAUTHE-09096** :

This is a decision on the petition filed July 30, 2009, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

Petitioner states that the correct assignee's name is "Roeckl Sporthandschue GmbH & Co. KG (DE)" 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.

As authorized, the $130 fee for the petition under 37 CFR 3.81(b) has been assessed to petitioner's deposit account.

Telephone inquiries concerning this decision may be directed to the JoAnne Burke at (571) 272-4584. 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.

/JoAnne Burke/
JoAnne Burke
Petitions Examiner
Office of Petitions

---

[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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MAILED

AUG 30 2010

OFFICE OF PETITIONS

FOLEY AND LARDNER LLP
SUITE 500
3000 K STREET NW
WASHINGTON DC 20007

In re Patent No. 7,373,967
Issued: May 20, 2008
Application No. 10/879,245
Filed: June 28, 2004
Dkt. No.: 047589-0254

: 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 under 37 CFR 1.183 and the petition under 37 CFR 1.705(d) filed November 25, 2009.

DECISION UNDER 37 CFR 1.183

The present renewed petition under 37 CFR 1.183 is granted to the extent that the decision of September 28, 2009 has been reconsidered

DECISION UNDER 37 CFR 1.705(d)

This petition is **GRANTED TO THE EXTENT INDICATED HEREIN**.

The petition for recalculation/reconsideration of the USPTO's PTA determination for U.S. Patent No. 7,373,967 was previously 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.

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.

Accordingly, a decision on the merits of the request for reconsideration of patent term adjustment follows herewith.

Patentees herein request a patent term adjustment of 744 days. Patentees calculation is based on 934 days of non-overlapping days under 35 USC 154(b)(1)(A) & (B) less an applicant delay of 190 days.

Review of the record reveals that the application is entitled to an "A" delay of 544 days pursuant to 37 CFR 1.702(a)(1) plus a "B" delay of 327 days less applicant delay of 91 days pursuant to 37 CFR 1.704(b). Thus, the patent is entitled to an overall adjustment of 780 days (544 + 327 – 91).

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. See 37 CFR 1.323(a)(4).

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 780 days.

The Office acknowledges the previous submission of petition fees. 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
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,373,967

DATED : **May 20, 2008** **DRAFT**

INVENTOR(S) : Tusutaniwskyj, 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 453 days

Delete the phrase "by 453 days" and insert – by 780 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. 7081573
Issue Date: July 25,2006
Application No. 10879252
Filed: June 28,2004
Attorney Docket No. 026806-004500US

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed November 12,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of November 12,2010 . 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)
7,081,573	2006-07-25	10/879,252	2004-06-28	026806-004500US

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	/Shane H. Hunter, Reg. No. 41,858/	Date (YYYY-MM-DD)	2010-11-12
Name	Shane H. Hunter	Registration Number	41858

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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MAR 22 2012

OFFICE OF PETITIONS

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C
ONE FINANCIAL CENTER
BOSTON MA 02111

In re Patent No. 7,509,349
Issue Date: March 24, 2009
Application No. 10/879,331
Filed: June 29, 2004
Attorney Docket No. 18358-007

: DECISION DISMISSING PETITION
: UNDER 37 CFR 1.78(a)(3) AND
: REQUEST FOR CERTIFICATE OF
: CORRECTION
:

This is a decision on the petition, filed February 22, 2012, which is being treated as a petition under 37 CFR 1.78(a)(3), seeking to add a claim for priority under 35 U.S.C. § 120 to nonprovisional Application No. 10/123,788, filed April 16, 2002, by way of a certificate of correction.

The petition is **dismissed.**

A review of the file record fails to disclose that a claim for the benefit of priority to the above-noted, prior-filed nonprovisional application was made within the time period set forth in 37 CFR 1.78(a)(2)(ii) and further failed to include a proper reference to the prior-filed application as required by 37 CFR 1.78(a)(2)(i) and 1.78(a)(2)(iii).

The instant application was filed June 29, 2004. Therefore, since this application was filed after November 29, 2000, a petition under 37 CFR 1.78(a)(3), along with submission of a Certificate of Correction, is the appropriate avenue of relief to accept a late claim for the benefit of priority to a prior-filed nonprovisional application after issuance of the application into a patent. *See* MPEP 1481.

The Office notes:

Where priority is based upon 35 U.S.C. 120 to a national application, the following conditions must be satisfied:

(A) all requirements set forth in 37 CFR 1.78(a)(1) must have been met in the application which became the patent to be corrected;

(B) it must be clear from the record of the patent and the parent application(s) that priority is appropriate (see MPEP § 201.11); and

(C) a grantable petition to accept an unintentionally delayed claim for the benefit of a prior application must be filed, including a surcharge as set forth in 37 CFR 1.17(t), as required by 37 CFR 1.78(a)(3).

MPEP 1481.03(II)(B) .

If all the above-stated conditions are satisfied, a Certificate of Correction can be used to add or correct a claim under 35 U.S.C. 120 for benefit of a prior-filed nonprovisional application.

In this instance, petitioner has not satisfied condition (C) above because he did not submit a grantable petition under 37 CFR 1.78(a)(3).

A petition for acceptance of an unintentionally delayed claim 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) and (iii) to the prior-filed application (unless previously submitted);

(2) the surcharge set forth in 37 CFR 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition fails to comply with item (1) above.

The petition must be dismissed because the reference required by 35 U.S.C. 120 and 37 CFR 1.78(a)(2)(i) has not be properly supplied. Specifically, petitioner did not submit the reference in compliance with 37 CFR 1.78(a) by filing an amendment to the first sentence(s) of the specification or in a supplemental ADS. Pursuant to 37 CFR 1.78(a)(2)(iii), the reference to the prior-filed nonprovisional application must be included in an application data sheet (§ 1.76) or the specification must contain or be amended to contain such reference in the first sentence(s) following the title. Additionally, the Office notes that the Certificate of Correction form submitted on February 22, 2012, requested correction of the first paragraph of the specification, but not the front page, of the Letters Patent.

Also, the status of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. See MPEP Section 201.11, Reference to Prior Nonprovisional Applications.

In addition, Application No. 10/657,757 does not contain a reference indicating that it is a continuation of Application No. 10/123,788, filed on April 15, 2002. A petition under 37 CFR 1.78(a)(3) was filed in Application No. 10/657,757 on February 22, 2012 and dismissed on March 21, 2012. Until an appropriate reference is entered in Application No. 10/657,757, the

desired change cannot be entered in the subject application. In other words, appropriate references must be present in each intermediate application in the chain of prior applications.

The following must occur to effectuate the desired changes:

(1) Petitioner must file a renewed petition in Application No. 10/657,757 to add a delayed benefit claim to Application No. 10/123,788 and the petition must be granted. [Please review the petition decision in Application No. 10/657,757, mailed March 21, 2012 for further explanation.] &

(2) Petitioner must file a renewed petition under 37 CFR 1.78(a)(3), accompanied by either a supplemental ADS or an amendment to the specification listing the status of each nonprovisional parent application and adding the new benefit claim.[1] Additionally, petitioner must submit a completed Certificate of Correction form listing the status of each nonprovisional parent application and adding the new reference to the prior-filed nonprovisional application on both the front page and the first paragraph of the specification of the Letters Patent. The text of the correction, as well as the location of the error in the printed patent should be identified on form PTO/SB/44 by column and line number.

The Office acknowledges receipt of the $1,410 surcharge fee, as well as the $100 certificate of correction fee. No additional fees will be required when the renewed petition and certificate of correction are filed.

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

[1] The Office notes that 37 CFR 1.33(b) requires that amendments and other papers, except for written assertions pursuant to 37 CFR 1.27(c)(2)(ii), filed in an application must be signed by an appropriate party. Therefore, any supplemental ADS or amendment submitted on renewed petition must be signed in accordance with 37 CFR 1.33(b).

By internet: EFS-Web
www.uspto.gov/ebc/efs_help.html
(for help using EFS-Web call the
Patent Electronic Business Center
at (866) 217-9197)

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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APR 13 2012

OFFICE OF PETITIONS

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C
ONE FINANCIAL CENTER
BOSTON MA 02111

In re Patent No. 7,509,349 : DECISION GRANTING PETITION
Issue Date: March 24, 2009 : UNDER 37 CFR 1.78(a)(3) AND
Application No. 10/879,331 : REQUEST FOR CERTIFICATE OF
Filed: June 29, 2004 : CORRECTION
Attorney Docket No. 18358-007 :

This is a decision on the petition, filed April 2, 2012, under 37 CFR 1.78(a)(3), seeking to add a claim for priority under 35 U.S.C. § 120 to nonprovisional Application No. 10/123,788, filed April 16, 2002, by way of a certificate of correction.

The petition is **granted**.

A review of the file record fails to disclose that a claim for the benefit of priority to the above-noted, prior-filed nonprovisional application was made within the time period set forth in 37 CFR 1.78(a)(2)(ii) and further failed to include a proper reference to the prior-filed application as required by 37 CFR 1.78(a)(2)(i) and 1.78(a)(2)(iii).

The instant application was filed June 29, 2004. Therefore, since this application was filed after November 29, 2000, a petition under 37 CFR 1.78(a)(3), along with submission of a Certificate of Correction, is the appropriate avenue of relief to accept a late claim for the benefit of priority to a prior-filed nonprovisional application after issuance of the application into a patent. *See* MPEP 1481.

The Office notes:

Where priority is based upon 35 U.S.C. 120 to a national application, the following conditions must be satisfied:

(A) all requirements set forth in 37 CFR 1.78(a)(1) must have been met in the application which became the patent to be corrected;

(B) it must be clear from the record of the patent and the parent application(s) that priority is appropriate (see MPEP § 201.11); and

(C) a grantable petition to accept an unintentionally delayed claim for the benefit of a prior application must be filed, including a surcharge as set forth in 37 CFR 1.17(t), as required by 37 CFR 1.78(a)(3).

MPEP 1481.03(II)(B) .

If all the above-stated conditions are satisfied, a Certificate of Correction can be used to add or correct a claim under 35 U.S.C. 120 for benefit of a prior-filed nonprovisional application.

Petitioner has satisfied the above listed requirements.

A petition for acceptance of an unintentionally delayed claim 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) and (iii) to the prior-filed application (unless previously submitted);

(2) the surcharge set forth in 37 CFR 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

As the petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the above-noted, prior-filed nonprovisional application satisfies the conditions of 37 CFR 1.78(a)(3) and applicant has submitted a completed Certificate of Correction form correcting the reference to the prior-filed nonprovisional application on both the front page and the first paragraph of the specification of the Letters Patent, the petition is granted.

A corrected Filing Receipt, which includes the priority claim to the above-noted, prior-filed nonprovisional application, accompanies this decision on petition.

Petitioner is advised that the granting of this petition and the mailing of a corrected Filing Receipt should not be viewed as an indication that a determination has been made that this application is entitled to claim benefit of the prior-filed application. A determination that applicant is entitled to claim benefit of the prior-filed application will be made by the Examiner prior to the mailing of a certificate of correction.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3230.

This application is being referred to the Certificates of Correction Branch for processing the request for a certificate of correction in accordance with this decision on the petition under 37 CFR 1.78(a)(3).

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
10/879,331	06/29/2004	2165	757	18358-007	28	3

CONFIRMATION NO. 8007

CORRECTED FILING RECEIPT

30623
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C
ONE FINANCIAL CENTER
BOSTON, MA 02111

Date Mailed: 04/12/2012

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)

Feyzi Celik, Hopkinton, MA;

Power of Attorney:

Nathaniel Kramer--25350	Howard Susser--33556
Anthony Mirabito--28161	Matthew Golden--35161
Paul Hayes--28307	Daniel Coughlin--36111
James Gatto--32694	Nicholas Triano III--36397
Eugene Feher--33171	David Crosby--36400

Domestic Priority data as claimed by applicant

This application is a CIP of 10/657,757 09/08/2003 PAT 7296036
which is a CON of 10/123,788 04/16/2002 PAT 6654768
which is a CON of 09/223,129 12/30/1998 PAT 6374259
which claims benefit of 60/102,614 10/01/1998

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: 08/17/2004

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 10/879,331**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

METHOD AND APPARATUS FOR STORING AND RETRIEVING BUSINESS CONTACT INFORMATION IN A COMPUTER SYSTEM

Preliminary Class

707

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

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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Accenture Chicago 28164
Brinks Hofer Gilson & Lione
PO Box 10395
Chicago, IL 60610

MAILED
AUG 25 2011
OFFICE OF PETITIONS

In re Patent No. 7,469,219	:
Goldberg	: DECISION UPON REMAND AND
Issue Date: December 23, 2008	: RECONSIDERATION OF
Application No. 10/879,368	: PATENT TERM ADJUSTMENT
Filed: June 28, 2004	: AND NOTICE OF INTENT
Attorney Docket No. 10022/487	: TO ISSUE CERTIFICATE OF
Title: Order Management System	: CORRECTION
	:

This is a decision following remand from the District Court for the District of Columbia regarding the patent term adjustment indicated on the above-identified patent. The Court remanded this matter to the U.S. Patent and Trademark Office for recalculation of the patent term adjustment in accordance with the decision in Wyeth & Elan Pharma Int'l Ltd. v. Kappos, 591 F.3d 1364 (Fed. Cir. 2010).

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 six hundred and twenty-two (690) days.

The application is being forwarded to the Certificates Branch for issuance of a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one thousand one hundred and twenty-two (690) days.

The Office notes that the amount of PTA is one day more than requested by applicant. The USPTO in a telephonic call to Attorney John Rauch on August 15, 2011 notified Mr. Rauch of the additional day and advised by Rauch that the certificate would be in an amount of 690.

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 : 7,469,219

DATED : December 23, 2008 **DRAFT**

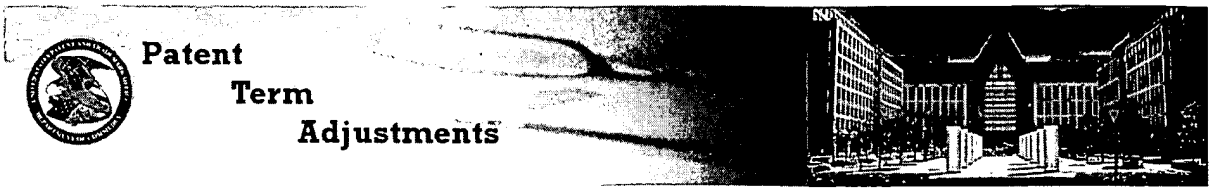
INVENTOR(S) : Goldberg et al.

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 690 days--



PTA/PTE Information | Patent Term Adjustment | Patent Term Extension

Application Number*: 10879368 Search | Explanation of PTA Calculation | Explanation of PTE Calculation

PTA Calculations for Application: 10879368

Application Filing Date	06/28/2004	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent	12/23/2008	Non-Overlapping USPTO Delays:	567
A Delays	567	PTO Manual Adjustment	216
B Delays	0	Applicant Delay (APPL)	93
C Delays	0	Total PTA (days)	690

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
64	08/16/2011		P028	Adjustment of PTA Calculation by PTO	216		0
56	12/23/2008	10/04/2008	PTAC	Patent Issue Date Used in PTA Calculation	80		51
56.5	12/03/2008	06/28/2007	PTA36M	PTA 36 Months	0		0
55	11/25/2008		EFDC	Export to Final Data Capture			0
54	11/24/2008		D1935	Dispatch to FDC			0
53	06/05/2008		PILS	Application Is Considered Ready for Issue			0
52	06/04/2008		REAS	Response to Reasons for Allowance			0
51	06/04/2008		N084	Issue Fee Payment Verified			0
50	06/04/2008		IFEE	Issue Fee Payment Received			0
49	04/23/2008		FIDC	Finished Initial Data Capture			0
48	04/01/2008		EIDC	Export to Initial Data Capture			0
46	03/27/2008		MN/=.	Mail Notice of Allowance			0
45	03/21/2008		IREV	Issue Revision Completed			0
44	03/21/2008		DVER	Document Verification			0
43	03/21/2008		N/=.	Notice of Allowance Data Verification Completed			0
42	03/17/2008		EX.A	Examiner's Amendment Communication			0
41	03/17/2008		CNTA	Allowability Notice			0
40	02/11/2008		FWDX	Date Forwarded to Examiner			0
38	02/11/2008		FWDX	Date Forwarded to Examiner			0
36	02/11/2008		ABN9	Disposal for a RCE / CPA / R129			0
35	02/06/2008		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
39	01/29/2008		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
37	01/29/2008		RCEX	Request for Continued Examination (RCE)			0
33	01/29/2008		BRCE	Workflow - Request for RCE - Begin			0
34	01/28/2008		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
32	11/01/2007		MCTFR	Mail Final Rejection (PTOL - 326)			0
31	10/29/2007		CTFR	Final Rejection			0
30	09/12/2007		FWDX	Date Forwarded to Examiner			0
29	09/10/2007	06/09/2007	A...	Response after Non-Final Action		93	25
26	09/10/2007		XT/G	Request for Extension of Time - Granted			0
25	03/09/2007		MCTNF	Mail Non-Final Rejection			0
24	03/05/2007		CTNF	Non-Final Rejection			0
22	02/09/2007		FWDX	Date Forwarded to Examiner			0
21	01/29/2007		ELC.	Response to Election / Restriction Filed			0
20	12/28/2006	08/28/2005	MCTRS	Mail Restriction Requirement	487		-1
19	12/21/2006		CTRS	Restriction/Election Requirement			0
23	10/27/2006		IDSC	Information Disclosure Statement considered			0
18	10/27/2006		RCAP	Reference capture on IDS			0
17.7	10/27/2006		M844	Information Disclosure Statement (IDS) Filed			0
17	10/27/2006		WIDS	Information Disclosure Statement (IDS) Filed			0
16	10/04/2006		DOCK	Case Docketed to Examiner in GAU			0
15	02/28/2006		DOCK	Case Docketed to Examiner in GAU			0
14	07/11/2005		RESC	Rescind Nonpublication Request for Pre Grant Publication			0
13	04/14/2005		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
12	04/14/2005		DOCK	Case Docketed to Examiner in GAU			0
11	04/14/2005		C.AD	Correspondence Address Change			0
7	08/23/2004		COMP	Application Is Now Complete			0
10	08/21/2004		WROIPE	Application Return from OIPE			0
9	08/21/2004		ROIPE	Application Return TO OIPE			0
8	08/21/2004		OIPE	Application Dispatched from OIPE			0
5	08/19/2004		L128	Cleared by L&R (LARS)			0
4	08/11/2004		L198	Referred to Level 2 (LARS) by OIPE CSR			0
3	08/11/2004		CLSS	CASE CLASSIFIED BY OIPE			0
2	07/25/2004		SCAN	IFW Scan & PACR Auto Security Review			0
6	06/28/2004		NPRQ	PGPubs nonPub Request			0
1	06/28/2004		IEXX	Initial Exam Team nn			0

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	10879484
Filing Date	28-Jun-2004
First Named Inventor	Gadi Melamed
Art Unit	2177
Examiner Name	QUOC TRAN
Attorney Docket Number	2003P00791US(S20.026)
Title	OBJECT BASED NAVIGATION

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	/Patrick J. Buckley/
Name	Patrick J. Buckley
Registration Number	40928

UNITED STATES 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 5,2011

In re Application of :

Gadi Melamed

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 10879484

Filed : 28-Jun-2004

Attorney Docket No : 2003P00791US(S20.026)

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed October 5,2011 , 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 2177 for processing of the request for continuing examination under 37 CFR 1.114 .

Office of Petitions

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Roche Molecular Systems, Inc.
4300 Hacienda Drive
Pleasanton CA 94588

MAILED

APR 06 2011

OFFICE OF PETITIONS

In re Application of :
Veeraiah Bodepudi, et al. :
Application No. 10/879,494 : DECISION ON PETITION
Filed: June 28, 2004 :
Attorney Docket No. 21636-US1 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 7, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before January 18, 2011, as required by the Notice of Allowance and Fee(s) Due, mailed October 15, 2010. Accordingly, the date of abandonment of this application is January 19, 2011. The Notice of Abandonment was mailed February 1, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,510 and the publication fee of $300, (2) the petition fee of $1,620; and (3) a proper statement of unintentional delay.

The time to respond to the Notice of Allowance and Fee(s) Due that was mailed October 15, 2010 was not restarted because of the mailing of a supplemental Notice of Allowability mailed December 6, 2010. Therefore, the $1620 petition fee will be charged to the petitioner's deposit account.

Telephone inquiries concerning this decision should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to the Office of Data Management for processing into a patent.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450
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OFFICE OF PETITIONS

BANNER & WITCOFF, LTD.
TEN SOUTH WACKER DRIVE
SUITE 3000
CHICAGO, IL 60606

In re Patent No. 7,387,757 :
Issue Date: June 17, 2008 :
Application No. 10/880,189 : NOTICE
Filed: June 29, 2004 :
Attorney Docket No. 03248.00099

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989).** Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED.**

Inquiries related to this communication should be directed to Irvin Dingle at (571) 272-3210.

Irvin Dingle
Petitions Examiner
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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JUN 01 2011

OFFICE OF PETITIONS

QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO CA 92121

In re Application of :
OLIVER, et al :
Application No. 10/880,309 : DECISION ON PETITION
Filed: June 28, 2004 :
Attorney Docket No. 020601 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 15, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely pay the issue and publication fees on or before April 7, 2011, as required by the Notice of Allowance and Fee(s) Due, mailed January 7, 2011, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on April 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 payment of the issue fee of $1510; (2) the petition fee of $810; and (3) a statement of unintentional delay.

As authorized, the issue and publication fees of $1810 will be charged to Deposit Account No. 17-0026.

The submission of the Request for Continued Examination (RCE) and IDS is acknowledged and will be processed by the Technology Center.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

All other telephone inquiries should be directed to the Technology Center at (571) 272-3600.

The application is being referred to Technology Center AU 3625 for processing of the RCE within the normal course of business.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

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Paper No.

BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO IL 60610

MAILED

JAN 25 2011

OFFICE OF PETITIONS

In re Patent No. 7,522,135	:	DECISION ON REQUEST
Seong Ho Baik	:	FOR
Issue Date: April 21, 2009	:	RECONSIDERATION OF
Application No. 10/880,321	:	PATENT TERM ADJUSTMENT
Filed: June 28, 2004	:	and
Atty Docket No. 10125-5270	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on (Monday) June 22, 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 three hundred thirty-two (1332) days. This petition was recently forwarded to the undersigned for consideration.

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 three hundred thirty-two (1332) days is **GRANTED**.

The $200.00 fee set forth in 37 CFR 1.18(e) is being charged to the Deposit Account, as authorized. No additional fees are required.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand three hundred thirty-two (1332)** days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,522,135 B2

DATED : **April 21, 2009** **DRAFT**

INVENTOR(S) : Baik

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 1005 days

Delete the phrase "by 1005 days" and insert – by 1332 days--

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FOLEY & LARDNER LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON WI 53701-1497

MAILED

MAR 24 2011

OFFICE OF PETITIONS

In re Application :
Wentink :
Application No. 10/880,366 : PATENT TERM ADJUSTMENT
Filing or 371(c) Date: June 30, 2004 :
Dkt. No.: 088245-2656 :

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 1531 days, not 1270 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

---

[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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FOLEY & LARDNER LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON WI 53701-1497

MAILED
SEP 21 2011
OFFICE OF PETITIONS

In re Application :
Menzo Wentink :
Application No. 10/880,367 : DECISION ON APPLICATION
Filed: June 30, 2004 : FOR PATENT TERM ADJUSTMENT
Attorney Docket No. 088245-2510 :

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FOR PATENT APPLICATION UNDER 37 C.F.R. §1.705(b) filed September 19, 2011. Applicant requests that the determination of patent term adjustment be corrected from 688 to 953 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]

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within two months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3212.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

[1] For example, if applicants dispute both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed, and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicants must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the § 1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

UNITED STATES PATENT AND TRADEMARK OFFICE

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401 9TH STREET, NW
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WASHINGTON DC 20004-2128

MAILED

OCT 18 2010

OFFICE OF PETITIONS

In re Application of	:	
Kastel et al.	:	DECISION ON PETITION
Application No. 10/880,369	:	TO WITHDRAW
Filed: June 30, 2004	:	FROM RECORD
Attorney Docket No. 741439-17	:	

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 29, 2010.

The request is **NOT APPROVED**.

The Office will only accept correspondence address changes to the most current address information provided for the assignee of the entire interest *who properly became of record under 37 CFR 3.71,* or, if no assignee of the entire interest has properly been made of record, the most current address information provided for the first named inventor. 37 CFR 3.71(c) states:

> ***An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.***

Therefore, as there is currently no Statement under 37 CFR 3.73(b) of record in the instant application, the Office cannot change the correspondence address to the address on the Request to Withdraw.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Currently, there is no outstanding Office action that requires a reply.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-7751.

Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Fish & Richardson PC
PO Box 1022
Minneapolis MN 55440-1022

MAILED
MAR 22 2012
OFFICE OF PETITIONS

In re Patent No. 8,065,611	:
Chan et al.	: DECISION ON REQUEST FOR
Issue Date: November 22, 2011	: RECONSIDERATION OF
Application No. 10/880,375	: PATENT TERM ADJUSTMENT
Filed: June 30, 2004	: and
Attorney Docket No. **16113-0650001**	: NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION

This is a decision on the petition filed on January 23, 2012, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by six hundred nineteen (619) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.** The patent term adjustment is corrected to indicate that the term of the above-identified patent is extended or adjusted by four hundred eighty-six (486) days.

Receipt of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

BACKGROUND

On November 22, 2011, the above-identified application matured into U.S. Patent No. 8,065,611, with a revised patent term adjustment of 598 days. On Monday, January 23, 2012, 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 619 days.

Preliminarily, pursuant to their duty of good faith and candor, Patentee discloses that the Office failed to enter two periods of reduction for applicant delay. First, patentee correctly discloses that a period of reduction of 56 days, pursuant to 37 CFR 1.704(b), should have been entered for the filing of a reply to the Office action mailed October 5, 2006 not being filed until three months and 56 days later on March 2, 2007. Second, patentee correctly discloses that a period of reduction of 56 days, pursuant to 37 CFR 1.704(c)(8), should be entered for the filing of an information disclosure statement on September 13, 2010, 56 days subsequent to the filing of a reply on July 19, 2010. In view thereof, two periods of reduction of 56 days each have been entered for applicant delay.

However, Patentee also maintains that the Office incorrectly calculated Office delay pursuant to 37 CFR 1.702(b). Patentee contends that the Office erred in subtracting from the "B delay" a period of time that was not "consumed by continued examination of the application." Specifically, Patentee argues that (after the filing of requests for continued examination on May 1, 2008, May 8, 2009 and July 19, 2010) the Office mailed a Notice of Allowance on July 13, 2011, thereby closing examination of the application on that date. Thus, Patentees argue no continued examination took place during the 133 day period from July 13, 2011 (the mailing date of the Notice of Allowance) until November 22, 2011 (the date the patent was issued). As such, Patentee maintains that the "B delay" should include the 133 days and be increased from 305 to 438 days. This argument is at issue.

RELEVANT STATUTE AND REGULATIONS

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

> Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including —
>
> (i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

(ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or

(iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 CFR 1.702(b) provides that:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:

(1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);

(2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);

(3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;

(4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or

(5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

Patentee's arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 305 days based on the application having been filed under 35 U.S.C. 111(a) on June 30, 2004 and the patent not having issued as of the day after the three year date, July 1, 2007, and a first request for continued examination under 132(b) having been filed on May 1, 2008.

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was

delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1]. So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Further, counting the period of time excluded from the three-year period for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent

---

[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.

term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56365, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," meaning that the limitations of paragraph 2 apply to this paragraph's extension of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issuance of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United

States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period is not counted continuously from the date of filing of the application to the day 3 years after the filing date of the application, but rather the three-year period for the Office to issue a patent is counted not beginning on the date of filing of the application in the United States but not including "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 2008 U.S. Dist. LEXIS 76063 (D.D.C., September 30, 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants extensions of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent. Thus, not including "any time consumed by" means not including in "that 3-year period" any days it takes to prosecute

the application as specified in clauses (i)-(ii). The "any" signifies that the days taken up are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. The "time consumed by" refers to the days taken up with 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, 4) appellate review or 5) any delay in processing requested by applicant, except as permitted by paragraph (3)(C), which allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days taken up with or any time consumed by clauses (i)-(iii), including filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or taken up with the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the American Inventors Protection Act of 1999, as 35 U.S.C. 154(b).

By nature, the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a

patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been

mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed.

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request.

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, a first request for continued examination was filed on May 1, 2008, and the patent issued by virtue of that request on November 22, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on May 1, 2008 and ending on November 22, 2011 is not included in calculating Office delay.

CONCLUSION

With respect to correction of the applicant delay, the Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by four hundred eighty-six (486) days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 8,065,611

DATED : **November 22, 2011** **DRAFT**

INVENTOR(S) : **Chan 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 598 days

Delete the phrase "by 598 days" and insert – by 486 days --

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James W. Badie, Esq.
Suite 330
521 Fifth Avenue
New York, NY 10175-3399

MAILED

AUG 25 2011

OFFICE OF PETITIONS

In re Patent No. 7,213,633 :
Issue Date: May 8, 2007 :
Application No. 10/880,475 : ON PETITION
Filed: July 1, 2004 :
Patentee(s): Frank Petronzio :

This is a decision on the petition under 37 CFR 1.378(c), filed on July 26, 2011, to accept the delayed payment of a maintenance fee for the above-identified patent.

Since petitioner has demonstrated to the satisfaction of the Commissioner that the delay in timely paying the maintenance fee was unintentional, the petition under 37 CFR 1.378(c) is hereby **GRANTED**.

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

This patented file is being forwarded to Files Repository.

Telephone inquiries should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

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APR 12 2011

OFFICE OF PETITIONS

In re Application of :
Robert T. GOLLA :
Application No. 10/880,712 : DECISION ON PETITION
Filed: June 30, 2004 :
Attorney Docket No. 6447-00100 :

This is a decision on the petition filed October 26, 2010, requesting under 37 CFR 1.182 that the acceptance of the terminal disclaimer filed January 07, 2010 be withdrawn. The $400 petition fee has been received.

The petition is dismissed.

Petitioner request withdrawal of the terminal disclaimer filed January 07, 2010. Petitioner asserts that the ownership of the instant application had changed prior to the filing of the terminal disclaimer and that the terminal disclaimer was inadvertently filed in error since there is no common ownership. The undersigned has consulted with the examiner in charge of this application, and the examiner indicates that there is still a Double Patenting issue between the current claims of 10/880712 and Patent 7,533,248. Accordingly, the terminal disclaimer will not be withdrawn.

Telephone inquiries related to this decision should be addressed to Michelle R. Eason at (571) – 272-4231

Thurman K. Page
Petitions Examiner
Office of Petitions

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JUL 19 2011

OFFICE OF PETITIONS

In re Application of :
Robert T. GOLLA :
Application No. 10/880,712 : DECISION ON PETITION
Filed: June 30, 2004 :
Attorney Docket No. 6447-00100 :

This is a decision on the renewed petition filed June 13, 2011, requesting under 37 CFR 1.182 that the acceptance of the terminal disclaimer filed January 07, 2010 be withdrawn. The $400 petition fee has been received.

The petition is **Granted.**

Petitioners assert that, the terminal disclaimer filed January 07, 2010 was inadvertently filed in error and as the claims for which the aforementioned terminal disclaimer was originally proffered have now been amended to remove the basis for the previous obviousness-type double patenting rejection, there is no further need for the disclaimer to remain recorded against this application. Accordingly, the terminal disclaimer is withdrawn. USPTO records for the above-identified application have been changed consistent with this decision.

Telephone inquiries related to this decision should be addressed to Michelle R. Eason at (571) – 272-4231.

This application is being referred to Technology Center AU 2183 for examination in due course.

Thurman K. Page
Petitions Examiner
Office of Petitions

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FEB 13 2012

OFFICE OF PETITIONS

In re Application of :
Darzinskas :
Application No. 10/880,737 : DECISION
Filed/Deposited: 1 July, 2004 :
Attorney Docket No. 075076.0003 :

This is a decision on the papers filed on 28 December, 2011, pursuant to 37 C.F.R. §1.137(b) for revival of an application abandoned due to unintentional delay.

The petition pursuant to 37 C.F.R. §1.137(b) is **GRANTED**.

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(II).

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the final Office action mailed on 31 January, 2011, with reply due absent an extension of time on or 30 April, 2011.

The application went abandoned by operation of law after midnight 30 April, 2011.

On Monday, 2 May, 2011, Petitioner filed an amendment after final, which the Examiner refused to enter and Petitioner—as one registered to practice before the Office—knew was not as of right and not a proper reply[1] if it did not *prima facie* place the application in condition for allowance, and on 6 June, 2011, the Examiner mailed an Advisory Action.

The application went abandoned by operation of law after midnight 30 April, 2011.

The Office mailed the Notice of Abandonment on 30 August, 2011.

On 28 December, 2011, Petitioner filed, *inter alia*, a petition pursuant to 37 C.F.R. §1.137(b), with fee, with a statement of unintentional delay and a reply in the form of a request for continued examination (RCE) and fee and a submission under the provisions of 37 C.F.R. §1.114 in the form of an amendment

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c) as to the showing regarding unintentional delay and a petition pursuant to 37 C.F.R. §1.137(b).

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[2]

STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994). And the regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application.[3],[4]

---

[1] A proper reply is an amendment *prima facie* placing the application in condition for allowance, a Notice of Appeal, or an RCE (with fee and submission under 37 C.F.R. §1.114). (See: MPEP §711.03(c).)

[2] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §11.18, formerly §10.18, to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

[3] See: Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. at 53158-59 (October 10, 1997), 1203 Off. Gaz. Pat. Office at 86-87 (October 21, 1997).

Moreover, the Office has set forth in the Commentary at MPEP §711.03(c)(I) the showing and timeliness requirements for a proper showing for relief under 37 C.F.R. §1.181 in these matters.

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[5]

As to Allegations of
Unintentional Delay

As indicated above, the requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a proper reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

It appears that the requirements under the rule have been satisfied.

CONCLUSION

Accordingly, the petition pursuant to 37 C.F.R. §1.137(b) is **granted**.

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[4] The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition. (Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.) Delays in responding properly raise the question whether delays are unavoidable. Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) And the Petitioner must be diligent in attending to the matter. Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care. (By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.))

[5] In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

The instant application is released to the Technology Center/AU 3782 for further processing in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the instant decision to ensure that the revival has been acknowledged by the TC/AU in response to this decision. It is noted that all inquiries with regard to status need be directed to the TC/AU where that change of status must be effected—that does not occur in the Office of Petitions.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however , that all practice before the Office is in writing (see: 37 C.F.R. §1.2[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.

HAMMOND

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/25/11

TO SPE OF : ART UNIT 3695

SUBJECT : Request for Certificate of Correction for Appl. No.: 10880849 Patent No.: 7814016

CofC mailroom date: 03/08/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

[redacted]

Lamonte Newsome

Certificates of Correction Branch

571-272-3421

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

- ☑ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: Charles R. Hammond SPE AU 3695

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Christopher M. Goff (27860)
ARMSTRONG TEASDALE LLP
7700 Forsyth Boulevard
Suite 1800
St. Louis MO 63105

MAILED
NOV 19 2010
OFFICE OF PETITIONS

In re Application of	:	
Anderson et al.	:	ON SECOND REQUEST
Patent Number: 7,651,814	:	FOR RECONSIDERATION OF
Issue Date: 01/26/2010	:	PATENT TERM ADJUSTMENT
Application No. 10/880878	:	and
Filing or 371(c) Date: 06/30/2004	:	NOTICE OF INTENT TO ISSUE
Attorney Docket Number: 27860-24	:	CERTIFICATE OF CORRECTION

This is a decision on the renewed petition filed on July 30, 2010, which is being treated as a renewed petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by seven hundred seventy-one (771) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by seven hundred seventy-one (771) days is **GRANTED**.

On March 23, 2010 the Office mailed a "DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT and NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION" indicating that the patent term adjustment had been determined to be 771 days.

On June 30, 2010, the Office mailed a "DECISION ON REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH AND NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION" indicating that the patent term adjustment had been determined to be 1021 days.

The Office notes that the decision of June 30, 2010, was issued in error as it accorded patentee 250 more days of patent term adjustment than were warranted. Accordingly, the decision of June 30, 2010, is vacated. The present decision supersedes the decision mailed on June 30, 2010, and corrects the record to reflect the decision mailed March 23, 2010 correctly determined the patent term adjustment of 771 days.

The Office has determined that the patent term adjustment for the above-identified patent is **771 days**. The 250 additional days of adjustment will be 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 application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **seven hundred seventy-one (771) 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 : 7,651,814 B2

DATED : **January 26, 2010**

INVENTOR(S) : Anderson et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 1021 days.

Delete the phrase "by 1021 days" and insert – by 771 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

WESTMAN CHAMPLIN
& KELLY, P.A.
SUITE 1400
900 SECOND AVENUE SOUTH
MINNEAPOLIS MN 55402

MAILED

FEB 22 2011

OFFICE OF PETITIONS

In re Application of :
Nikiforov :
Application No. 10/880,897 : DECISION
Filed/Deposited: 30 June, 2004 :
Attorney Docket No. S30.12-0008 :

This is a decision on the papers filed on 15 December, 2010, considered as a petition pursuant to 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition pursuant to 37 C.F.R. §1.181 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition pursuant to 37 C.F.R. §1.181."

This is **not** a final agency action within the meaning of 5 U.S.C. §704.

As to the Request to Withdraw
the Holding of Abandonment

Petitioner is directed to the Commentary at MPEP §711.03(c)(I) for guidance as to the proper showing requirements for relief pursuant to 37 C.F.R. §1.181.

Petitioner appears not to comply with the guidance in the Commentary at MPEP §711.03(c)(I)—as discussed below, Petitioner has failed to satisfy the showing requirements set forth there. Petitioner may find it beneficial to review that material and move step-wise through that guidance in the effort to satisfy the showing requirements (statements and supporting documentation).

BACKGROUND

The record reflects as follows:

Following the 9 September, 2009, decision of the Board of Patent Appeals and Interferences (BPAI) denying Petitioner's request to amend its decision of 29 June, 2009, on 7 December, 2009, the Examiner (upon conferral with the Supervisory Patent Examiner (SPE) and the Training Quality Assurance Specialist (TQAS), mailed an Office action requiring Petitioner to:

> ... have dependent claims 3-10-, 13-20, 22 and 23 rewritten in independent form, including all of the limitations of the base claim and any intervening claims. Additionally, all the claims must comply with the current 35 U.S.C. [§]101's requirement. The decision is FINAL.

The Examiner set a one- (1-) month period of reply, to 7 January, 2010, and no statement was evident as to the availability of an extension of time.

Petitioner failed to reply timely and properly to the Office action, and chose instead to file a paper on 22 December, 2009, refusing to amend as instructed, and so at that time Petitioner filed a non-compliant amendment.

On 26 March, 2010, the Office mailed a Notice of Non-Compliant Amendment, with a one- (1-) month period of reply, which was non-extendable and reply was due on or before 26 April, 2010.

Petitioner filed a reply on 16 April, 2010, which reply the Examiner found non-responsive.

The application went abandoned by operation of law after midnight 26 April, 2010.

The Office mailed the Notice of Abandonment of 26 November, 2010.

On 15 December, 2010, Petitioner filed a request to withdraw the holding of abandonment pursuant to 37 C.F.R. §1.181, and averred timely reply. However, as the history described above and the record demonstrate, having gotten less than what he wished from the BPAI Petitioner apparently sought to press for more by refusing to reply properly and timely to the instructions of the Examiner set out after consultation with the TQAS and SPE. Thus, Petitioner was unable to and so failed to make the showing required under the Rule. Petitioner's only alternative now appears to properly and timely file a petition (Form PTO/SB/64, copy enclosed), with fee, pursuant to 37 C.F.R. §1.137(b) to revive the application as having been abandoned due to unintentional delay, make the statement of unintentional delay (set forth in the form) and submit with the petition a reply in the form and substance required by the Examiner in his instruction of 7 December, 2009. Petitioner is reminded that the failure to file promptly and properly the petition pursuant to 37 C.F.R. §1.137(b) and the reply in the form and substance required by the

Examiner in his instruction of 7 December, 2009, may be considered *indicia* of delay that is other than unintentional.

With regard to Petitioner's request to withdraw the holding of abandonment pursuant to 37 C.F.R. §1.181, the guidance in the Commentary at MPEP §711.03(c)(I) provides in pertinent part as to timely fling:

> ***
>
> 37 C.F.R. §1.10(c) through §1.10(e) and §1.10(g) set forth procedures for petitioning the Director of the USPTO to accord a filing date to correspondence as of the date of deposit of the correspondence as "Express Mail." A petition to withdraw the holding of abandonment relying upon a timely reply placed in "Express Mail" must include an appropriate petition under 37 C.F.R. §1.10(c), (d), (e), or (g) (see MPEP §513). When a paper is shown to have been mailed to the Office using the "Express Mail" procedures, the paper must be entered in PALM with the "Express Mail" date.
>
> Similarly, applicants may establish that a reply was filed with a postcard receipt that properly identifies the reply and provides *prima facie* evidence that the reply was timely filed. See MPEP §503. For example, if the application has been held abandoned for failure to file a reply to a first Office action, and applicant has a postcard receipt showing that an amendment was timely filed in response to the Office action, then the holding of abandonment should be withdrawn upon the filing of a petition to withdraw the holding of abandonment. When the reply is shown to have been timely filed based on a postcard receipt, the reply must be entered into PALM using the date of receipt of the reply as shown on the post card receipt.
>
> Where a certificate of mailing under 37 C.F.R. §1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 C.F.R. 1.8(b) and MPEP §512. As stated in 37 C.F.R. §1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application). When the correspondence is shown to have been timely filed based on a certificate of mailing, the correspondence is entered into PALM with the actual date of receipt (i.e., the date that the duplicate copy of the papers was filed with the statement under 37 C.F.R. §1.8).
>
> 37 C.F.R. §1.8(b) also permits applicant to notify the Office of a previous mailing or transmission of correspondence and submit a statement under 37 C.F.R. §1.8(b)(3) accompanied by a duplicate copy of the correspondence when a reasonable amount of time (e.g., more than one month) has elapsed from the time of mailing or transmitting of

> the correspondence. Applicant does not have to wait until the application becomes abandoned before notifying the Office of the previous mailing or transmission of the correspondence. Applicant should check the private Patent Application Information Retrieval (PAIR) system for the status of the correspondence before notifying the Office. See MPEP §512.[1]
>
> ***

A Petitioner unable to comply with and/or otherwise satisfy these requirements may wish to revive the application: Petitioner may wish to properly file a petition to the Commissioner requesting revival of an application abandoned due to unintentional delay under 37 C.F.R. §1.137(b). (See: http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c)

Out of an abundance of caution, Petitioners always are reminded that the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (*see*: 37 C.F.R. §1.181(f)), and those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[2]

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994). And the regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application.[3],[4]

---

[1] *See*: MPEP §711.03(c) (I)(B).

[2] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on Petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

[3] See: Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. at 53158-59 (October 10, 1997), 1203 Off. Gaz. Pat. Office at 86-87 (October 21, 1997).

[4] The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition. (Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.) Delays in responding properly raise the question whether delays are unavoidable. Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) And the Petitioner must be diligent in attending to the matter. Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care. (By contrast,

Moreover, the Office has set forth in the Commentary at MPEP §711.03(c)(I) the showing and timeliness requirements for a proper showing for relief under 37 C.F.R. §1.181 in these matters.

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[5]

Allegations as to the Request to Withdraw the Holding of Abandonment

The guidance in the Commentary at MPEP §711.03(c)(I) specifies the showing required and how it is to be made and supported.

Petitioner appears not to have made the showing required.

CONCLUSION

Accordingly, the petition pursuant to 37 C.F.R. §1.181 is **dismissed**.

ALTERNATIVE VENUE

Should Petitioner wish to revive the application, Petitioner may wish to properly file a petition to the Commissioner requesting revival of an application abandoned due to unintentional delay pursuant to 37 C.F.R. §1.137(b). (See: http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c)

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unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.))

[5] In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

A petition to revive on the grounds of unintentional delay must be filed promptly and such petition must be accompanied by the reply, the petition fee, a terminal disclaimer and fee where appropriate and a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional." (The statement is in the form available online.)

Further correspondence with respect to this matter should be addressed as follows:

By Mail:
Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand:
U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By facsimile:
(571) 273-8300
Attn: Office of Petitions

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[6]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

---

[6] The regulations at 37 C.F.R. §1.2 provide:

§1.2 Business to be transacted in writing.

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UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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WESTMAN CHAMPLIN
& KELLY, P.A.
SUITE 1400
900 SECOND AVENUE SOUTH
MINNEAPOLIS MN 55402

MAILED

AUG 01 2011

OFFICE OF PETITIONS

In re Application of :
Nikiforov :
Application No. 10/880,897 : DECISION
Filed/Deposited: 30 June, 2004 :
Attorney Docket No. S30.12-0008 :

This is a decision on the papers filed on 16 June, 2011, for revival of an application abandoned due to unintentional delay under 37 C.F.R. §1.137(b).

The petition pursuant to 37 C.F.R. §1.137(b) is **GRANTED**.

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(II).

BACKGROUND

The record reflects as follows:

Following the 9 September, 2009, decision of the Board of Patent Appeals and Interferences (BPAI) denying Petitioner's request to amend its decision of 29 June, 2009, on 7 December, 2009, the Examiner (upon conferral with the Supervisory Patent Examiner (SPE) and the Training Quality Assurance Specialist (TQAS), mailed an Office action requiring Petitioner to:

> ... have dependent claims 3-10-, 13-20, 22 and 23 rewritten in independent form, including all of the limitations of the base claim and any intervening claims. Additionally, all the claims must comply with the current 35 U.S.C. [§]101's requirement. The decision is FINAL.

The Examiner set a one- (1-) month period of reply, to 7 January, 2010, and no statement was evident as to the availability of an extension of time.

Petitioner failed to reply timely and properly to the Office action, and chose instead to file a paper on 22 December, 2009, refusing to amend as instructed, and so at that time Petitioner filed a non-compliant amendment.

On 26 March, 2010, the Office mailed a Notice of Non-Compliant Amendment, with a one- (1-) month period of reply, which was non-extendable and reply was due on or before 26 April, 2010.

Petitioner filed a reply on 16 April, 2010, which reply the Examiner found non-responsive.

The application went abandoned by operation of law after midnight 26 April, 2010.

The Office mailed the Notice of Abandonment of 26 November, 2010.

On 15 December, 2010, Petitioner filed a request to withdraw the holding of abandonment pursuant to 37 C.F.R. §1.181, and averred timely reply. However, as the history described above and the record demonstrate, having gotten less than what he wished from the BPAI Petitioner apparently sought to press for more by refusing to reply properly and timely to the instructions of the Examiner set out after consultation with the TQAS and SPE. Thus, Petitioner was unable to and so failed to make the showing required under the Rule. The petition was dismissed on 22 February, 2011.

On 16 June, 2011, Petitioner filed, *inter alia*, an authorization to charge fees, 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 amendment and made the statement of unintentional delay.

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c) as to the showing regarding unintentional delay and a petition pursuant to 37 C.F.R. §1.137(b).

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[1]

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[2] The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority.

Unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and, by definition, are not intentional.[3]))

As to Allegations of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

It appears that the requirements under the rule have been satisfied.

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 2624 for further processing in due course.

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[1] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

[2] 35 U.S.C. §133 provides:

35 U.S.C. §133 Time for prosecuting application.

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

[3] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the instant decision to ensure that the revival has been acknowledged by the TC/AU in response to this decision. It is noted that all inquiries with regard to status need be directed to the TC/AU where that change of status must be effected—that does not occur in the Office of Petitions.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[4]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

[4] The regulations at 37 C.F.R. §1.2 provide:

§1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attdance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 4/22/2011

TO SPE OF : ART UNIT 2827 ZARABIAN Amir (Spe)

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/881056 Patent No.: 7027351

CofC mailroom date: 4/13/2011

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

H. Riley

Certificates of Correction Branch

703-756-1571 _____

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

- ☐ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

_____

_____

_____

_____

_____ SPE _____ Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 4/22/2011

TO SPE OF : ART UNIT 2827 ZARABIAN Amir (Spe)

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/881058 Patent No.: 7027351

CofC mailroom date: 4/13/2011

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: _____

SPE

2827
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

September 30, 2010

Patent No. : 7,611,912 B2
Appl. No. : 10/881,445
Inventor(s) : Liubo Hong, et al.
Issued : November 3, 2009
Title : **UNDERLAYER FOR HIGH PERFORMANCE MAGNETIC TUNNELING JUNCTION MRAM**
Docket No. : **HT04-012**

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule 1.323.

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

In view of the foregoing, your request, in this 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 1.117(h) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, , no additional fee is required.

Antonio Johnson
For Mary F. Diggs
Decisions & Certificates
of Correction Branch
(571)272-0483

SAILE ACKERMAN LLC
28 DAVIS AVENUE
POUGHKEEPSIE NY 12603

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

SAILE ACKERMAN LLC
28 DAVIS AVENUE
POUGHKEEPSIE NY 12603

MAILED

APR 15 2011

OFFICE OF PETITIONS

In re Patent No.7,611,912 :
Issue Date: November 3, 2009 :
Application No. 10/881,445 : DECISION ON PETITION
Filed: June 30, 2004 :
Attorney Docket No. HT04-012 :

This is a decision on the Petition Under 37 CFR 1.183, filed October 19, 2010, which is being treated as a Petition Under 37 CFR 3.81(b), to add --MagIC Technologies, Inc., Milpitas, CA-- as the additional assignee to the Title Page of the Patent via a Certificate of Correction.

The petition under 37 CFR §3.81(b) is **DISMISSED**.

Petitioner urges that the present Petition was submitted to add the omitted --MagIC Technologies, Inc., Milpitas, CA-- 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.

U.S. Patent and Trademark Office assignments records disclose that an assignment *MagIC Technologies, Inc.* was submitted for recordation on May 27, 2010. Therefore, the recorded assignment was **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 certification of correction would not be proper.

Inquiries related this communication should be directed to the undersigned at (571)272-3213.

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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NOV 17 2011

OFFICE OF PETITIONS

FISH & RICHARDSON P.C.
PO BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 8,005,716 :
Desikan : DECISION ON REQUEST FOR
Issue Date: August 23, 2011 : RECONSIDERATION OF
Application No. 10/881,492 : PATENT TERM ADJUSTMENT
Filed: June 30, 2004 :
Attorney Docket No. 16113-03430001 :
Title: METHODS AND SYSTEMS FOR ESTABLISHING A KEYWORD UTILIZING PATH NAVIGATION INFORMATION :

This is a decision on the petition filed on October 24, 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 seven hundred fifty-six (756) days.

The request for reconsideration of the patent term adjustment (PTA) pursuant to 37 CFR 1.705(d) is **DISMISSED**.

The above-identified application matured into U.S. Pat. No. 8,005,716 on August 23, 2011. The patent issued with a patent term adjustment of 629 days. The instant application for patent term adjustment was timely filed in accordance with 37 CFR 1.705(d). Patentees contest the period of adjustment of 187 days accorded pursuant to 37 CFR 1.702(b) and assert that the correct period of adjustment under 37 CFR 1.702(b) is 314 days.

Petitioner's arguments have been carefully considered, but are not persuasive. The period of adjustment pursuant to 37 CFR 1.702(b) was properly calculated at 187 days.

35 USC 154(b)(1)(B) states in relevant part:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including – (i) any time consumed by continued examination of the application requested by the applicant under section 132(b).

37 CFR 1.702(b) states in relevant part:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including: (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b).

37 CFR 1.703(b) states in relevant part:

The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the following periods: (1) The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the

final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56365, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

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, 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 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.

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.
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

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[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.

application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

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[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

[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.

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 view thereof, no adjustment to the patent term will be made.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3215.

Charlema Grant
Attorney Advisor
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

DILLON & YUDELL LLP
8911 NORTH CAPITAL OF TEXAS HWY, SUITE 2110
AUSTIN, TX 78759

MAILED

JUN 17 2011

OFFICE OF PETITIONS

In re Application of :
Jean M. ASCHENBRENNER, *et al.* :
Application No. 10/881,522 : DECISION ON PETITION TO
Filed: June 30, 2004 : WITHDRAW FROM RECORD
Attorney Docket No. **BLD920030029US2** :

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed June 15, 2011.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others.

The request was signed by Andrew J. Dillon on behalf of all attorneys of record. Andrew J. Dillon has been withdrawn as attorney or agent of record; all other attorneys remain of record.

The correspondence address of record remains unchanged.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7253.

/Monica A. Graves/
Petitions Examiner, Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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THE ECLIPSE GROUP, LLP
10605 BALBOA BLVD., SUITE 300
GRANADA HILLS, CA 91344

MAILED

SEP 13 2010

OFFICE OF PETITIONS

In re Application of :
Dannie C. Lau, et. al. :
Application No. 10/881,549 : ON PETITION
Filed: June 30, 2004 :
Attorney Docket No. HI09099C1 :

This is a decision on the petition under 37 CFR 1.137(b), filed July 28, 2010, to revive the above-identified application.

It is not apparent whether the statement of unintentional delay was signed by a person who would have been in a position of knowing that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Nevertheless, in accordance with 37 CFR 10.18, the statement is accepted as constituting a certification of unintentional delay. However, in the event that petitioner has no knowledge that the delay was unintentional, petitioner must make such an inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay was intentional, petitioner must so notify the Office.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) along with the $810 fee and the submission under 37 CFR 1.114; (2) the petition fee of $1,620; and (3) a proper statement of unintentional delay. Therefore, the petition is **GRANTED**.

This application file is being referred to Technology Center Art Unit 2451 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

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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MAY 26 2011

OFFICE OF PETITIONS

BENASUTTI, P.A.
17294 BERMUDA VILLAGE DRIVE
BOCA RATON, FL 33487

In re Patent No. 6,881,887 :
Issue Date: April 19, 2005 :
Application No. 10/881,586 : ON PETITION
Filed: June 30, 2004 :
Attorney Docket No.: 0913-20002 :

This is a decision on the petition, filed April 19, 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 April 19, 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: CHRISTOPHER P. BERENS
201 SW 1ST STREET, #2
BOCA RATON, FL 33432

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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MAILED

APR 26 2011

OFFICE OF PETITIONS

HOWISON & ARNOTT, L.L.P
P.O. BOX 741715
DALLAS TX 75374-1715

In re Patent No. 7,257,619 :
Issue Date: August 14, 2007 :
Application No. 10/881,725 : NOTICE
Filed: June 29, 2004 :
Attorney Docket No. RPXC – 26,823 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed March 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. The petition is **GRANTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

This file is being forwarded to Files Repository.

Telephone inquiries related to this decision should be directed to the Kimberly Inabinet at (571) 272-4618.

/Kimberly Inabinet/
Kimberly Inabinet
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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ALLERGAN, INC.
2525 DUPONT DRIVE, T2-7H
IRVINE CA 92612-1599

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FEB 07 2012

OFFICE OF PETITIONS

In re Application of
John E. Donello et al.
Application No. 10/881,761
Filed: June 30, 2004
Attorney Docket No. 17621 (AP)

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b),[1] filed January 23, 2012, to revive the above identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the Final Office Action mailed July 11, 2011. A shortened statutory period of three months was set for replying to the Final Office Action. With a three month extension of time, a Request for Continued Examination (RCE) was filed January 11, 2012 with only an IDS, thus it was improper and a NOTICE OF IMPROPER REQUEST FOR CONTINUED EXAMINATION (RCE) was mailed January 17, 2012. The instant petition and this decision precedes the mailing of the Notice of Abandonment.

Comes now petitioner with the instant petition to revive and an amendment to be treated as the submission under 37 CFR 1.114.

This matter is being referred to Technology Center 1612 for processing of the RCE filed January 11, 2012 and for entry of the amendment filed January 23, 2012 with the instant petition.

Telephone inquiries related to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

[1]Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

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SANDIA CORPORATION
P O BOX 5800
MS-0161
ALBUQUERQUE NM 87185-0161

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JAN 03 2011

OFFICE OF PETITIONS

In re Application of :
Youchison et al. :
Application Number: 10/881873 : ON PETITION
Filing Date: 06/29/2004 :
Attorney Docket Number: SD-6881 :
:

This is a decision in response to the petition under 37 CFR 1.137(b) filed on October 25, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on September 25, 2010, for failure to submit corrected drawings in response to the Notice of Allowability mailed on June 24, 2010, which set a three (3) month statutory period for reply. Notice of Abandonment was mailed on October 12, 2010.

Receipt of one (1) sheet of drawings filed on October 25, 2010 is acknowledged.

The application is referred to the Office of Data Management for processing into a patent.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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FOLEY & LARDNER
555 SOUTH FLOWER STREET
SUITE 3500
LOS ANGELES, CA 90071-2411

MAILED

SEP 08 2011

OFFICE OF PETITIONS

In re Application of :
Ronald J. Lebel, et al. :
Application No. 10/881,955 : ON PETITION
Filed: June 29, 2004 :
Attorney Docket No. 047711-0349 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 28, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed March 24, 2010, which set a shortened statutory period for reply of three (3) months. A two (2) month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on August 25, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application under 37 CFR 1.53(b); (2) the petition fee of $1620; and (3) a proper statement of unintentional delay.

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuing application No. 12/862,690.

Telephone inquiries concerning this decision should be directed to undersigned at (571) 272-1642.

April M. Wise
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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HAMILTON & TERRILE, LLP
IBM Austin
P.O. BOX 203518
AUSTIN TX 78720

MAILED

SEP 30 2011

OFFICE OF PETITIONS

In re Application of	:	
Nadalin et al.	:	
Application No. 10/881978	:	DECISION
Filing or 371(c) Date: 06/30/2004	:	ON PETITION
Title of Invention:	:	
METHOD AND SYSTEM FOR A PKI-BASED	:	
DELEGATION PROCESS	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 15, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Panel Decision from Pre-Appeal Brief Review ("Notice"), mailed September 11, 2008. The Notice set a one (1) month period, or the balance of the two month period from the filing of the Notice of Appeal, for applicant to file an appeal brief. Extensions of time were available under 37 CFR 1.136. No reply having been filed, the application became abandoned October 12, 2008. A Notice of Abandonment was mailed May 11, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee; a submission in the form of an Amendment 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 2435 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the Amendment submitted with the petition in accordance with 37 CFR 1.114.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 05/06/11

TO SPE OF : ART UNIT 2614

SUBJECT : Request for Certificate of Correction for Appl. No.: 10882522 Patent No.: 7548523

CofC mailroom date: 04/26/11

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

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

/Curtis Kuntz/

SPE Art Unit

2614

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UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
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COOLEY LLP
ATTN: Patent Group
Suite 1100
777 - 6th Street, NW
WASHINGTON DC 20001

MAILED

OCT 22 2010

OFFICE OF PETITIONS

In re Patent No. 7,262,293 :
Gyollai et al. :
Issue Date: August 28, 2007 :
Application No. 10/882,591 :
Filed: July 1, 2004 : FINAL AGENCY DECISION
Attorney Docket No. 2664/57403 :
Title: AZTREONAM L-LYSINE AND :
METHODS FOR THE PREPARATION :
THEREOF :

This is a decision on the PETITION UNDER 37 C.F.R. § 1.183 TO WAIVE THE RULES, filed June 8, 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, patentee requests that the requirements of the *Interim Procedure for Patentees to Request a Recalculation of the Patent Term Adjustment to Comply with the Federal Circuit Decision in Wyeth v. Kappos Regarding Overlapping Delay Provisions of 35 U.S.C. §154(b)(2)(A)* be waived to permit the reconsideration of the patent term adjustment of the above-identified patent later than 180 days after its issuance.

This is also a decision on the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §§1.705(d) & 1.183, also filed June 8, 2010, requesting, in addition to waiver of the requirements of the rule and interim procedure as discussed above, 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 five

hundred thirty-four (534) days. Patentee requests this correction on the basis that the Office took in excess of three years to issue the patent and in light of the Court of Appeals for the Federal Circuit's decision in *Wyeth v. Kappos*, 2009-1120 (Fed. Cir. 1-7-2010).

The 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.

The instant patent issued on August 28, 2007. The instant request for reconsideration of patent term adjustment under 37 CFR 1.705(d) was filed on June 8, 2010, two years and ten months later. As this request was filed more than 180 days after patent grant, it is appropriate to deny the request for waiver.

In view thereof, the time requirement of 37 CFR 1.705(d) is not met. The petition for recalculation/reconsideration of the USPTO's PTA determination for U.S. Patent No. 7,262,293 is dismissed as untimely filed.

Receipt of the $400 fee required for consideration of the petition under 37 CFR 1.183 is acknowledged.

Receipt of the $200 fee for consideration of the request for reconsideration of patent term adjustment is acknowledged.

Receipt of the revocation and new power by assignee[1] and statement under 37 C.F.R. §3.73(b) filed August 4, 2008 is acknowledged and made of record.

Telephone inquiries specific to this decision should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

Anthony Knight
Director
Office of Petitions

[1] The assignment recorded in the Office is to Corus Pharma. However, a review of publicly available records supports a conclusion that Corus Pharma was acquired by Gilead Sciences, Inc., (Gilead) and thus, the revocation filed by Gilead is acceptable.

UNITED STATES PATENT AND TRADEMARK OFFICE

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SEP 08 2010

OFFICE OF PETITIONS

SCHWEGMAN, LUNDBERG & WOESSNER/EBAY
P.O. BOX 2938
MINNEAPOLIS MN 55402

In re Patent No. 7,742,947	: DECISION ON PATENT TERM
Issued: June 22, 2010	: ADJUSTMENT and NOTICE OF INTENT
Application No. 10/882,633	: TO ISSUE CERTIFICATE OF
Filed: June 30, 2004	: CORRECTION
Dkt. No.: 2043.151US1	:

This is a decision on the petition filed on July 26, 2010 requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by 1008 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 1008 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 **1008** 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 : 7,742,947

DATED : **June 22, 2010** **DRAFT**

INVENTOR(S) : Fu, 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 883 days

Delete the phrase "by 883 days" and insert – by 1008 days--

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20120221

DATE : February 21, 2012

TO SPE OF : ART UNIT 2624

SUBJECT : Request for Certificate of Correction on Patent No.: 7,697,729

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 certificate of correction filed on 7/07/2010 is considered and approved.

/SAMIR AHMED/
Supervisory Patent Examiner.Art Unit 2624

PAGE 1/1 * RCVD AT 2/23/2012 5:31:44 PM [Eastern Standard Time] * SVR:W-PTOFAX-002/2 * DNIS:2709942 * CSID:5712730045 * DURATION (mm-ss):00-52

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QUARLES & BRADY LLP
411 E. WISCONSIN AVENUE
SUITE 2040
MILWAUKEE WI 53202-4497

MAILED

SEP 27 2010

OFFICE OF PETITIONS

In re Patent No. 7,154,368 :
Issue Date: December 26, 2006 :
Application No. 10/882,866 : NOTICE
Filed: July 2, 2004 :
Attorney Docket No. 127872.00013 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed August 5, 2010. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989).** Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby accepted. The petition is **GRANTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

This file is being forwarded to Files Repository.

Telephone inquiries related to this decision should be directed to the Kimberly Inabinet at (571) 272-4618.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

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Paper No.

BOZICEVIC, FIELD & FRANCIS LLP
1900 UNIVERSITY AVENUE
SUITE 200
EAST PALO ALTO CA 94303

MAILED

FEB 08 2011

OFFICE OF PETITIONS

In re Patent No. 7,754,707	: DECISION ON REQUEST
El Bakkouri et al.	: FOR
Issue Date: 07/13/2010	: RECONSIDERATION OF
Application Number: 10/882,993	: PATENT TERM ADJUSTMENT
Filing or 371(c) Date: 06/30/2004	: and
Atty Docket No.	: NOTICE OF INTENT TO ISSUE
REDL-008	: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on September 8, 2010, under 37 CFR 1.705(d), requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand seven hundred twenty (1720) days. The petition is treated as a petition requesting that the term of the above-identified patent is extended or adjusted by one thousand seven hundred seventy (1770) 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 seventy (1770) days is **GRANTED to the extent indicated herein.**

As to the "B" delay, the period is the period beginning on July 1, 2007, 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 ending on July 13, 2010, the date the application issued as a patent, or 1109 days. Any time consumed by appellate review, however, is not included in the calculation of 37 CFR 1.702(b). See 35 U.S.C. 154(b)(1)(B)(ii). On October 17, 2008, a notice of appeal was filed. On January 15, 2010, a decision of the Board of Appeals and Interferences reversing the examiner was mailed, 456 days after the date the notice of appeal was filed. Accordingly, the excluded period for appeal is 456 days, and the "B" delay period is 653 (1109 – 456) days.

Applicants assert that a period of overlap of 50 days between the "A" and "B" periods should be removed from the patent term adjustment calculation. Considering the excluded period, the period of overlap between the "A" and "B" periods would be any "A" delays that occur during the time period beginning on September 29, 2008, and ending on July 13, 2010. Accordingly, it is determined that there are 0 days of overlap between the "A" and "B" periods of delay.

The patent term adjustment at the time of issuance of the patent is 1770 (720 days of Office delay + 653 days of over three years delay – 59 days of applicant delay + 456 days of successful appeal delay) 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 Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The Office thanks patentees for their good faith and candor in bringing this to the attention of the Office.

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 seventy **(1770)** days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3231.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,754,707 B2

DATED : **July 13, 2010** **DRAFT**

INVENTOR(S) : El Bakkouri 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 1618 days.

Delete the phrase "by 1618 days" and insert – by 1770 days--

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110110

DATE : January 10, 2011

TO SPE OF : ART UNIT 1655

SUBJECT : Request for Certificate of Correction on Patent No.: 7,198,938

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:

MPEP 201.16 only applies to perfecting a FOREIGN PRIORITY claim in a patent when the patent is a continuation of a case in which the foreign priority had been properly claimed. The re Van Esdonk ruling was based upon the patent being a continuation under the former 37 CFR 1.60 continuation practice, but the ruling also applies to patents that are continuations under 35 USC 120. It does not apply to perfecting a US priority claim under 35 USC 120 as the patentee is proposing in the instant situation.

/Terry A McKelvey/
Supervisory Patent Examiner, Art Unit 1655

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : October 31, 2011

TO SPE OF : ART UNIT 2167

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/883541 Patent No.: 7730026 B2

CofC mailroom date: 10-10-11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

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: _____

JOHN COTTINGHAM
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

_____ **SPE**

2167 **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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RG & ASSOCIATES
1103 TWIN CREEKS
STE. 120
ALLEN TX 75013

MAILED
SEP 28 2010
OFFICE OF PETITIONS

In re Application of :
Mark J. Sutherland, et al. :
Application No. 10/883,639 : ON PETITION
Filed: June 30, 2004 :
Attorney Docket No. KAS-001 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 13, 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 October 8, 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). A three (3) month extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is April 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 Request for Continued Examination (RCE) and fee of $405, and the submission required by 37 CFR 1.114; (2) the petition fee of $810; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-1642. 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 2457 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

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)
6899169	2005-05-31	10884320	2004-07-02	1062

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	/ANDREW W LUDY/	Date (YYYY-MM-DD)	2011-01-19
Name	ANDREW W LUDY	Registration Number	35259

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. 6899169
Issue Date: May 31,2005
Application No. 10884320
Filed: July 2,2004
Attorney Docket No. 1062

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed January 19,2011 ,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 19,2011 . 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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LEYENDECKER & LEMIRE, LLC
SUITE 280
9137 E MINERAL CIRCLE
CENTENNIAL CO 80112

MAILED
JUN 16 2011
OFFICE OF PETITIONS

In re Patent No. 7,182,341 :
Issued: February 27, 2007 :
Application No. 10/884,422 : ON PETITION
Filed: July 3, 2004 :
Attorney Docket No. KJC0-001 :

This is a decision on the petition under 37 CFR 1.378(c), filed May 10, 2011, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on February 28, 2011 for failure to pay the three and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

/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

In re Patent No. 7204181
Issue Date: April 17,2007
Application No. 10884598
Filed: July 2,2004
Attorney Docket No. DPC-28US

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed May 3,2011 ,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 May 3,2011 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
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PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7204181	2007-04-17	10884598	2004-07-02	DPC-28US

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	/Kristi L. Davidson/	Date (YYYY-MM-DD)	2011-05-03
Name	Kristi L. Davidson	Registration Number	44643

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.

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. DRAWER 800889
DALLAS TX 75380

MAILED

AUG 17 2010

OFFICE OF PETITIONS

In re Patent No. 7,719,981
Issue Date: May 18, 2010
Application No. 10/884,641
Filed: July 2, 2004
Attorney Docket No. BITB01-00003

: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(6)

This is a decision on the renewed petition filed July 21, 2010, under 37 CFR 1.78(a)(6), to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of prior-filed provisional application 60/121,897.

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.

Application no. 10/884,641 which was filed after November 29, 2000, matured into Patent No. 7,719,981 on May 18, 2010. The claim for the benefit of priority to a prior-filed nonprovisional application was submitted after expiration of the period specified in 37 CFR 1.78(a)(5)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(6).

The petition complies with the requirements for a grantable petition under 37 CFR § 1.78(a)(6) in that (1) a reference to the above-noted, prior-filed nonprovisional application has been included in a certificate of correction and (2), the certificate of correction fee has been submitted; and (3) the petition contains a proper statement of

unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §119(e) to the above-noted, prior-filed provisional application satisfies the conditions of 37 CFR 1.78(a)(6), the petition is granted.

This application is being forwarded to the Certificates of Corrections branch for an issuance of a certificate of correction noting the priority claim to prior filed application 60/121,897 filed February 26, 1999.

Any questions concerning this matter may be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212. Any questions regarding the Certificate of Correction should be directed to the Certificates of Correction Branch at (703) 305-8309.

Chris Bottorff
Supervisor
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

COLGATE-PALMOLIVE COMPANY
909 RIVER ROAD
PISCATAWAY, NJ 08855

MAILED

MAR 24 2011

OFFICE OF PETITIONS

In re Application of
Kim Gene Friesen, et. al.
Application No. 10/884,733
Filed: July 2, 2004
Attorney Docket No. 6763-00-HL

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed February 1, 2011, to revive the above-identified application.

The instant petition is not signed by an attorney of record. However, in accordance with 37 CFR 1.34(a), the signature of Shannon E. McGarrah appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that she is authorized to represent the particular party on whose behalf she acts.

The application became abandoned for failure to file a reply to the non-final Office action mailed February 24, 2010. A Notice of Abandonment was mailed on August 30, 2010.

Since the petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment; (2) the petition fee of $1,620; and (3) a proper statement of unintentional delay, the petition is **GRANTED**.

The Office acknowledges receipt of $1,110 for a three months extension of time filed on February 1, 2011. However, an extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r. Pats. 1988). Accordingly, since the $1,110 extension of time fee submitted on February 1, 2011, was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

This application file is being referred to Technology Center Art Unit 1614 for review of the amendment submitted with the present petition.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/885,078	07/07/2004	Francois Zuber	1034469-000031	9168

21839 7590 03/28/2011
BUCHANAN, INGERSOLL & ROONEY PC
POST OFFICE BOX 1404
ALEXANDRIA, VA 22313-1404

EXAMINER	
REDMAN, JERRY E	

ART UNIT	PAPER NUMBER
3634	

NOTIFICATION DATE	DELIVERY MODE
03/28/2011	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):

ADIPFDD@bipc.com
offserv@bipc.com

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Commissioner for Patents
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P.O. Box 1450
Alexandria, VA 22313-1450
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MAR 2 5 2011

Buchanan, Ingersoll & Rooney, PC
P.O. Box 1404
Alexandria, VA 22313-1404

In re Application of : DECISION ON THE PETITION
Francois Zuber et al. : REGARDING WITHDRAWAL
Application No. 10/885,078 : OF DRAWING OBJECTION
Filed: July 7, 2004 :
For: CONSTRUCTION ASSEMBLY OF SKIM COATED PREFABRICATED ELEMENTS AND JOINTING MATERIAL, A KIT THEREFOR, AND METHOD OF ASSEMBLINGTHE SAME

Applicant's petition under 37 CFR 1.181, filed February 11, 2011, requests the supervisor to withdraw the drawing objection and refusal by the examiner to enter the drawings made in the Final rejection of December 17, 2010.

The petition is **GRANTED-IN-PART** to the extent indicated below.

A review of the file record indicates that the examiner issued a Ex Parte Quayle Office action on January 21, 2009 that indicated the allowability of the claims and objected to the lack of drawing figures that illustrate the claimed subject matter under 37 CFR 1.83(a). The applicant replied on February 27, 2009 with the addition of a single drawing figure. The examiner held the response non-compliant as containing new matter on May 21, 2009. On June 22, 2009, the applicant responded with a request for reconsideration arguing that even though the previously submitted drawing was not entered, the requirement for a drawing is in error as no drawing is needed. The examiner responded with a Notice of Non-responsive amendment on November 2, 2009 because the applicant failed to file drawings lacking new matter. The applicant responded on December 2, 2009 with 3 new figures. The examiner responded with another Notice of Non-responsive amendment on March 26, 2010 indicating that the drawings contained new matter and failed to show all claimed subject matter. Applicant responded with amended Figures 1-3 on April 2, 2010. The examiner mailed a non-final Office action on June 29, 2010 that, in addition to newly added rejections, included a new objection to the drawings because "all of the elements and their specific dimensions are not shown", "applicant's entire invention is based on how the elements are put together to form a panel assembly yet the applicant has failed to provide conforming drawings the invention", "the applicant finds criticality in the thickness of material yet the applicant finds no need in showing how the material are attached/formed together", and that "the entire construction assembly which includes the apparatus, method and kit as recited throughout the claims; the coating roll recited in claim 5, 22 and 32; and the lining paper in claims 60 and 64" are presumably missing from the drawings. In response applicant filed a newly added Figure 4 on September 29, 2010.

The examiner repeated the above drawing objection in a Final Office action on December 17, 2010. The applicant filed the instant petition in response to the above Final rejection.

The applicant's petition argues that the requirement for drawings is contrary to 37 CFR 1.81(a) in that drawings are needed only when "necessary for the understanding of the subject matter sought to be patented". Applicant further argues that even if drawings are required the submitted Figures 1-4 more than adequately illustrate that which is "necessary for the understanding of the subject matter sought to be patented". Applicant further argues that with the exception of the coating roll and lining paper the examiner has failed to identify anything specifically missing from the drawings necessary to understand the drawings. To this end the applicant argues that Figure 4 illustrates the lining paper, and the coating roll is merely used in the preparation of the invention and not a structural component of the invention.

While 37 CFR 1.81 does indicate what is required to be shown in the drawings, and MPEP 608.02 deals with when drawings are required **for a filing date to be granted**, they do not specifically speak to what is required to be shown in the drawings with respect to claimed subject matter. For that requirement, 37 CFR 1.83 controls. Indeed, 37 CFR 1.83 recites that the drawings in a nonprovisional application "must show every feature of the invention specified in the claims". So even if it is agreed that drawings of applicant's construction assembly, method for the construction of interior works, and kit for the construction of interior works are not needed to understand the invention, as long as there is a claimed feature of the invention, drawings are still needed as essential for a proper understanding of the invention, as specified by 37 CFR 1.83. In this case, drawings showing the claimed subject matter are properly required.

As to whether or not Figures 1-4 as submitted by the applicant have been properly denied entry by the examiner, it is agreed that the broad recitations put forward by the examiner of drawings not showing "specific dimensions", "how the elements are put together to form a panel assembly" "conforming drawings describing the invention", or "the entire construction assembly which includes the apparatus, method, or kit as recited throughout the claims" are insufficient to provide the specificity needed to justify the examiner's holding of the submitted drawings not being acceptable for entry or to adequately provide a proper understanding of the claimed invention. Furthermore, specific dimensions are not required in the drawings as alleged by the examiner, and it is agreed with the applicant that Figure 4 does show lining paper and that the coating roll is merely a device used in the construction of the assembly and need not be illustrated.

Given that the examiner has not provided a sufficiently detailed explanation of why it is that the drawings submitted on April 2, 2010 and September 29, 2010 are not acceptable for entry as explained above, the objection to the drawings cannot be sustained. Therefore, the objection to the drawings in the final rejection of December 17, 2010 is hereby **WITHDRAWN**. However, it is also noticed that the manner in which applicant has submitted the drawings does not comply with that which is required under 37 CFR 1.121(d). Though it is not seen that the examiner has objected to the drawings for this reason, clearly applicant will need to resubmit drawings that are in compliance with the above-noted rule.

The request that the requirement for drawings in this case be withdrawn is **DISMISSED**. The request that the objection to the proposed drawings made by the examiner in the Final rejection of December 17, 2010 be withdrawn is **GRANTED** to the extent indicated above.

Applicant has filed an After-final amendment in this case on March 17, 2011, and the examiner will address the above-noted amendment in a manner consistent with this decision.

Any questions or comments with respect to this decision should be forwarded to Quality Assurance Specialist Steven N. Meyers at (571) 272-6611.

Kathy Matecki

Kathy Matecki, Director
Patent Technology Center 3600
(571) 272-5250

snm/snm: 3/21/11

SM

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P.O. Box 1450
Alexandria, VA 22313-1450
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In re Patent No. 7243524
Issue Date: July 17,2007
Application No. 10885122
Filed: July 7,2004
Attorney Docket No. 1706-104

:
: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.

A31 PTO/SB/66
Approved for use through 04/30/2009. 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)
7,243,524	2007-07-17	10/885,122	2004-07-07	1706-0104

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity			Small Entity		
	Fee	Code		Fee	Code
○	3 ½ year	(1551)	◉	3 ½ year	(2551)
○	7 ½ year	(1552)	○	7 ½ year	(2552)
○	11 ½ year	(1553)	○	11 ½ year	(2553)

SURCHARGE

The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition.

STATEMENT

THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

◉ An attorney or agent registered to practice before the Patent and Trademark Office

○ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

○ A joint patentee; all of whom are signing this e-petition

○ The assignee of record of the entire interest

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/gfr4/	Date (YYYY-MM-DD)	2011-07-22
Name	G. Franklin Rothwell	Registration Number	18125

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 record s.

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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OFFICE OF PETITIONS

BANNER & WITCOFF LTD
ATTORNEYS FOR CLIENT NO 000449 001701
1100 13th STREET NW
SUITE 1200
WASHINGTON DC 20005-4051

In re Application of :
Vakil, et al. :
Application No. 10/885,238 : ON PETITION
Filed: July 7, 2004 :
Attorney Docket No. 007871.00019 :

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed December 27, 2011.

The petition under 37 CFR 1.181 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181".

The above-identified application became abandoned for failure to timely respond to the non-final Office action mailed April 28, 2011. This Office action set a shortened statutory period for reply of three months. No reply having been received, the application became abandoned on July 29, 2011. The Office mailed on December 5, 2011.

Petitioner states that he did not receive the April 28, 2011 Office action.

To establish non-receipt of an Office action, a petitioner:

> must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.[1]

In addition, the Manual of Patent Examining Procedure § 711.03(c) also states:

> A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the non-received Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the non-received Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

Here, petitioner has not submitted a copy of an incoming mail log showing all PTO mail received from April 28, 2011 to May 31, 2011. On renewed petition, petitioner should submit a copy of a master docket report showing all of the firm's replies docketed for a due date of July 28, 2011. If the firm does not keep a master docket report, petitioner should so state for the record.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

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[1] MPEP 711.03(c).

By FAX: (571) 273-8300
Attn: Office of Petitions

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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SUITE 1200
WASHINGTON DC 20005-4051

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MAR 06 2012
OFFICE OF PETITIONS

In re Application of :
Vakil, et al. :
Application No. 10/885,238 : ON PETITION
Filed: July 7, 2004 :
Attorney Docket No. 007871.00019 :

This is a decision on the renewed petition to withdraw the holding of abandonment under 37 CFR 1.181, filed February 24, 2012.

The petition under 37 CFR 1.181 is **GRANTED**.

The above-identified application became abandoned for failure to timely respond to the final Office action mailed April 28, 2011. This Office action set a shortened statutory period for reply of three months. No reply having been received, the application became abandoned on July 29, 2011. The Office mailed on December 5, 2011. Applicants filed a petition to withdraw the holding of abandonment on December 27, 2011. However, the petition was dismissed in a decision mailed on January 12, 2012.

With the instant renewed petition, Petitioner states that there is no master docket report kept by his law firm. Instead, petitioner has submitted a copy of an incoming mail log, showing

all PTO mail received from April 28, 2011 to May 31, 2011. In addition, Petitioner has submitted a copy of a docket report for the attorney in question, showing all of his replies docketed for a due date of July 28, 2011.

In view of the above, it is concluded that Petitioner did not receive the April 28, 2011 final Office action.

Accordingly, the holding of abandonment is **WITHDRAWN**.

The application is being forwarded to Group Art Unit 2617 for re-mailing of the April 28, 2011 final Office action, setting a new period for reply.

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

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BLISS MCGLYNN, P.C.
2075 WEST BIG BEAVER ROAD
SUITE 600
TROY MI 48084

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NOV 15 2010

OFFICE OF PETITIONS

In re Application of :
Catherine Metry :
Application No.10/885,326 : ON PETITION
Filed: July 6, 2004 :
Attorney Docket No. CM04-001 :

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed May 21, 2010, to revive the above-identified application.

The petition is **GRANTED.**

This above-identified application became abandoned for failure to timely file a reply to the Notice to File Missing Parts mailed August 30, 2004. The Notice to File Missing Parts set a two (2) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on October 31, 2005. A Notice of Abandonment was mailed on May 2, 2007. A petition filed under 37 CFR 1.137(b) on September 11, 2009 was dismissed on March 24, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the filing fees[1] (2) the petition fee of $810, and (3) a proper statement of unintentional delay.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

[1] It is noted the Office is in receipt of $27.00 as was required by the Notice to File Missing Parts mailed August 30, 2004. However, the Office of Patent Application Processing will review and calculate the appropriate claims fees in light of any increase of claim fees since 2004 and any surcharge that may be required.

This application is being referred to the Office of Patent Application Processing for pre-examination processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3215.

Charlema Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

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MAR 01 2011

OFFICE OF PETITIONS

In re Application of :
Karaoguz, et al. :
Application No. 10/885,405 : ON APPLICATION FOR
Filed: July 6, 2004 : PATENT TERM ADJUSTMENT
Atty Docket No. **15213US02** :

This is in response to 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). Applicants submits that the patent term adjustment to be indicated on the patent is four hundred and eighty-four (484) days, not one hundred and seventy-two (172) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As

such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

It is noted that any period of adjustment will be entered in light of 35 U.S.C. 154(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

> Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a

---

[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.

patent within 3 years after the actual filing date of the application in the United States, not including –

(i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

It is further noted that a Request for Continued Examination (RCE) was filed in this application onMay 20, 2008.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Senior Petitions Attorney
Office of Petitions

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FISH & RICHARDSON P.C. (TC)
PO BOX 1022
MINNEAPOLIS MN 55440-1022

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OFFICE OF PETITIONS

In re Patent No. 7,452,984	: DECISION DISMISSING
Espy et al.	: REQUEST FOR
Issue Date: 11/18/2008	: RECONSIDERATION OF
Application Number: 10/885,437	: PATENT TERM ADJUSTMENT
Filing or 371(c) Date: 07/06/2004	:
Atty Docket No.	:
20014-003002	:

This is a decision on the RESPONSE TO DECISION DISMISSING REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705, filed on November 2, 2009, which is treated as a request for reconsideration under 37 CFR 1.705(d) requesting that the above-identified patent is extended or adjusted by five hundred thirty-seven (537) days.

The request for reconsideration of patent term adjustment under § 1.705(d) is **DISMISSED AS UNTIMELY FILED.**

On September 29, 2009, a Decision Dismissing Request for Reconsideration of Patent Term Adjustment Under 37 CFR 1.705(d) was mailed, setting a thirty (30) day or one (1) month period for reply, whichever was longer. No extensions of time were available. On November 2, 2009, more than thirty (30) days or month (1) after the decision mailed on September 29, 2009, was mailed, the subject request for reconsideration was filed.

The request for reconsideration is dismissed as untimely.

37 CFR 1.136(a)(1) states that 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;

Patentees were notified in the decision mailed on September 29, 2009, that a one (1) month time period was set for reply. The request for reconsideration, however, was not filed until November

2, 2009, more than one (1) month after the mailing date of the decision mailed on September 29, 2009. As such, the petition must be dismissed as untimely.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3231.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAILED
JUN 29 2011
OFFICE OF PETITIONS

FISH AND RICHARDSON P.C. (TC)
PO BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 7,452,984	: DECISION ON PETITION
Espy et al.	: and
Issue Date: 11/18/2008	: DECISION ON REQUEST
Application No. 10/885,437	: FOR RECONSIDERATION
Filing or 371(c) Date: 07/06/2004	: OF
Atty Docket No.	: PATENT TERM ADJUSTMENT
20014-003002	: and
	: NOTICE OF INTENT TO ISSUE
	: CERTIFICATE OF CORRECTION

This is a decision on the petition under 37 CFR 1.183, filed on April 1, 2011, requesting waiver of the rules and for reconsideration of the patent term adjustment, which is also treated as a request for reconsideration under 37 CFR 1.705(d) requesting that the patent term adjustment determination for the above-identified patent be extended or adjusted by four hundred thirty-five (435) days.

The petition under 37 CFR 1.183 is **GRANTED**.

The request for reconsideration of patent term adjustment under 37 CFR 1.705(d) is **GRANTED**.

Petitioners request waiver of the rules under 37 CFR 1.183 inasmuch as the patent adjustment determination be considered.

Under the specific circumstances of this case, the petition under 37 CFR 1.183 is granted.

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-five (435) days is **GRANTED**.

The Office acknowledges submission of the $400.00 fee set forth in § 1.17(f) for the petition under 37 CFR 1.183. 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 thirty-five (435)** days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3231.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,452,984 B2

DATED : **Nov. 18, 2008** **DRAFT**

INVENTOR(S) : Espy 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 324 days.

Delete the phrase "by 324 days" and insert – by 435 days--

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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FISH & RICHARDSON P.C. (TC)
PO BOX 1022
MINNEAPOLIS MN 55440-1022

MAILED
SEP 20 2011
OFFICE OF PETITIONS

In re Patent No. 7,452,984	:	DECISION ON REQUEST
Espy et al.	:	FOR
Application Number: 10/885,437	:	RECONSIDERATION OF
Issue Date: 11/18/2008	:	PATENT TERM ADJUSTMENT
Filing or 371(c) Date: 07/06/2004	:	
Atty Docket No.	:	
20014-003002	:	

This is a decision on the REQUEST FOR RECONSIDERATION OF DECISION ON REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH, filed on August 23, 2011, which is being treated as a renewed petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be revised to indicate that the term of the above-identified patent is extended or adjusted by five hundred thirty-six (536) days.

The petition to correct the patent term adjustment is **DISMISSED** with respect to making any change in the patent term adjustment determination under 35 U.S.C. § 154(b) of four hundred thirty-five (435) days.

Patentee asserts an additional period of 101 days should be added to the "B" delay period.

Patentee's argument has been considered, but is not persuasive.

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 July 7, 2007, the day after the date three years after the date the application was filed, and ends on February 3, 2008, the day before the RCE was filed, and is 212 days, as previously calculated.

Accordingly, no change will be made to the patent term adjustment of 435 days (419 days of "A" delay + 212 days of "B" delay – 0 overlapping days – 196 days of applicant delay) as set forth in the decision mailed on June 23, 2011.[1]

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) on January 21, 2009. No additional fees are required. The petition fee submitted with the subject request is therefore unnecessary and will be credited to counsel's deposit account.

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

[1] Patentee is reminded that a 101 day reduction for applicant delay pursuant to 37 CFR 1.704(c)(7) was entered in the decision on patent term adjustment mailed on September 29, 2009.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 11/28/11

TO SPE OF : ART UNIT: 3717 Attn: BUMGARNER MELBA N (SPE)

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/885570 Patent No.: 8043152

CofC mailroom date: 11/15/2011

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Note: Please check Claims 10, 14 & 28
Should these amended claims be amended again or not

Tasneem Siddiqui
Certificates of Correction Branch
703-756-1814 & 703-756-1593

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- [X] **Approved** — All changes apply.
- [ ] **Approved in Part** — Specify below which changes do not apply.
- [ ] **Denied** — State the reasons for denial below.

Comments: _____

Melba Bumgarner — SPE

3717 — 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. 7080107
Issue Date: July 18,2006
Application No. 10885924
Filed: July 6,2004
Attorney Docket No. 42P17000C

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed October 14,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of October 14,2010 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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)
7080107	2006-07-18	10885924	2004-07-06	42P17000C

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	/Kendal M. Sheets/	Date (YYYY-MM-DD)	2010-10-13
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.

PTO/SB/66 (03-09)
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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)
7178125	2007-02-13	10885994	2004-07-07	OPTI.002US0

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	/Edward C. Kwok, Reg. No. 33,938/	Date (YYYY-MM-DD)	2011-04-07
Name	Edward C. Kwok	Registration Number	33938

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. 7178125
Issue Date: February 13,2007
Application No. 10885994
Filed: July 7,2004
Attorney Docket No. OPTI.002US0

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed April 7,2011 ,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 7,2011 .
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

In re Patent No. 7150786
Issue Date: December 19,2006
Application No. 10886013
Filed: July 6,2004
Attorney Docket No. 059474-0201

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed February 2,2012 ,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 2,2012 . 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)
7150786	2006-12-19	10886013	2004-07-06	141/033

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	/K. L. Green/	Date (YYYY-MM-DD)	2012-02-02
Name	Kenneth L. Green	Registration Number	44724

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

5-12-2011

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Patent No : 7,886,124 B1
Ser. No. : 10/886,124
Inventor(s) : Rainer Kuehne
Issued :

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322.

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid,* including after issuance of the patent.

In view of the foregoing, your request is hereby denied.

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1.17(i) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (703) 872-9306
ATTN: Office of Petitions

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, , no additional fee is required.

Eva James
For Mary Diggs
Decisions & Certificates
of Correction Branch
(571) 272-3422 or 703- 756 -1580

Gerard A. Messina
Kenyon & Kenyon LLP
One Broadway
New York, NY 10004

ej

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

In re Patent No. 7009803
Issue Date: March 7,2006
Application No. 10886171
Filed: July 6,2004
Attorney Docket No. 139-039U

:
: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
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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)
7009803	2006-03-07	10886171	2004-07-06	

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

	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	/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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P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

GLOBAL PATENT GROUP - KEM
1005 N WARSON ROAD
SUITE 201
ST. LOUIS MO 63132

MAILED

JUN 24 2011

OFFICE OF PETITIONS

In re Application of :
Nichols et al. :
Application No. 10/886,222 : DECISION ON PETITION
Filed: July 7, 2004 :
Attorney Docket No. KEM0001-201-US :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 20, 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 April 6, 2011, as required by the Notice of Allowance and Fee(s) Due mailed January 6, 2011. Accordingly, the date of abandonment of this application is April 7, 2011. A Notice of Abandonment was mailed April 25, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $755.00 and the publication fee of $300.00, (2) the petition fee of $810.00; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This application is being referred to the Office of Data Management for processing into a patent.

/Joan Olszewski/
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

BAKER DONELSON
INTELLECTUAL PROPERTY DEPARTMENT
MONARCH PLAZA, SUITE 1600
3414 PEACHTREE RD.
ATLANTA, GA 30326

MAILED

APR 11 2011

OFFICE OF PETITIONS

In re Patent No. 7,183,918 :
Issue Date: February 27, 2007 :
Application No. 10/886,355 : NOTICE
Filed: July 7, 2004 :
Attorney Docket No. 2825322-000008

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

Inquiries related to this communication should be directed to Irvin Dingle at (571) 272-3210.

Irvin Dingle
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

PATENT, COPYRIGHT & TRADEMARK LAW GROUP
4199 KINROSS LAKES PARKWAY
SUITE 275
RICHFIELD OH 44286

MAILED

AUG 2 6 2010

OFFICE OF PETITIONS

In re Application of :
Steven TSENGAS et al. :
Application No. 10/886,544 : DECISION ON PETITION
Filed: July 09, 2004 :
Attorney Docket No. **1121A** :

This is a decision on the renewed petition, filed October 19, 2009, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

This application was held abandoned for failure to reply to the final Office action mailed December 14, 2006, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on July 02, 2007.

Petitioner states that "[t]he Dec. 14, 2006 Office Action was never received by the Practitioner. The file jacket was searched and the docket records indicate that the Office Action was never received. A copy of the docket record is also included with this petition. A History and Pending report for this file is included, and it appears (refer to highlight) that no Final Action was received during any time period between a mailing of the Sep. I, 2006 reply and the Jul. 8, 2007 Notice of Abandonment. Similarly, a copy of the docket tracking record fails to reveal any matter due to the Office in March for this client and this customer number (refer to highlight)." Petitioner further contends that a request for change of address was submitted to the Office in June of 2006.

Petitioner's arguments have been reviewed. While the Final Office action mailed December 14, 2006 (Office action), may not have been received by the petitioner, the Office did mail the Office action to the correspondence address of record at that time. The Office does not have evidence of receiving a request for change in correspondence address for the instant application prior to the mailing of the Office action. The office does have evidence of a request for a change in correspondence address in the instant application, filed March 28, 2007, that was subsequent to the mailing of the Office action. Petitioner's statement concerning the request dated June 8, 2006, for a change of address has been noted. However, that request was for associating the customer number "33055" with a list of applications/patents attached thereto. Petitioner has not provided the Office with evidence that the list included the instant application. Accordingly, the instant petition has failed to establish that the Office action was mailed to an incorrect address.

Accordingly, absent the required evidence to establish non-receipt of the Office action of December 14, 2006, 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 a petition fee of $810. It is noted that in the petition originally filed February 21, 2008, petitioner included a fee of $750 along with a request for its refund. Petitioner should note that the fee submission was deficient as it was less than the required petition fee of $770. If the petitioner desires to have the application revived under the unintentional provisions of 37 CFR 1.137(b), the balance of $60 must be included with any renewed petition, as the current fee is $810. Petitioner should also note that the petition filed February 21, 2008, lacked any statement pertaining to the nature of the delay in filing a reply to the Office action. Petitioner is urged to consider using the attached form PTO/SB/64 to file a petition for revival of the instant application under the unintentional provisions of 37 CFR 1.137(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).

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 Tredelle Jackson at (571) 272-2783.

Ramesh Krishnamurthy
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.

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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NSIP LAW
P.O. BOX 34688
WASHINGTON DC 20043

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APR 06 2012

OFFICE OF PETITIONS

In re Application of :
Kyung-Geun Lee et al. :
Application No. 10/886,554 : DECISION ON REQUEST FOR REFUND
Filed: July 9, 2004 :
Attorney Docket No. 1101.0940 :

This is a decision on the Request For Refund filed, March 23, 2012.

The request is **GRANTED**.

Applicant files the above request for refund and states that "Applicants respectfully request under the provisions of 37 CFR 1.26 a refund of the fee paid in connection with the Petition and Rule 130 Affidavit filed on March 23, 2012, in the above-captioned application. Applicant incorrectly filed the petition which was intended to be filed in application no. 09/600,160."

In view of the above, the petition fee paid on accounting date of March 26, 2012 has been credited to applicant's credit card account, as it is the method in which the fee was paid.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

MAILED

SEP 27 2010

OFFICE OF PETITIONS

In re Patent No. 7720836	:	DECISION ON REQUEST
Abajian et al.	:	FOR
Issue Date: 05/18/2010	:	RECONSIDERATION OF
Application No. 10/886946	:	PATENT TERM ADJUSTMENT
Filed: 07/07/2004	:	
Atty Docket No.	:	
10587.0192-01000	:	

This is a decision on the petition filed on REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT, filed on June 16, 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 thirty (930) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by nine hundred thirty (930) days is **GRANTED**.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **nine hundred thirty (930)** days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3231.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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SEP 24 2010

OFFICE OF PETITIONS

MHKKG / GLOBALFOUNDRIES
P.O. BOX 398
AUSTIN TX 78767-0698

In re Application of	:	
Karthikeyan MUTHUSAMY, et al	:	
Application No. 10/887,069	:	DECISION ON PETITION
Filed: July 8, 2004	:	
Attorney Docket No. 6363-10700	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 28, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely pay the issue and publication fees on or before April 28, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed January 28, 2010, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on April 29, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1510 and publication fee of $300; (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.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

This application is being referred to the Office of Data Management for processing into a patent.

/DCG/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

UNITED STATES 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. 7148039
Issue Date: December 12,2006
Application No. 10887100
Filed: July 9,2004
Attorney Docket No. 255614US

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed August 18,2011 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of August 18,2011 .
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)
7,148,039	2006-12-12	10/887,100	2004-07-09	OA98031

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	/STEVE TRZASKA/	Date (YYYY-MM-DD)	2011-08-18
Name	STEVEN TRZASKA	Registration Number	36296

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.**

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/887,213	07/08/2004	Douglas B. Orr	0016.0012US1	2081

29127 7590 03/28/2011

HOUSTON ELISEEVA
420 BEDFORD ST
SUITE 155
LEXINGTON, MA 02420

EXAMINER	
SCHMIDT, KARI L	

ART UNIT	PAPER NUMBER
2439	

MAIL DATE	DELIVERY MODE
03/28/2011	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
WASHINGTON, DC 20231
www.uspto.gov

J Grant Houston
Houston Eliseeva
420 Bedford St
Suite 155
Lexington MA 01420

In re Application of: Orr et al.
Application No. 10/887213
Filed: July 8, 2004
For: Method and System for Authentication Event Security Policy Generation

DECISION ON PETITION TO WITHDRAW HOLDING OF ABANDONMENT

This is a decision on the request, filed March 3, 2011, that the holding of abandonment be withdrawn in the above-identified application. This request is being effectively handled as a petition under 37 C.F.R. §1.181 and M.P.E.P §711.03(c).

This application was held abandoned for failure to respond in a timely and effective manner to the Office action mailed August 12, 2010. A Notice of Abandonment was mailed February 23, 2011.

Practitioner's request included a copy of the post card receipt. A review of the file record indicates that the original response (a notice of appeal) has been associated with the file and was filed on February 16, 2011. The original response included a three month extension of time and a certificate of mailing dated February 14, 2011. Further, since the six month statutory period ended on February 12, 2011, a Saturday, February 12, 2000 was the next succeeding business day. Accordingly, the response was timely filed within the six month period as per M.P.E.P. 505 and is accepted.

Therefore, the record is clear that the application was ***not abandoned in fact*** and a Notice of Abandonment should not have been issued. The office regrets any inconvenience caused by the mailing of the Notice of Abandonment.

The petition is **GRANTED**. The Notice of Abandonment is withdrawn. The 2 month time period started with the filing of the notice of appeal continues to run.

Any inquiry regarding this decision should be directed to Tod Swann, Quality Assurance Specialist, at (571) 272-3612. A second point of Contact is Kim Huynh at (571)-272-4147

Tod R Swann, WQAS 2430
Technology Center 2400

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/30/11

TO SPE OF : ART UNIT 1625

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/887,227 Patent No. 7,718,671

CofC mailroom date 3/21/11

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.

xApproved	**All** changes apply.
❑ **Approved in Part**	Specify below which changes **do not** apply.
❑ **Denied**	State the reasons for denial below.

Comments: _____

_____

_____

_____

/Janet L. Andres/ 1625
SPE **Art Unit**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/30/11

TO SPE OF : ART UNIT 1625

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/887,227 Patent No. 7,718,671

CofC mailroom date 3/21/11

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.

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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/Janet L. Andres/ 1625
SPE **Art Unit**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : June 29 2008

TO SPE OF : ART UNIT 2800

SUBJECT : Request for Certificate of Correction for Appl. No 10/8872342 patent no7237270

Please respond to this request for a certificate of correction within 7 days.

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**

Magdalene Talley

Certificates of Correction Branch

703-308-9390 ext. 116

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

☒ **Approved**	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: _____

/Gary L. Welch/ — **SPE**

3765 — **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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NOV 09 2010

OFFICE OF PETITIONS

MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

In re Patent of Steven B. Lindsay et al. :
Patent No. 7,644,194 :
Issue Date: January 5, 2010 :
Application No. 10/887,515 :
Filing Date: July 8, 2004 :
Attorney Docket No. 14999US02 :

DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

This is a decision on the petition filed June 4, 2010, requesting the patent term adjustment indicated on the patent be corrected to indicate the term of the patent is extended or adjusted by one thousand two hundred thirty-one (1231) days.

The request for reconsideration of the patent term adjustment indicated on the patent is **dismissed**.

The patent issued January 5, 2010. The patent set forth a patent term adjustment determination of 1230 days, which included a 14-day reduction under 37 C.F.R. § 1.704(c)(10).

If Patentees disagreed with the Office's determination of the 14-day reduction, Patentees could have filed a petition under 37 C.F.R. § 1.705(d) within two months of the date the patent issued.

Patentees did not file a request for reconsideration of the patent term adjustment under 37 C.F.R. § 1.705(d).

Patentee filed a Request for Recalculation of Patent Term Adjustment in View of *Wyeth* ("*Wyeth* Request") on April 29, 2010, which was more than two months after the date the patent issued.

The Office issued a decision in response to the *Wyeth* Request on May 4, 2010. The decision determined the patent term adjustment is 1230 days, which is the same as the patent term adjustment determination set forth on the issued patent.

The instant petition was filed June 4, 2010. The petition does not assert the patent term adjustment on the prior decision was based on an incorrect determination of the number of days of overlap between the period of delay under 37 C.F.R. § 1.703(a) and the period of delay under

37 C.F.R. § 1.703(b) or an incorrect determination of the number of days of overlap between the period of delay under 37 C.F.R. § 1.703(a) and the period of delay under 37 C.F.R. § 1.703(e). Instead, the petition asserts the Office should have entered a 13-day reduction, not a 14-day reduction, under 37 C.F.R. § 1.704(c)(10).

Patentees appear to misunderstand the nature of the *Wyeth* Request filed April 29, 2010. A *Wyeth* Request only allows a party to challenge the number of days by which the Office reduced the patent term adjustment for overlap between A Delay and B Delay. The first page of the *Wyeth* Request form submitted by Patentees explicitly states, with emphasis added in bold, "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)." The first sentence on the second page of the form states, with emphasis in the original, "**This form is only [to be used] if the sole basis for requesting the recalculation is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A).**"

A party may not challenge the Office's determination of Applicant Delay via a *Wyeth* Request or via a request for reconsideration of a decision issued in response to a *Wyeth* Request. Therefore, the petition is dismissed.

The Office notes the requested relief would not be granted even if a petition under 37 C.F.R. § 1.705(d) disputing the number of days of the reduction under 37 C.F.R. § 1.704(c)(10).had been timely filed.

An amendment under 37 C.F.R. § 1.312 was filed November 18, 2009, and a "Response to Rule 312 Communication" was issued December 1, 2009. Patentees argue the correct number of days of delay under 37 C.F.R. § 1.704(c)(10) is 13 days instead of 14 days. Patentees *appear* to believe the correct number of days of delay is the number of days beginning on November 19, 2009, the day after the date Patentees filed the amendment, and ending on November 18, 2009, the date the Office issued a response to the amendment. However, the period of delay under 37 C.F.R. § 1.704(c)(10) starts on the date the paper at issue is filed, *not* the day after the date the paper is filed. The number of days beginning on November 18, 2009, the date the amendment was filed under 37 C.F.R. § 1.312, and ending on December 1, 2009, the date the Office issued a "Response to Rule 312 Communication," is 14 days. Therefore, the correct number of days of delay under 37 C.F.R. § 1.704(c)(10) is 14 days.

In view of the prior discussion, the patent term adjustment of 1230 days set forth on the patent will not be changed.

Submission of the $200.00 fee set forth in 37 C.F.R. § 1.18(e) is acknowledged. No additional fee is required.

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 4/21/10 Paper No.: _____

TO SPE OF : ART UNIT 2841 Jinhee Lee

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/887635 Patent No.: 7095618

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Certificates of Correction Branch
703-756-1571

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- [X] **Approved** — **All** changes apply.
- [ ] **Approved in Part** — Specify below which changes **do not** apply.
- [ ] **Denied** — State the reasons for denial below.

Comments: _____

SPE

2841, Acting SPE
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Alexandria, VA 22313-1450
www.uspto.gov

BAKER BOTTS L.L.P.
2001 ROSS AVENUE
SUITE 600
DALLAS TX 75201-2980

MAILED

MAR 25 2011

OFFICE OF PETITIONS

In re Application of
David E. Huddleston et al.
Application No. 10/887,654
Filed: July 9, 2004
Attorney Docket No. 063170.6942

ON PETITION

This is a decision on the "NON-FEE PETITION UNDER 37 C.F.R. § 1.181 TO WITHDRAW HOLDING OF ABANDONMENT" filed February 14, 2011.

The petition to withdraw the holding of abandonment is **GRANTED**.

The application was held abandoned on October 13, 2010 for failure to file a timely response to the Final Office Action mailed July 9, 2010, which set a three (3) month shortened period for reply. No extensions of time in accordance with 37 CFR 1.136(a) were obtained. Accordingly, a Notice of Abandonment was mailed January 21, 2011.

Petitioner asserts that a proper response in the form of a Request for Continued Examination (RCE) and a request to consider the previously filed amendment as the submission under 37 CFR 1.114, was filed on October 12, 2011, the first business day after a weekend and holiday. In support, petitioner submits a copy of the reply said to have been filed, which includes a certificate of mail dated October 12, 2010, pursuant to 37 CFR 1.8.

The evidence submitted corroborates a timely response to the Final Office Action. Accordingly, the holding of abandonment is withdrawn and the Notice of Abandonment is vacated. No petition fee is due and none has been charged. The fee for the RCE has been applied.

This matter is being referred to Technology Center 3624 for appropriate action on the RCE and amendment previously filed on October 12, 2010, a copy of which was submitted with the instant petition.

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 7-11-11

TO SPE OF : ART UNIT 2167

SUBJECT : Request for Certificate of Correction for Appl. No.: 10887670 Patent No.: 7836043

CofC mailroom date: 6-30-11

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 – 9D40-E
Palm Location 7580

Note: _____

_____

Omega Lewis

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.

- [X] **Approved** — **All** changes apply.
- [ ] **Approved in Part** — Specify below which changes **do not** apply.
- [ ] **Denied** — State the reasons for denial below.

Comments: _____

_____

_____

_____

_____ 2167

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

XUEYING HUANG
204 CHERRY BLOSSOM PLACE
HUCKESSIN DE 19707

MAILED

OCT 03 2011

OFFICE OF PETITIONS

In re Patent No. 7,247,387 :
Issue Date: July 24, 2007 :
Application No. 10/887,672 : ON PETITION
Filed: July 10, 2004 :
Attorney Docket No. SEPAX-2 :

This is a decision on the petition under 37 CFR 1.378(c), filed September 15, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on July 25, 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:

XUEYING HUANG
SEPAX TECHNOLOGIES, INC.
5 INNOVATION WAY, SE. 100
NEWARK DE 19711

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)
7044512	2006-05-16	10887691	2004-07-12	

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity			Small Entity		
	Fee	Code		Fee	Code
○	3 ½ year	(1551)	◉	3 ½ year	(2551)
○	7 ½ year	(1552)	○	7 ½ year	(2552)
○	11 ½ year	(1553)	○	11 ½ year	(2553)

SURCHARGE

The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition.

STATEMENT

THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

◉ An attorney or agent registered to practice before the Patent and Trademark Office

○ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

○ A joint patentee; all of whom are signing this e-petition

○ The assignee of record of the entire interest

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	/ruben alcoba/	Date (YYYY-MM-DD)	2011-06-15
Name	ruben alcoba, esq.	Registration Number	44499

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. 7044512
Issue Date: May 16,2006
Application No. 10887691
Filed: July 12,2004
Attorney Docket No. 280107

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed June 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 June 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.

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.
10/887,824	07/12/2004	Marc Ramet	120334	4246

7590 11/24/2010

Oliff & Berridge, PLC
P.O. Box 320850
Alexandria, VA 22320-4850

EXAMINER	
PICKETT, JOHN G	

ART UNIT	PAPER NUMBER
3728	

NOTIFICATION DATE	DELIVERY MODE
11/24/2010	ELECTRONIC

DECISION GRANTING PETITION UNDER 37 CFR 1.138(d)

The declaration of express abandonment is recognized

This is in response to the petition under 37 CFR 1.138(d), requesting for a refund of any previously paid search fee and excess claims fee in the above-identified application.

The petition is granted.

The express abandonment is recognized. Any previously paid search fee and excess claims fee are hereby refunded.

Telephone inquiries should be directed to the Office of Data Management at (571) 272-4200.

Betty Powell

Patent Publication Branch
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

WOLF GREENFIELD & SACKS, P.C.
600 ATLANTIC AVENUE
BOSTON MA 02210-2206

MAILED
FEB 24 2012
OFFICE OF PETITIONS

In re Application of :
Krieg, et al. :
Application No. 10/888,089 : ON APPLICATION FOR
Filed: July 9, 2004 : PATENT TERM ADJUSTMENT
Atty Docket No. **C1039.70083US10**

This is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705", filed February 17, 2012. The petition is properly treated under 37 CFR 1.705(b). Applicants submit that the correct patent term adjustment to be indicated on the patent is six hundred and twenty-four (624) days, not one hundred and four (104) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

It is noted that any period of adjustment will be entered in light of 35 U.S.C. 154(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

> Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including –

---

[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

(i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

It is further noted that a Request for Continued Examination (RCE) was filed in this application on December 11, 2008.

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) was received.

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

KATTEN MUCHIN ROSENMAN LLP
(C/O PATENT ADMINISTRATOR)
2900 K STREET NW, SUITE 200
WASHINGTON DC 20007-5118

MAILED

DEC 27 2010

OFFICE OF PETITIONS

In re Application of :
Cordula GRUETTNER, et al :
Application No. 10/888,189 : DECISION ON PETITION
Filed: July 9, 2004 : TO WITHDRAW
Attorney Docket No. 134848.02001 FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed December 6, 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 does not include a proper change of correspondence address. In this regard, the change of address provided is that of an assignee who has not been properly made of record under 37 CFR 3.71.

In order to request or take action in a patent matter, the assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, a Statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (*e.g.*, reel and frame number).

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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KATTEN MUCHIN ROSENMAN LLP
(C/O PATENT ADMINISTRATOR)
2900 K STREET NW, SUITE 200
WASHINGTON DC 20007-5118

MAILED

FEB 22 2011

OFFICE OF PETITIONS

In re Application of :
Cordula GRUETTNER, et al :
Application No. 10/888,189 : DECISION ON PETITION
Filed: July 9, 2004 : TO WITHDRAW
Attorney Docket No. 134848.02001 FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed January 28, 2011.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office requires the practitioner(s) requesting withdrawal to certify that he, she, or they have: (1) given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any responses that may be due and the time frame within which the client must respond, pursuant 37 CFR 10.40(c).

The request was signed by Sarah Janosik on behalf of the attorneys of record associated with Customer No. 27160.

The attorneys of record associated with Customer No. 27160 have been withdrawn.

Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address indicated below 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: ADURO BIOTECH
626 BANCROFT WAY,
SUITE 3-C
BERKELEY CA 94710

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/888,189	07/09/2004	Cordula Gruettner	134848.02001

CONFIRMATION NO. 2702

POWER OF ATTORNEY NOTICE

27160
KATTEN MUCHIN ROSENMAN LLP
(C/O PATENT ADMINISTRATOR)
2900 K STREET NW, SUITE 200
WASHINGTON, DC 20007-5118

Date Mailed: 02/14/2011

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 01/28/2011.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/dcgoodwyn/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

David Allan Moore
P.O. Box 351
Middletown, CT 06457

MAILED
MAR 22 2011
OFFICE OF PETITIONS

In re Application of :
Moore :
Application No. 10/888,297 : DECISION ON PETITION
Filed: July 9, 2004 :
For: DYNAMIC HUMAN/WIND POWERED :
FLYING SUIT :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 10, 2011, to revive the above-identified application.

The petition is **DISMISSED.**

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

This above-identified application became abandoned for failure to timely file a reply to the Notice to File Missing Parts mailed August 25, 2004. The Notice to File Missing Parts set a two (2) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on October 26, 2004. A Notice of Abandonment was mailed on August 10, 2007.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either

the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. *See* MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item (3).

There are three periods to be considered during the evaluation of a petition under 37 CFR 1.137(b):

> (1) the delay in reply that originally resulted in the abandonment;
>
> (2) the delay in filing an initial petition pursuant to 37 CFR 1.137(b) to revive the application; and
>
> (3) the delay in filing a grantable petition pursuant to 37 CFR 1.137(b) to revive the application.

Currently, the delay has not been shown to the satisfaction of the Director to be unintentional for periods (2).

As to Period (2):

Likewise, where the applicant deliberately chooses not to seek or persist in seeking the revival of an abandoned application, or where the applicant deliberately chooses to delay seeking the revival of an abandoned application, the resulting delay in seeking revival of the abandoned application cannot be considered as "unintentional" within the meaning of 37 CFR 1.137(b). *See* MPEP 711.03(c).

The language of both 35 U.S.C. § 41(a)(7) and 37 CFR 1.137(b) are clear and unambiguous, and, furthermore, without qualification. That is, the delay in filing the reply during prosecution, as well as in filing the petition seeking revival, must have been, without qualification, "unintentional" for the reply to now be accepted on petition. The Office requires that the entire delay be at least unintentional as a prerequisite to revival of an abandoned application to prevent abuse and injury to the public. *See* H.R. Rep. No. 542, 97th Cong., 2d Sess. 7 (1982), reprinted in 1982 U.S.C.C.A.N. 771 ("[i]n order to prevent abuse and injury to the public the Commissioner . . . could require applicants to act promptly after becoming aware of the abandonment"). The December 1997 change to 37 CFR 1.137 did not create any new right to overcome an intentional delay in seeking revival, or in renewing an attempt at seeking revival, of an abandoned application. *See* Changes to Patent Practice and Procedure; Final

Rule Notice, 62 Fed. Reg. 53131, 53160 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 87 (October 21, 1997), which clearly stated that any protracted delay (here, over 6 years) could trigger, as here, a request for additional information. As the courts have since made clear, a protracted delay in seeking revival, as here, requires a petitioner's detailed explanation seeking to excuse the delay as opposed to USPTO acceptance of a general allegation of unintentional delay. *See* Lawman Armor v. Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633, at 1637-8 (DC EMich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005) at *21-*23. Statements are required from any and all persons having firsthand knowledge of the circumstances surrounding the protracted delay, after the abandonment date, in seeking revival.

As noted in MPEP 711.03(c)(II), subsection D, in instances in which such petition was not filed within 1 year of the date of abandonment of the application, applicants should include:

> (A) the date that the applicant first became aware of the abandonment of the application; and
> (B) a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant.

In either instance, applicant's failure to carry the burden of proof to establish that the "entire" delay was "unavoidable" or "unintentional" may lead to the denial of a petition under 37 CFR 1.137(b), regardless of the circumstances that originally resulted in the abandonment of the application. *See also* New York University v. Autodesk, 2007 U.S. DIST LEXIS, U.S.District LEXIS 50832, *10 -*12 (S.D.N.Y. 2007)(protracted delay in seeking revival undercuts assertion of unintentional delay).

Petitioner has failed to provide sufficient evidence to establish that the delay in filing the initial petition was unintentional. Petitioner should seek a statement from attorney Paulding.

Any renewed petition may be addressed as follows:

By Mail:
Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand:
U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street

Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300.**

Correspondence regarding this decision may also be filed through the electronic filing system of the USPTO.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3215.

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

MAILED

JUN 02 2011

OFFICE OF PETITIONS

David Allan Moore
P.O. Box 351
Middletown, CT 06457

In re Application of :
Moore :
Application No. 10/888,297 : DECISION ON PETITION
Filed: July 9, 2004 :
For: DYNAMIC HUMAN/WIND POWERED :
FLYING SUIT :

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed May 9, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This above-identified application became abandoned for failure to timely file a reply to the Notice to File Missing Parts mailed August 25, 2004. The Notice to File Missing Parts set a two (2) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on October 26, 2004. A Notice of Abandonment was mailed on August 10, 2007. A petition filed under 37 CFR 1.137(b) was dismissed on March 22, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the declaration, filing fee, surcharge, replacement claims and replacement abstract (2) the petition fee of $810, and (3) a proper statement of unintentional delay.

This application is being referred to the Office of Patent Application Processing for pre-examination processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3215.

Charlema Grant

Charlema Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MAILED

JUL 15 2011

OFFICE OF PETITIONS

KILPATRICK TOWNSEND & STOCKTON LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO CA 94111-3834

In re Patent No. 7,960,522 :
Issued: June 14, 2011 :
Application No. 10/888,683 : ON PETITION
Filed: July 8, 2004 :
Attorney Docket No: 75941-683633 :
(018720US)

This is a decision regarding your request under 37 CFR 1.28. for acceptance of a fee deficiency submission filed June 21, 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.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.

Petitioner is advised that there is no fee for the request under 37 CFR 1.28. Your fee deficiency submission in the amount of $1620, under 37 CFR 1.28, is hereby accepted and the petition is **GRANTED**.

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

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Fish & Richardson PC
PO Box 1022
Minneapolis, MN 55440-1022

MAILED

AUG 3 0 2010

OFFICE OF PETITIONS

In re Patent No. 7,470,699 :
Jones et al. : DECISION UPON REMAND AND
Issue Date: December 30, 2008 : RECONSIDERATION OF
Application No. 10/888,747 : PATENT TERM ADJUSTMENT
Filed: July 9, 2004 : AND NOTICE OF INTENT
Attorney Docket No. 20750- : TO ISSUE CERTIFICATE OF
009001 69.US3.REG : CORRECTION
Title: Trisubstitutd Aryl and :
Heteroaryl Derivatives as
Modulators of Metabolism and
the Prophylaxis and Treatment
of Disorders Related Thereto

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 eight hundred ninety-six (896) days.

The application is being forwarded to the Certificates Branch for issuance of a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by five hundred thirty-two (896) days.

Telephone inquiries specific to this matter should be directed to Senior Legal Advisor Kery A. Fries at (571) 272-7757.

/Kery A. Fries/

Kery Fries
Senior Legal Advisor Attorney
Office of Patent Legal Administration
Office of Associate Commissioner
For Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,470,699 B2

DATED : **December 30, 2008** **DRAFT**

INVENTOR(S) : Jones 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 499 days

Delete the phrase "by 499 days" and insert – by 896 days--

Day : Wednesday

PALM INTRANET

Date: 8/18/2010
Time: 11:21:43

PTA Calculations for Application: 10/888747			
Application Filing Date:	07/09/2004	PTO Delay (PTO):	540
Issue Date of Patent:	12/30/2008	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	41
Post-Issue Petitions:	0	Total PTA (days):	896
PTO Delay Adjustment:	397		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
76	08/18/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	397		
67.5	12/10/2008	PTA 36 MONTHS	143		
67	12/30/2008	PATENT ISSUE DATE USED IN PTA CALCULATION			
66	12/03/2008	EXPORT TO FINAL DATA CAPTURE			
65	12/01/2008	FINISHED INITIAL DATA CAPTURE			
64	12/01/2008	DISPATCH TO FDC			
63	10/20/2008	APPLICATION IS CONSIDERED READY FOR ISSUE			
62	10/15/2008	ISSUE FEE PAYMENT VERIFIED			
61	10/15/2008	STATEMENT FILED INDICATING A LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS			
60	10/15/2008	ISSUE FEE PAYMENT RECEIVED			
59	08/21/2008	SEQUENCE FORWARDED TO PUBS ON TAPE			
58	08/11/2008	EXPORT TO INITIAL DATA CAPTURE			
57	08/08/2008	MAIL NOTICE OF ALLOWANCE			
56	08/04/2008	ISSUE REVISION COMPLETED			
55	08/04/2008	DOCUMENT VERIFICATION			
54	08/04/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
53	07/31/2008	NOTICE OF ALLOWABILITY			
52	07/21/2008	DATE FORWARDED TO EXAMINER			
51	06/20/2008	AMENDMENT AFTER FINAL REJECTION			
50	06/17/2008	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
49	06/12/2008	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
48	04/21/2008	MAIL FINAL REJECTION (PTOL - 326)			

47	04/18/2008	FINAL REJECTION			
46	02/28/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		41	38
45	02/28/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
44	01/18/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
43	02/28/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
42	01/18/2008	REFERENCE CAPTURE ON IDS			
41	01/18/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
40	01/18/2008	OATH OR DECLARATION FILED (INCLUDING SUPPLEMENTAL)			
39	02/08/2008	DATE FORWARDED TO EXAMINER			
38	01/18/2008	RESPONSE AFTER NON-FINAL ACTION			
37	01/18/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
36	10/19/2007	MAIL NON-FINAL REJECTION			
35	10/15/2007	NON-FINAL REJECTION			
34	08/29/2007	CORRESPONDENCE ADDRESS CHANGE			
33	08/29/2007	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
32	07/17/2007	DATE FORWARDED TO EXAMINER			
31	07/05/2007	RESPONSE AFTER NON-FINAL ACTION			
30	04/06/2007	MAIL NON-FINAL REJECTION			
29	03/31/2007	NON-FINAL REJECTION			
28	12/19/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
27	01/29/2007	DATE FORWARDED TO EXAMINER			
26	01/11/2007	RESPONSE TO ELECTION / RESTRICTION FILED			
25	01/11/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
23	12/19/2006	REFERENCE CAPTURE ON IDS			
22.7	12/19/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
22	12/19/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
21	10/11/2006	MAIL RESTRICTION REQUIREMENT	397		-1
20	10/02/2006	REQUIREMENT FOR RESTRICTION / ELECTION			
19	12/15/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			

18	12/15/2004	CASE DOCKETED TO EXAMINER IN GAU			
17	12/06/2004	APPLICATION RETURN FROM OIPE			
16	12/06/2004	APPLICATION RETURN TO OIPE			
15	12/03/2004	APPLICATION RETURN FROM OIPE			
14	12/06/2004	APPLICATION IS NOW COMPLETE			
13	12/03/2004	APPLICATION RETURN TO OIPE			
12	12/03/2004	APPLICATION DISPATCHED FROM OIPE			
11	12/03/2004	APPLICATION IS NOW COMPLETE			
10	11/19/2004	ADDITIONAL APPLICATION FILING FEES			
9	11/19/2004	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
8	08/31/2004	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
6	08/25/2004	CLEARED BY OIPE CSR			
5	08/25/2004	CASE CLASSIFIED BY OIPE			
4	08/02/2004	IFW SCAN & PACR AUTO SECURITY REVIEW			
3	07/27/2004	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
2	07/09/2004	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
1	07/09/2004	INITIAL EXAM TEAM NN			

Search Another: Application# Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

To go back, right click here and select Back. To go forward, right click here and select Forward. To refresh, right click here and select Refresh.

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SHIMOKAJI & ASSOCIATES, P.C.
8911 RESEARCH DRIVE
IRVINE, CA 92618

MAILED

JUN 29 2011

OFFICE OF PETITIONS

In re Patent No. 7,122,913 :
Issue Date: October 10, 2006 :
Application No. 10/888,893 : ON PETITION
Filed: July 9, 2004 :
Patentee(s): Eric B. Witten, et. al. :

This is a decision on the petition under 37 CFR 1.378(c), filed on May 9, 2011, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **dismissed**.

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).

The petition lacks item (1) above. In this regard, the petition 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.

In this case, the statement of unintentional delay, is signed by the Director of IPALCO BV; however, the requirements of 37 CFR 3.73(b) have not been met[1]. Therefore, the instant petition is considered not to contain a proper statement of unintentional delay; and thus, cannot be granted at this time.

37 CFR 3.73(b) provides that: (1) when an assignee seeks to take action in a matter before the Office, the assignee must establish its ownership of the property to the satisfaction of the Commissioner; (2) ownership is established by submitting to the Office, in the Office file related to the matter in which action is sought to be taken, documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment submitted for recording) or by specifying (e.g., reel and frame number) where such evidence is recorded in the Office; (3) the submission establishing ownership must be signed by a party authorized to act on behalf of the assignee; and (4) documents submitted to establish ownership may be required to be recorded as a condition to permitting the assignee to take action in a matter pending before the Office. A blank Statement under 37 CFR 3.73(b) is enclosed for petitioner's convenience.

[1] Petitioner should note that filing the required response should not be construed as meaning that the petition will be granted under the provisions of 37 CFR 1.378(c).

Additionally, a review of the record shows that Topline Capital II (CAL), LLC assigned rights to Cavotec (Swiss) SA by assignment recorded in the USPTO on April 7, 2011. The record also shows that Topline Capital II (CAL), LLC also assigned rights to IPALCO BV by assignment recorded in the USPTO on April 27, 2011. There appears to be a break in the chain of title, in that, there is no assignment showing that Cavotec (Swiss) SA assigned rights back to Topline Capital II (CAL), LLC before assigning rights to IPALCO BV. Thus, petitioner must explain the break in the chain of title and supply the Statement under 37 CFR 3.73(b), which shows the chain of title from the original owner to the current assignee.

Further, it is noted that 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 correspondence address should be filed. However, Petitioner should note that a change of correspondence address will not affect the fee address. Therefore, if petitioner desires to receive future correspondence regarding maintenance fees for the above patent, a "Fee Address Indication" and/or "Request for Customer Number" forms must be submitted. See USPTO forms PTO/SB/47 and PTO/SB/125.

A courtesy copy of this decision is being mailed to petitioner at the address given in the petition. Thereafter, all future correspondence regarding this patent will be mailed to the address of record unless otherwise instructed.

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.

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.

If petitioner does not wish to pursue reinstatement of this expired patent, petitioner may request a refund totaling $2,620, which includes the maintenance fee and surcharge. The request should be made in writing and addressed to: Mail Stop 16, Director of the U.S. Patent and Trademark Office,

P.O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany petitioner's request.

Telephone inquiries should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

Enclosures: Privacy Act Statement
Blank Statement under 37 CFR 3.73(b)

cc: Jack Groesbeck
IPALCO BV
Ohmweg 17, Alblasserdam
NETHERLANDS 2952 BD

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

KLEIN, O'NEILL & SINGH, LLP
18200 VON KARMAN AVENUE
SUITE 725
IRVINE, CA 92612

MAILED

AUG 25 2011

OFFICE OF PETITIONS

In re Patent No. 7,122,913 :
Issue Date: October 17, 2006 :
Application No. 10/888,893 : ON PETITION
Filed: July 9, 2004 :
Patentee(s): Eric B. Witten, et. al. :

This is a decision on the renewed petition under 37 CFR 1.378(e), filed on August 15, 2011, to accept the delayed payment of a maintenance fee for the above-identified patent.

In response to the decision mailed June 28, 2011, petitioner submits the present renewed petition with the $400 petition fee, a Power of Attorney, and a Statement under 37 CFR 3.73(b).

Since petitioner has demonstrated to the satisfaction of the Commissioner that the delay in timely paying the maintenance fee was unintentional, the petition is hereby **GRANTED**.

The Power of Attorney filed on August 18, 2011, has been made of record.

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

This patented file is being forwarded to Files Repository.

Telephone inquiries should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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KLEIN, O'NEILL & SINGH, LLP
18200 VON KARMAN AVENUE
SUITE 725
IRVINE CA 92612

MAILED
NOV 07 2011
OFFICE OF PETITIONS

In re Patent No. 7,122,913
Issue Date: October 17, 2006
Application No. 10/888,893
Filed: July 9, 2004
Attorney Docket No. 1318-000.000

DECISION ON REQUEST FOR REFUND

This is a decision on the Request For Refund filed October 6, 2011.

The request is **DISMISSED**.

The request is dismissed because USPTO regulations require that papers filed in the application be signed by a registered attorney or agent, by the applicants (inventors) or by the assignee of the entire interest who has taken action in the application in accordance with 37 CFR 3.71. The request is signed by Jackie Chao. 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.

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.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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KLEIN, O'NEILL & SINGH, LLP
18200 VON KARMAN AVENUE
SUITE 725
IRVINE CA 92612

MAILED

DEC 14 2011

OFFICE OF PETITIONS

In re Patent No. 7,122,913 :
Issue Date: October 17, 2006 :
Application No. 10/888,893 : DECISION ON REQUEST FOR REFUND
Filed: July 9, 2004 :
Attorney Docket No. 1318-000.000 :

This is a decision on the Request For Refund filed December 1, 2011.

The request is **GRANTED**.

Applicant request a refund of the petition fee ($400.00) charged to applicant's deposit account on August 15, 2011, because the fee was also charged to applicant's credit card account.

In view of the above, the $400.00 petition fee has been credited to petitioner's deposit account as authorized.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : October 4, 2010

TO SPE OF : ART UNIT 2471 - SPE

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/889,259 Patent No.: 7,453,802 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 reference "EP 1059588 12/2000 is to be entered under Foreign Patent Documents?
See COCIN dated 09-16-2010

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** 2471

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 10/26/10

TO SPE OF : ART UNIT 2472 Trost William (Spe)

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/889267 Patent No.: 7463646

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

H Rhody
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: _____

WILLIAM TROST
SUPERVISORY PATENT EXAMINER William Trost
TECHNOLOGY CENTER ~~2600~~ 2400 **SPE**

2472
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

DANIEL O'BRIEN
INTELLECTUAL PROPERTY MANAGER
MASSACHUSETTS INSTITUTE OF TECHNOLOGY
TECHNOLOGY LICENSING OFFICE
5 CAMBRIDGE CENTER ROOM NE25-230
CAMBRIDGE, MA 02142

MAILED

MAR 10 2011

OFFICE OF PETITIONS

In re Patent No. 7,015,854 :
Issued: March 21, 2006 :
Application No. 10/889,281 : ON PETITION
Filed: July 12, 2004 :
Attorney Docket No: 9635L :

This is a decision regarding your request for acceptance of a fee deficiency submission and loss of small entity status filed February 8, 2011 under 37 CFR 1.28.

On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc.. 154 F.33d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission 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

Commissioner for Patents
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P.O. Box 1450
Alexandria, VA 22313-1450
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THE LAW OFFICES OF BRADLEY J. BEREZNAK
800 WEST EL CAMINO REAL
SUITE 180
MOUNTAIN VIEW CA 94040

MAILED

AUG 29 2011

OFFICE OF PETITIONS

In re Application of :
Stephen G. Perlman :
Application No. 10/889,326 : DECISION ON PETITION
Filed: July 12, 2004 :
Attorney Docket No. **08258.P007C3** :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 12, 2011, to revive the above-identified application.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed December 22, 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 March 23, 2011.

The petition is hereby **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $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 Technology Center AU 2462 for appropriate action by the Examiner in the normal course of business.

JoAnne Burke
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Paper No.

MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED

SEP 13 2010

OFFICE OF PETITIONS

In re Application of :
Killion et al. :
Application No. 10/889,420 : LETTER REGARDING
Filed: July 12, 2004 : FEE DEFICIENCY PAYMENT
Atty Docket No. 11663US11 :

This is in response to the NOTIFICATION OF LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS filed March 24, 2010, notifying the Office of loss of entitlement to small entity status.

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.

This letter includes an itemization of the fee deficiencies and payment as required by 37 CFR 1.28(c)(2)(ii).

Your notification of a loss of entitlement to small entity status is made of record and your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

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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J. Michael Neary
53939 Pine Grove Road
LaPine OR 97739

MAILED

AUG 09 2011

OFFICE OF PETITIONS

In re Patent No. 7,084,548 :
Issue Date: August 1, 2006 :
Application No. 10/889,532 : ON PETITION
Filed: July 12, 2004 :
Attorney Docket No. **CG2265US** :

This is a decision on the petition under 37 CFR 1.378(c), filed July 22, 2011, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **DISMISSED**.

This patent expired at midnight August 1, 2010, for failure to pay the 11½ 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).

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Any petition for reconsideration of this decision must be accompanied by the petition fee of $400 as set forth in 37 CFR 1.17(f). The petition for reconsideration must include the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.

A petition to accept the unintentionally delayed payment of a maintenance fee under 35 U.S.C. 41(c) and 37 CFR 1.378(c) must be accompanied by: (1) a statement that the delay was unintentional; (2) payment of the appropriate maintenance fee, unless previously submitted; (3) payment of the surcharge set forth in 37 CFR 1.20(i)(2). This petition lacks item (2) above.

This patent expired at midnight August 1, 2010, 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). Petitioner has submitted fees totaling $1,640 with the above-noted petition. However, petitioner failed to submit $490 for the payment of the 3½ year maintenance fee. Therefore, petitioner must submit $490 for the maintenance fee payment and $400 for the petition for reconsideration before this patent can be reinstated.

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

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.

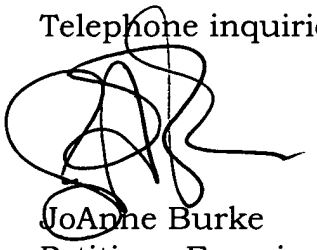
Further correspondence with respect to this matter should be addressed as follows:

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 JoAnne Burke at (703) 571-4584.



JoAnne Burke
Petitions Examiner
Office of Petitions

cc: Christopher Gabrys
1970 Sierra Oaka Ct.
Reno, NV 89521

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
www.uspto.gov

WHYTE HIRSCHBOECK DUDEK S.C.
INTELLECTUAL PROPERTY DEPARTMENT
555 EAST WELLS STREET, SUITE 1900
MILWAUKEE WI 53202

In re Application of	:	
Donald L. Yates	:	
Application No. 10/889,597	:	DECISION GRANTING PETITION
Filed: July 12, 2004	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. MTI-31046-C	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, August 31, 2011 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on August 2, 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 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 - Request Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : November 2, 2010

TO SPE OF : ART UNIT 2464.

SUBJECT : Request for Certificate of Correction for Appl. No.: 10/889635 Patent No.: 7,525,910

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square Building
2800 South Randolph Street
Arlington, VA 22206

Magdalene Talley

_____
Certificates of Correction Branch
(571)272-0XXX

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☐ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: Approved/ All changes apply.

_____

_____

_____ SPE /Seema S. Rao/ Art Unit 2462

Formatted: Bullets and Numbering

Deleted: _____

Deleted: .

Deleted: _____