SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : September 13, 2011

TO SPE OF : ART UNIT 2454

SUBJECT : Request for Certificate of Correction for Appl. No.: 11072763 Patent No.: 7824919

CofC mailroom date: Sept. 9, 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: _____

_____

_____

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.
- X **Denied** — State the reasons for denial below.

Comments: The restriction requirement dated 6/5/09 had 2 groups. Applicant elected group I claims 1-11 and 13 for examination. The Non-final dated 11/20/09 acknowledge the election of group I and withdrawal of claims 14-28 but made a typo of the rejected claims to include claims 14-28 as being rejected when they were withdrawn as stated in the same Office Action. Claims 1-11 and 13 were allowed on 6/23/10 and claims 14-28 were cancelled in an Examiner's Amendment. Since the restriction was proper and arguments were made in response to the Applicant's traverse, claims 14-28 were

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

withdrawn with the mailing of Non-final Office Action 11/20/09.

In Suk Bullock 1772

SPE Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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MAR 12 2012

OFFICE OF PETITIONS

DR. REDDY"S LABORATORIES, INC.
200 SOMERSET CORPORATE BLVD
SEVENTH FLOOR
BRIDGEWATER NJ 08807-2862

In re Application of	:	
Ross A. WALLINGFORD et al.	:	ON PETITION
Application No. 11/072,763	:	
Filed: March 4, 2005	:	
Patent No.: 7,824,919	:	
Issue Date: November 2, 2010	:	
Atty. Docket No.: CPS 3.0-005	:	

This is in response to the submission captioned "Petition Under 37 C.F.R. § 1.182" filed October 25, 2011, requesting that the above-referenced application be "revived" for purposes of continuity.

The petition is **DISMISSED.**

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

The instant application issued as U.S. Patent No. 7,824,919 on November 2, 2010. A divisional application bearing the serial number 13/280,790 was filed concurrently with the instant petition. Petitioners are requesting the above-identified application "be revived for purposes of according the divisional application the priority benefit under 35 U.S.C. § 120 of its parent application."

The statutes governing the claim of priority to prior filed non-provisional applications include (only relevant portions are cited below):

35 U.S.C. 121 Divisional applications

If two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions. If the other invention is made the subject of a divisional application which complies with the

requirements of ***section 120*** *of this title it shall be entitled to the benefit of the filing date of the original application.*

35 U.S.C. 120 Benefit of earlier filing date in the United States

An application for patent for an invention disclosed in the manner provided by the first paragraph of ***section 112*** *of this title in an application previously filed in the United States, or as provided by* ***section 363*** *of this title, which is filed by an inventor or inventors named in the previously filed application shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application.*

Petitioners allege that they "were misled by communications from the Office during prosecution of the parent application, and therefore are entitled to a domestic priority benefit for their divisional application that is now being filed." As the divisional application was filed **after** the instant application matured into a patent (U.S. Patent No. 7,824,919 issued on November 2, 2010), 35 USC 120 **statutorily bars** the divisional application from claiming the benefit of the earlier filing date of the instant application.

Acknowledging that "submitting a petition to revive the parent application from abandonment would not seem to be proper," petitioner states that "in the event patenting is deemed to be in the nature of "termination of proceedings" as has been discussed by Ex parte Vossen, 155 USPQ 109 (P.O. Board of Appeals 1967), and In re Bryan, 2 USPQ2d 1215 (Commissioner of Patents and Trademarks 1986), petitioners request that this petition be considered as having been submitted under 37 C.F.R. § 1.137(b)." This request has been considered. The Manual of Patent Examining Procedure (MPEP) at § 711.02(c), notes that "termination of proceedings" applies in the following situations:

- *(A) When the issue fee is not paid and the application is abandoned for failure to pay the issue fee, proceedings are terminated as of the date the issue fee was due and the application is the same as if it were abandoned after midnight on that date (but if the issue fee is later accepted, on petition, the application is revived). See MPEP § 711.03(c).*
- *(B) If an application is in interference wherein all the claims present in the application correspond to the counts and the application loses the interference as to all the claims, then proceedings on that application are terminated as of the date appeal or review by civil action was due if no appeal or civil action was filed.*
- *(C) Proceedings are terminated in an application after decision by the Board of Patent Appeals and Interferences as explained in MPEP § 1214.06.*
- *(D) Proceedings are terminated after a decision by the court as explained in MPEP § 1216.01.*

Patenting of an application clearly does not fall within the above noted categories. Moreover, a consideration of revival under the provisions of 37 CFR 1.137 is limited to "**abandoned application, terminated reexamination proceeding, or lapsed patent**." Accordingly, the instant application, having matured into a patent, is ineligible for "revival" under the provisions of 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

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

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

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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SCHWEGMAN LUNDBERG & WOESSNER, P.A.
P.O. BOX 2938
MINNEAPOLIS, MN 55402

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SEP 30 2011

OFFICE OF PETITIONS

In re Application of :
Lance Aiji Tokuda et al :
Application No. 11/072,791 : DECISION GRANTING PETITION
Filed: March 3, 2005 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 2210.002US1 :

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, September 30, 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 24, 2011 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 2443 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

/Irvin Dingle/
Irvin Dingle
Petitions Examiner
Office of Petitions

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

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OFFICE OF PETITIONS

KRIEGER INTELLECTUAL PROPERTY, INC.
PO Box 872438
Vancouver WA 98687-2438

In re Application of	:	
Boguslaw Ludwik Plewnia et al.	:	
Application No. 11/073,055	:	DECISION ON PETITION
Filed: March 4, 2005	:	
Attorney Docket No. SLA1793	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 15, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the final Office action mailed, March 30, 2011, 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 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 a Notice of Appeal, with the required fee of $620, (2) the petition fee of $1,860, and (3) a proper statement of unintentional delay. Accordingly the Notice of Appeal is accepted as being unintentionally delayed.

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

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

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

This application is being referred to the Board of Patent Appeals and Interferences for appropriate action in the normal course of business for processing of the reply received October 15, 2011.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Scott C. Krieger
P.O. Box 872438
Vancouver, WA 98687

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Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
The Chrysler Center
666 Third Avenue, 24th Floor
New York NY 10017

In re Patent No. 7,716,104 :
Issue Date: May 11, 2010 :
Application No. 11/073,238 : DECISION ON PETITION
Filed: March 4, 2005 :
Attorney Docket No. 20968-502 :

This is a decision on the petition, filed February 10, 2012, captioned under 37 CFR 1.182, requesting issuance of a duplicate Letters Patent for the above-identified patent. As petitioners assert the original Letters Patent was not received by applicants' representatives, the petition will be first treated as a feeless petition under 37 CFR 1.181.

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

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

Petitioners state that the original Letters Patent was never received.

The Office follows the guidelines set forth in MPEP § 711.03(c) (*see also* "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993), which sets forth that, in the absence of any irregularity in the mailing of an Office action (in this case, the Letters Patent), there is a strong presumption that the Office action (Letters Patent) was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Letters Patent was not in fact received. In this regard, the showing required to establish the failure to receive the Letters Patent must consist of the following:

1. a statement from practitioner stating that the Letters Patent 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 Letters Patent was not received; and
3. a copy of the docket record where the non-received Letters Patent would have been entered had it been received must be attached to and referenced in the practitioner's statement.

The petition is not accompanied by the evidence required to establish non-receipt of the original Letters Patent. In this regard, petitioners have not provided a statement of the fruitless search of the file jacket and docket records and petitioners have not provided a copy of the docket record where the non-received Letters Patent would have been entered had it been received. The evidence submitted does not establish non-receipt of the Letters Patent at the correspondence address of record.

In view of the above, the petition fails to provide the necessary evidence to establish non-receipt of the Letters Patent. Accordingly, the petition for issuance of a duplicate Letters Patent under 37 CFR 1.181 is dismissed.

The petition under 37 CFR 1.182 for issuance of duplicate Letters Patent due to loss is granted.

The Office of Data Management is directed to issue duplicate Letters Patent.

As authorized, the $400 fee for the petition under 37 CFR 1.182 has been assessed to petitioners' deposit account.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3230. Inquiries regarding the issuance of duplicate Letters Patent may be directed to Kimberly Terrell in the Office of Data Management at (703) 756-1568.

A copy of this decision is being sent to Office of Data Management for issuance of duplicate Letters Patent.

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

cc: Kimberly Terrell, (Fax No. 571-270-9958)

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
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BLANK ROME LLP
WATERGATE
600 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, DC 20037

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SEP 1 4 2010

OFFICE OF PETITIONS

In re Application of
Josephine Geraci
Application No. 11/073,592
Filed: March 8, 2005
Attorney Docket No. 122159-00101

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent under 37 C.F.R. § 1.36(b) filed August 5, 2010.

The request is **NOT APPROVED**.

The Office will no longer approve requests from practitioners to withdraw from application where the requesting practitioners is acting, or has acted, in a representative capacity pursuant to 37 CFR 1.34. In these situations, the practitioner is responsible for the correspondence the practitioner files in the application while acting in a representative capacity. As such, there is no need for the practitioner to obtain the Office's permission to withdraw from representation. However, practitioners acting in a representative capacity, like practitioners who have power of attorney in the application, remain responsible for noncompliance with 37 CFR 1.56, as well as 37 CFR 10.18, with respect to the documents they file.

A review of the file record indicates that Blank Rome, LLP does not have power of attorney in this patent application. See 37 C.F.R. § 10.40. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is not applicable.

A review of the file also indicates that while the oath/declaration did include a power of attorney, the request was not accepted because it was improper. A power of attorney filed after June 25, 2004 cannot list more than 10 attorneys or agents without the use of customer number practice.

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

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

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

cc: JOSEPHINE GERACI
2 WHITE CAP COURT
LLYOD NECK, NY 11743

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Alexandria, VA 22313-1450
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Pearl Cohen Zedek Latzer, LLP
1500 Broadway
12th Floor
New York NY 10036

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AUG 27 2010

OFFICE OF PETITIONS

In re Patent of Glukhovsky et al. :
Patent No. 7,618,366 :
Issue Date: November 17, 2009 : DECISION ON REQUEST
Application No. 11/073,633 : FOR RECONSIDERATION OF
Filed: March 8, 2005 : PATENT TERM ADJUSTMENT
Attorney Docket No. P-2984-US3

This is a decision on the petitions under 37 CFR 1.705(d), filed May 21, 2010 and June 17, 2010, respectively. Both petitions request that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand one hundred nine (1109) days.

The May 21, 2010 petition is **DISMISSED AS MOOT**.

The June 17, 2010 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 nine (1109) days is **DISMISSED**.

On November 17, 2009, the above-identified application matured into U.S. Patent No. 7,618,366 with a revised patent term adjustment of 617 days. On April 6, 2010, patentees 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, which informed patentees that the Office had calculated a 894 day patent term adjustment and that a certificate of correction would be issued shortly absent the filing of a reconsideration petition within 1 month/30 days.

A Notice Concerning Improper Calculation of Patent Term Adjustment Based upon USPTO Improperly Measuring Reduction Period Under 37 CFR 1.704(c)(1)), mailed May 18, 2010, vacated

the April 21, 2010 decision and informed patentees of a revised patent term adjustment of 990 days. Patentees were afforded a one month/30 day period to file a request for reconsideration of the revised patent term adjustment.

Patentees filed a request for reconsideration of patent term adjustment on May 21, 2010. The May 21, 2010 petition crossed in the mail with the May 18, 2010 Notice that vacated the April 21, 2010 decision. The May 21, 2010 petition is dismissed as moot in light of the May 18, 2010 Notice.

Patentees timely filed the July 17, 2010 second request for reconsideration of patent term adjustment within 1 month/30 days of the mailing of the May 18, 2010.

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

Patentees' assertion of 1109 days of patent term adjustment appears to be derived from the following formula: 763 days under 35 U.S.C. § 154(b)(1)(A)("A Delay") plus 467 days under 35 U.S.C. § 154(b)(1)(B) ("B Delay") minus 0 days overlap minus 121 days Applicant Delay.

The Office concurs with patentees' assertion of the period of A delay.

Patentees calculate the period of B Delay as 467 days. Per 35 U.S.C. § 154(b)(1)(B)(i), B Delay does not include "any time consumed by continued examination of the application requested by the applicant under section 132(b)." The maximum period of B Delay in this case is 466 days, which is the number of days beginning on March 9, 2008, the day after the date three years after the filing date, and ending on June 17, 2009, the day before the date the RCE was filed. Patentees fail to subtract the 93 day overlapping period of delay beginning on March 9, 2008 and ending on June 9, 2008 already accounted for under 35 U.S.C. § 154(b)(1)(A) ("A Delay"). Accordingly, the B Delay period is 373 (466 - 93) days.

Patentees argue that Applicant delay is 121 days. Patentees assert the Office made two errors with respect to reductions for a reply filed December 9, 2008 and a reply filed June 18, 2009. It is noted that a notice of allowance was mailed on July 9, 2009. Patentees are informed that consideration under 1.705(d) is not appropriate with respect to these two reductions. As stated in MPEP 2730, 1.703(d) provides that:

> If there is a revision to the patent term adjustment indicated in the notice of allowance, the patent will indicate the revised patent term adjustment. If the patent indicates or should have indicated a revised patent term adjustment, any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued and must comply with the requirements of paragraphs (b)(1) and (b)(2) of this section. Any request for reconsideration under this section that raises issues that were raised, or could have been raised, in an application for patent term adjustment under paragraph (b) of this section shall be dismissed as untimely as to those issues.

The issues raised should have been timely raised on application for patent term adjustment under § 1.705(b). As they were not, the issues are untimely raised in an application for patent term adjustment under § 1.705(d) and will not be addressed.

Patentees next argue that no reduction should have been assessed in connection with an Information Disclosure Statement (IDS) filed on July 20, 2009 because it occurred after a Request for Continued Examination (RCE) was filed on June 18, 2009. Patentees are informed that the filing of a RCE cuts-off an applicant's ability to accumulate any additional patent term adjustment against the three-year pendency provision, but does not otherwise affect patent term adjustment. 37 CFR §1.703(b)(1).

The reduction has been considered and a reduction is found to be warranted. It is undisputed that applicants filed an IDS after the mailing of the Notice of Allowance. This was properly a basis for reduction of patent term adjustment pursuant to § 1.704(c)(10).

> 37 CFR § 1.704(c)(10) provides that:
>
> Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:
>
> (i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in

response to the amendment under § 1.312 or such other paper;

or

(ii) Four months;

The period of reduction was properly calculated as twenty-four (24)days, counting the number of days in the period beginning on the date the IDS was filed, July 20, 2009, and ending on August 12, 2009, the date the Office mailed a supplemental notice of allowance that addressed the July 20, 2009 IDS.

In view thereof, the correct patent term adjustment is **nine hundred ninety (990) days** (763 days A Delay minus 466 days maximum B Delay minus 93 days overlapping days minus 146 days Applicant Delay). As such, no changes in the patent term adjustment will be made.

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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SUITE 3400
CHICAGO IL 60661

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DEC 20 2010

OFFICE OF PETITIONS

In re Application of	:	
Andre Eisenbach	:	
Application No. 11/073,647	:	DECISION GRANTING PETITION
Filed: March 7, 2005	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 16064US01	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, December 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 October 28, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 2618 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

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

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SUITE 3400
CHICAGO IL 60661

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JAN 11 2011

OFFICE OF PETITIONS

In re Application of :
Eisenbach :
Application No. 11/073,647 : ON APPLICATION FOR
Filed: March 7, 2005 : PATENT TERM ADJUSTMENT
Atty Docket No. 16064US01 :

This is in response to the APPLICATION FOR RECONSIDERATION OF THE DETERMINATION OF PATENT TERM ADJUSTMENT UNDER 35 U.S.C. 154(b) ACCOMPANYING THE NOTICE OF ALLOWANCE (37 C.F.R. § 1.705), filed October 28, 2010. Applicant submits that the correct patent term adjustment to be indicated on the patent is eight hundred sixty-seven (867) days, not one hundred seventy-eight (178) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction solely on the basis that the Office will take in excess of three years to issue this patent.

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

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

such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

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

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

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

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

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

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

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

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/073,686	03/08/2005	Shinjun Lee	1901.1357	9321

21171 7590 08/19/2010
STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

EXAMINER	
BAYAT, ALI	
ART UNIT	PAPER NUMBER
2624	
MAIL DATE	DELIVERY MODE
08/19/2010	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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STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

MAIL

AUG 19 2010

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

In re Application of :
Lee, Shinjun *et al.* :
Serial No.: 11/073,686 :
Filed: March 8, 2005 :
For: **ADAPTIVE 2N-ARY TREE GENERATING METHOD, AND METHOD AND APPARATUS FOR ENCODING AND DECODING 3D VOLUME DATA USING IT** :

DECISION ON PETITION
ACCEPTANCE OF COLOR DRAWINGS

This is a decision on the petition under 37 CFR §1.84(a)(2) filed March 8, 2005, requesting the acceptance of color drawings.

The petition requests that the color drawings identified in Figures 1, 22 and 24 be accepted in lieu of black and white drawings.

A grantable petition under 37 C.F.R. §1.84(a)(2) must be accompanied by a fee set forth under 37 C.F.R. § 1.17(h), 3 (three) sets of the color drawings in question, and the specification must contain, or be amended to contain, the following language as the first paragraph in that portion of the specification relating to the brief description of the drawings:

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

The petition did not contain 3 (three) complete sets of colored drawings, three sets of drawings must be submitted in color for a grantable petition, therefore, the petition is **DISMISSED**.

The petitioner may submit a request for reconsideration within **TWO MONTHS** of the date of this decision. Any request for reconsideration should be complete, i.e., include three (3) sets of color drawings, color photographs and a black and white photocopy of the same.

Doris To
Quality Assurance Specialist
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

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STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

MAILED
SEP 27 2010
OFFICE OF PETITIONS

In re Application of	:	
Shinjun Lee, et al.	:	
Application No. 11/073,686	:	DECISION GRANTING PETITION
Filed: March 8, 2005	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 1901.1357	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, September 27, 2010 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on April 19, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 2624 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

---

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

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/073,686	03/08/2005	Shinjun Lee	1901.1357	9321

7590 02/09/2011

STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

EXAMINER	
BAYAT, ALI	

ART UNIT	PAPER NUMBER
2624	

MAIL DATE	DELIVERY MODE
02/09/2011	PAPER

ACKNOWLEDGEMENT OF REQUEST

Notice of Allowance/Allowability Mailed

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

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

FORM PTOM327-5 (Rev. 02/08)

UNITED STATES PATENT AND TRADEMARK OFFICE

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

February 9, 2011

STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

In re Application of	:	
Shinjun Lee et al.	:	**DECISION ON PETITION**
Application No. 11073686	:	
Filed: 3/8/2005	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. 1901.1357	:	***DRAWINGS***

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) October 19, 2010.

The petition is **GRANTED**.

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

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

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

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

/Don Fairchild/
Office of Data Management
Publications Branch

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/073,686	03/08/2005	Shinjun Lee	1901.1357	9321

21171 7590 07/22/2011

STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

EXAMINER	
BAYAT, ALI	

ART UNIT	PAPER NUMBER
2624	

MAIL DATE	DELIVERY MODE
07/22/2011	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

Application No.: 11073686 :
Filed: 03/08/2005 : **DECISION ON PETITION**
Patent Number: 7,925,103 :
Issue Date: 04/12/11 :
Attorney Docket No. **1901.1357** :

This is a decision on the Petition filed under 37 CFR 1.181 received in the United States Patent and Trademark Office (USPTO) on July 14, 2011. Petitioner seeks relief from filing a Petition for Duplicate Letters Patent in this application due to the non-receipt of a large number of Patent Grants in the April 12, 2011 issue.

The Petition is **GRANTED**.

Petitioner submitted a statement that the Patent Grant was not received at the correspondence address of record; that a search of records did not indicate receipt; and that the docketing system is sufficiently reliable. Petitioner filed a copy of the docketing records showing receipts dates and application history as evidence.

Therefore, the Office of Data Management will provide one additional Original Letters Patent for this application.

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

/Kimberly Terrell/
Manager
Office of Data Management
Patent Publication Branch

UNITED STATES PATENT AND TRADEMARK OFFICE

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

SEP 09 2010

OFFICE OF PETITIONS

FRANK L. KUBLER
13261 S.W. 54TH COURT
MIRAMAR, FL 33027

In re Application of
Ramzi Abulhaj
Application No. 11/073,882
Filed: March 7, 2005
Attorney Docket No.: A-IVCATCH.PT2

ON PETITION

This is a decision in response to the petition, filed July 19, 2010, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed April 3, 2008. A Notice of Abandonment was mailed on September 5, 2009. On July 19, 2010, the present petition was filed.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that petitioner has supplied (1) a proposed reply in the form of an amendment; (2) the petition fee of $810; and (3) an adequate statement of unintentional delay.

The application is being referred to Technology Center AU 3763 for appropriate action by the Examiner in the normal course of business on the response filed July 19, 2010.

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

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 01/08/11

TO SPE OF : ART UNIT 2485

SUBJECT : Request for Certificate of Correction for Appl. No.: 11073898 Patent No.: 8014451

CofC mailroom date: 12/22/11

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
[redacted]

Note: Should the changes in the claims be approved?

Lamonte Newsome

Certificates of Correction Branch

571-272-3421

Thank You For Your Assistance

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

☒ **Approved** **All** changes apply.

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

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

Comments: _____

/Jayanti K Patel/ 2485

SPE **Art Unit**

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

MAILED
OCT 31 2011
OFFICE OF PETITIONS

In re Application of	:	
Cossairt et al.	:	
Application No. 11/073913	:	DECISION
Filing or 371(c) Date: 03/07/2005	:	ON PETITION
Patent No.: 7283308	:	
Issue Date: 10/16/2007	:	
Attorney Docket Number: 10857-021001	:	

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.

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.

Petitioner is advised that, in patented files: requests for changes of correspondence address, powers of attorney, revocations of powers of attorney, withdrawal of attorney and submissions under 37 CFR 1.501: Designation of, or changes to, a fee address, should be addressed to Mail Stop M Correspondence. 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 matter should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

CC: FISH & RICHARDSON P.C. (BO)
225 FRANKLIN STREET
BOSTON, MA 02110

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)
7,284,299	2007-10-23	11/074,002	2005-03-08	086554-1112

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 E. Rawlins, Reg. No. 34,702/	Date (YYYY-MM-DD)	2001-12-23
Name	Andrew E. Rawlins	Registration Number	34702

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
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In re Patent No. 7284299
Issue Date: October 23,2007
Application No. 11074002
Filed: March 8,2005
Attorney Docket No. 086554-1112

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

This is a decision on the electronic petition, filed December 23,2011 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of December 23,2011 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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PATENT DEPT - INTUITIVE SURGICAL OPERATIONS
1266 KIFER RD BLDG 101
SUNNYVALE CA 94086

MAILED

OCT 25 2011

OFFICE OF PETITIONS

In re Patent No. 7,373,219
Issued: May 13, 2008
Application No. 11/074,372
Filed: March 7, 2005
Attorney Docket No. 017516-001830US

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed September 22, 2011.

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

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

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

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

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

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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PATENT DEPT - INTUITIVE SURGICAL OPERATIONS
1266 KIFER RD BLDG 101
SUNNYVALE CA 94086

MAILED

OCT 25 2011

OFFICE OF PETITIONS

In re Patent No: 7,373,219	:	
Issued: May 13, 2008	:	
Application No. 11/074,372	:	NOTICE
Filed: March 7, 2005	:	
Attorney Docket No. 017516-001830US	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed September 27, 2011.

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

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

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

The request under 37 CFR 1.28 cannot be accepted at this time since it appears that the petition is not signed by a person having authority to act in the above-identified patent.

Petitioner's attention is directed to 37 CFR 1.33(b), which states.

Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:

(1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
(2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;
(3) An assignee as provided for under §3.71(b) of this chapter; or

(4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

Further, that part of the request that is directed to the maintenance fee deficiency payment is not signed by the proper party. Gill Lennon is not authorized to sign the request. Accordingly, the request cannot be accepted until it is signed by all inventors, an attorney or agent registered to practice before the U.S. Patent and Trademark Office or the assignee of the entire interest under 37 CFR 3.73(b).

Additionally, the current large entity three and a half year maintenance fee is $1,130.00. Petitioner has submitted $490.00 towards the required $640.00 deficiency fee payment, thus creating a $150.00 shortage.

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

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

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

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

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

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

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

cc: GILL LENNON
DENNEMEYER & CO LTD
REGENT HOUSE HEATON LANE
STOCKPORT CHESHIRE
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DEC 08 2011
OFFICE OF PETITIONS

In re Patent No. 7,373,219	:	
Issued: May 13, 2008	:	
Application No. 11/074,372	:	NOTICE
Filed: March 7, 2005	:	
Attorney Docket No. 017516-001830US	:	

This is a notice regarding your renewed request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed November 2, 2011.

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

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

Your fee deficiency submission under 37 CFR 1.28 is hereby **DISMISSED AS MOOT.**

This patent was granted large entity status on October 25, 2011. Accordingly, all fees paid in this patent must be paid at the large entity rate.

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

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

In re Application of :
Ziad, et al. :
Application No. 11/074,600 : DECISION
Filed/Deposited: 7 March, 2005 :
Attorney Docket No. 038786-0166

This is a decision on the petition filed on 8 September, 2011, requesting that the above-identified application be accorded a filing date of 8 March, 2005, rather than the presently accorded date of 7 March, 2005.

NOTE:

Petitioner avers the filing of the instant application on 8 March, 2005.

Petitioner thereafter waited—delayed—more than 6 years in the filing of the instant petition.

Petitioner suggests that he sought a "corrected filing receipt" in May 2005 and/or December 2008.

It is clear from Petitioner's own submission that he failed to do in 2005 (or otherwise until the instant filing) what was required in this matter—to wit:

- Timely and properly file a petition under the Rule—in this case the regulations at 37 C.F.R. §1.10;[1]

[1] The regulations at 37 C.F.R. §1.10 provide:

§ 1.10 Filing of correspondence by "Express Mail."
(a)(1)Any correspondence received by the U.S. Patent and Trademark Office (USPTO) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed with the USPTO on the date of deposit with the USPS.
(2)The date of deposit with USPS is shown by the "date in" on the "Express Mail" label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the USPTO receipt date as the filing date. See § 1.6(a).
(b)Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of

the "Express Mail" mailing label with the desired "date-in" clearly marked. The paper(s) or fee(s) that constitute the correspondence should also include the "Express Mail" mailing label number thereon. See paragraphs (c), (d) and (e) of this section.

(c)Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Director to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

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

(2)The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3)The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

(d)Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Director to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1)The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2)The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3)The petition includes a showing which establishes, to the satisfaction of the Director, 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. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

(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.

(f)The Office may require additional evidence to determine if the correspondence was deposited as "Express Mail" with the USPS on the date in question.

(g)Any person who mails 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 has the correspondence returned by the USPS due to an interruption or emergency in "Express Mail" service, may petition the Director to consider such correspondence as filed on a particular date in the Office, provided that:

(1)The petition is filed promptly after the person becomes aware of the return 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 the original correspondence or a copy of the original correspondence showing the number of the "Express Mail" mailing label thereon and a copy of the "Express Mail" mailing label showing the "date-in"; and

(4)The petition includes a statement which establishes, to the satisfaction of the Director, the original deposit of the correspondence and that the correspondence or copy of the correspondence is the original correspondence or a true copy of the correspondence originally deposited with the USPS on the requested filing date. The Office may require additional evidence to determine if the correspondence was returned by the USPS due to an interruption or emergency in "Express Mail" service.

(h)Any person who attempts to mail 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 has the correspondence refused by an employee of the USPS due to an interruption or emergency in "Express Mail" service, may petition the Director to consider such correspondence as filed on a particular date in the Office, provided that:

(1)The petition is filed promptly after the person becomes aware of the refusal 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 attempted mailing by "Express Mail";

- Make the showing required and in the manner specified by the Rule.

The Rules of Practice and the guidance in Commentary in the MPEP provide protections and benefits for applicants and practitioners, however, those protections and benefits are unavailable when those rules are not complied with/followed.

The petition is **DISMISSED**.

Petitioner filed a petition to obtain an earlier filing date than presently accorded on the contention that the application was deposited with Express Mail Service on 8 March, 2005.

(Across six years of prosecution there appears to have been no mention of the regulations pursuant to 37 C.F.R. §1.10.)

A review of the record evidenced the following:

- On 9 March, 2005, the Office received the instant application (U.S. Postal Service (USPS) Express Mail Label Receipt No. EV459168506US) from Counsel;

- On 28 March, 2005, the Office mailed to Counsel a filing receipt setting forth the filing date of 7 March, 005, and Counsel's own submission indicates receipt by his office of that filing receipt on 31 March, 2005;

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(3)The petition includes the original correspondence or a copy of the original correspondence showing the number of the "Express Mail" mailing label thereon; and
(4)The petition includes a statement by the person who originally attempted to deposit the correspondence with the USPS which establishes, to the satisfaction of the Director, the original attempt to deposit the correspondence and that the correspondence or copy of the correspondence is the original correspondence or a true copy of the correspondence originally attempted to be deposited with the USPS on the requested filing date. The Office may require additional evidence to determine if the correspondence was refused by an employee of the USPS due to an interruption or emergency in "Express Mail" service.
(i)Any person attempting to file correspondence under this section that was unable to be deposited with the USPS due to an interruption or emergency in "Express Mail" service which has been so designated by the Director, may petition the Director to consider such correspondence as filed on a particular date in the Office, provided that:
(1)The petition is filed in a manner designated by the Director promptly after the person becomes aware of the designated interruption or emergency in "Express Mail" service;
(2)The petition includes the original correspondence or a copy of the original correspondence; and
(3)The petition includes a statement which establishes, to the satisfaction of the Director, that the correspondence would have been deposited with the USPS but for the designated interruption or emergency in "Express Mail" service, and that the correspondence or copy of the correspondence is the original correspondence or a true copy of the correspondence originally attempted to be deposited with the USPS on the requested filing date.
[48 FR 2708, Jan. 20, 1983, added effective Feb. 27, 1983; 48 FR 4285, Jan. 31, 1983, paras. (a) & (c), 49 FR 552, Jan. 4, 1984, effective Apr. 1, 1984; paras. (a)-(c) revised and paras. (d) - (f) added, 61 FR 56439, Nov. 1, 1996, effective Dec. 2, 1996; paras. (d) & (e) revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (a) revised, 67 FR 36099, May 23, 2002, effective June 24, 2002; paras. (c), (d), (d)(3), (e) & (e)(4) revised, 68 FR 14332, Mar. 25, 2003, effective May 1, 2003; para. (a)(1) revised, 68 FR 48286, Aug. 13, 2003, effective Sept. 12, 2003; paras. (g) through (i) added, 69 FR 56481, Sept. 21, 2004, effective Sept. 21, 2004]

- On 28 May, 2005, and on 8 December, 2008, Counsel requested "a corrected filing receipt," but at no time did Counsel file a petition or otherwise make the showing required therefor.

Thereafter, on 9 June, 2011, the Examiner mailed a Notice of Allowance/Allowability and Fees Due.

Even then, Petitioner appeared not to have returned to the instant matter until 8 September, 2011, at which time Petitioner filed papers now considered as the instant petition.

(It is noted that since deposit of the instant application and mailing of the original filing receipt, no petition expressly pursuant to the regulations at 37 C.F.R. §1.10 ever was filed herein.)

While the Office considers the date the paper or fee is shown to have been deposited as "Express Mail" to be the "date-in" on the Express Mail label (*see*: MPEP §513.), the regulations at 37 C.F.R. §1.10(d), expressly provide:

***

> (d) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Director to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:
>
> (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
>
> (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and
>
> (3) The petition includes a showing which establishes, to the satisfaction of the Director, 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. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS. (Emphasis supplied.)

***

Counsel failed to satisfy Item (1), above throughout the prosecution of this matter.

As to Promptness

The application was deemed by the Office to have been deposited on 7 March, 2005.

The Office mailed a filing receipt on 28 March, 2005.

Counsel failed to file a petition until some seventy-seven (77) months after the filing receipt was mailed—and three months (3) after the Notice of Allowance/Allowability and Fees Due was mailed.

A petition was not filed "promptly" in this matter.

The threshold issue as to a petition pursuant to the regulations at of 37 C.F.R. §1.10(d)(1) is timeliness.

Counsel failed to address the matter.

The express requirements of 37 C.F.R. §1.10(d)(1) state that "petition is filed promptly ...." This Counsel did not do.

Thus, the showing at this writing is insufficient under the Rule as set forth above.

The petition is **dismissed**.

It appears that the Issue Fee was paid. The application is released to the Publications Branch for further processing in due course. Telephone inquiries related to that processing may be directed to the Publication Branch.

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[2]) 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. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

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[2] 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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OFFICE OF PETITIONS

In re Application of :
Ziad, et al. :
Application No. 11/074,600 : DECISION
Filed/Deposited: 7 March, 2005 :
Attorney Docket No. 038786-0166

This is a decision on the paper considered as a petition and filed on 22 November, 2011, requesting pursuant to the regulations at 37 C.F.R. §1.10 that the above-identified application be accorded a filing date of 8 March, 2005, rather than the presently accorded date of 7 March, 2005.

NOTE:

While the instant application was deposited and given a filing date of 7 March, 2005, there was no effort on the part of the Applicant or Petitioner to properly submit a petition pursuant to the regulations at 37 C.F.R. §1.10 (and so correct this date to 8 March, 2005,) until 8 September, 2011—some six and one-half years after the application was deposited and almost three months after the Examiner mailed the Notice of Allowance/Allowability.

Petitioner complained in his submission of 22 November, 2011, that the Office misstated his intention upon the filing of the original petition on 8 September, 2011.

While the decision of 27 September, 2011, indeed incorrectly stated at page three (3) of the decision stated "earlier filing date" rather than "later filing date," Petitioner's attentions are directed to the first sentence at page one (1) of the decision, which correctly stated:

> This is a decision on the petition filed on 8 September, 2011, requesting that the above-identified application be accorded a filing date of 8 March, 2005, rather than the presently accorded date of 7 March, 2005. (Emphasis, the original.)

Moreover, the sentence of which Petitioner complained at page three (3) of the decision correctly stated that Petitioner contended that:

> ...that the application was deposited with Express Mail Service on 8 March, 2005.

While Petitioner suggested that he sought a "corrected filing receipt" in May 2005 and/or December 2008, Petitioner's own submissions made clear that he failed to do in 2005—or otherwise until September 2011—what was required in this matter, to wit:

- Timely and properly file a petition under the Rule—in this case the regulations at 37 C.F.R. §1.10;[1]

[1] The regulations at 37 C.F.R. §1.10 provide:

§ 1.10 Filing of correspondence by "Express Mail."
(a)(1)Any correspondence received by the U.S. Patent and Trademark Office (USPTO) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed with the USPTO on the date of deposit with the USPS.
(2)The date of deposit with USPS is shown by the "date in" on the "Express Mail" label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the USPTO receipt date as the filing date. See § 1.6(a).
(b)Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked. The paper(s) or fee(s) that constitute the correspondence should also include the "Express Mail" mailing label number thereon. See paragraphs (c), (d) and (e) of this section.
(c)Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Director to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:
(1)The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
(2)The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and
(3)The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.
(d)Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Director to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:
(1)The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
(2)The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and
(3)The petition includes a showing which establishes, to the satisfaction of the Director, 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. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.
(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

- Make the showing required and in the manner specified by the Rule.

The Rules of Practice (e.g., generally the regulations at 37 C.F.R. §1.10, and specifically the regulations at 37 C.F.R. §1.10(c)(1)) and the guidance in Commentary in the Manual of Patent Examining Procedure (e.g., MPEP §513) provide protections and benefits for applicants and practitioners, however, those protections and benefits are unavailable when those rules are not complied with/followed.

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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.

(f)The Office may require additional evidence to determine if the correspondence was deposited as "Express Mail" with the USPS on the date in question.

(g)Any person who mails 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 has the correspondence returned by the USPS due to an interruption or emergency in "Express Mail" service, may petition the Director to consider such correspondence as filed on a particular date in the Office, provided that:

(1)The petition is filed promptly after the person becomes aware of the return 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 the original correspondence or a copy of the original correspondence showing the number of the "Express Mail" mailing label thereon and a copy of the "Express Mail" mailing label showing the "date-in"; and

(4)The petition includes a statement which establishes, to the satisfaction of the Director, the original deposit of the correspondence and that the correspondence or copy of the correspondence is the original correspondence or a true copy of the correspondence originally deposited with the USPS on the requested filing date. The Office may require additional evidence to determine if the correspondence was returned by the USPS due to an interruption or emergency in "Express Mail" service.

(h)Any person who attempts to mail 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 has the correspondence refused by an employee of the USPS due to an interruption or emergency in "Express Mail" service, may petition the Director to consider such correspondence as filed on a particular date in the Office, provided that:

(1)The petition is filed promptly after the person becomes aware of the refusal 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 attempted mailing by "Express Mail";

(3)The petition includes the original correspondence or a copy of the original correspondence showing the number of the "Express Mail" mailing label thereon; and

(4)The petition includes a statement by the person who originally attempted to deposit the correspondence with the USPS which establishes, to the satisfaction of the Director, the original attempt to deposit the correspondence and that the correspondence or copy of the correspondence is the original correspondence or a true copy of the correspondence originally attempted to be deposited with the USPS on the requested filing date. The Office may require additional evidence to determine if the correspondence was refused by an employee of the USPS due to an interruption or emergency in "Express Mail" service.

(i)Any person attempting to file correspondence under this section that was unable to be deposited with the USPS due to an interruption or emergency in "Express Mail" service which has been so designated by the Director, may petition the Director to consider such correspondence as filed on a particular date in the Office, provided that:

(1)The petition is filed in a manner designated by the Director promptly after the person becomes aware of the designated interruption or emergency in "Express Mail" service;

(2)The petition includes the original correspondence or a copy of the original correspondence; and

(3)The petition includes a statement which establishes, to the satisfaction of the Director, that the correspondence would have been deposited with the USPS but for the designated interruption or emergency in "Express Mail" service, and that the correspondence or copy of the correspondence is the original correspondence or a true copy of the correspondence originally attempted to be deposited with the USPS on the requested filing date.

[48 FR 2708, Jan. 20, 1983, added effective Feb. 27, 1983; 48 FR 4285, Jan. 31, 1983, paras. (a) & (c), 49 FR 552, Jan. 4, 1984, effective Apr. 1, 1984; paras. (a)-(c) revised and paras. (d) - (f) added, 61 FR 56439, Nov. 1, 1996, effective Dec. 2, 1996; paras. (d) & (e) revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (a) revised, 67 FR 36099, May 23, 2002, effective June 24, 2002; paras. (c), (d), (d)(3), (e) & (e)(4) revised, 68 FR 14332, Mar. 25, 2003, effective May 1, 2003; para. (a)(1) revised, 68 FR 48286, Aug. 13, 2003, effective Sept. 12, 2003; paras. (g) through (i) added, 69 FR 56481, Sept. 21, 2004, effective Sept. 21, 2004]

Petitioner also demanded that his paper of 22 November, 2011, "be made of record in the file history of the present application."

That status is the nature of the application history.

The petition is **DISMISSED**.

On 8 September, 2011, Petitioner filed a petition to obtain a later filing date than presently accorded on the contention that the application was deposited with Express Mail Service on 8 March, 2005. That petition was dismissed on 27 September, 2011, because Petitioner failed to timely seek relief under the regulations—in fact, across more than six years of prosecution there appeared to have been not a single mention of any effort to obtain relief pursuant to the regulations at 37 C.F.R. §1.10.

A review of the record evidenced that the Office received on 9 March, 2005, the instant application (U.S. Postal Service (USPS) Express Mail Label Receipt No. EV459168506US) from Counsel; on 28 March, 2005, the Office mailed to Counsel a filing receipt setting forth the filing date of 7 March, 005, and Counsel's own submission indicates receipt by his office of that filing receipt on 31 March, 2005; and on 25 May, 2005, and 8 December, 2008, Counsel requested "a corrected filing receipt," but at no time did Counsel file a petition or otherwise make the showing required therefor under the Rule.

On 9 June, 2011, the Examiner mailed a Notice of Allowance/Allowability and Fees Due.

Petitioner did not seek to properly address the filing date question under the Rule until 8 September, 2011, at which time Petitioner filed papers considered in the decision of 27 September, 2011—again, the record does not appear to reveal a petition pursuant to the regulations at 37 C.F.R. §1.10 filed between the deposit of the application in March 2005 and the submission of the 8 September, 2011, petition. That petition was dismissed on 29 September, 2011.

The record reveals no action by Petitioner to seek to withdraw the application from issue in an effort to correct any outstanding question(s) as to the application.

The application issued as Patent No. 8,050,956 on 1 November, 2011.

Petitioner filed the instant petition on 22 November, 2011.

Notwithstanding the dilatory practice of the Applicant in this history, Petitioner sought in his submission of 22 November, 2011, to deflect attention in this matter from that practice and history with a demonstration of petulance with the Office.

As set forth in the decision of 27 September, 2011, while the Office considers the date the paper or fee is shown to have been deposited as "Express Mail" to be the "date-in" on the Express Mail label (*see*: MPEP §513.), the regulations at 37 C.F.R. §1.10(c), expressly provide:

***

> (c) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Director to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:
>
> > (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
> >
> > (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and
> >
> > (3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit. (Emphasis supplied.)

***

Counsel failed to satisfy Item (1), above throughout the prosecution of this matter.

As to Promptness

The application was deemed by the Office to have been deposited on 7 March, 2005.

The Office mailed a filing receipt on 28 March, 2005.

Counsel failed to file a petition until some seventy-seven (77) months after the filing receipt was mailed—and three months (3) after the Notice of Allowance/Allowability and Fees Due was mailed.

A petition was not filed "promptly" in this matter.

The threshold issue as to a petition pursuant to the regulations at of 37 C.F.R. §1.10(d)(1) is timeliness. Counsel failed to address the matter.

The express requirements of 37 C.F.R. §1.10(c)(1) state that "petition is filed promptly ...." This Counsel did not do.

Petitioner made no showing in this regard on original petition, and Petitioner made no showing in this regard in the petition of 22 November, 2011.

Thus, the showing at this writing is insufficient under the Rule as set forth above.

The petition is **dismissed**.

It appears that the patent has issued. The application is released to the IFW Files Repository in due course. Telephone inquiries related to that processing may be directed to the Publication Branch.

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[2]) 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. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

---

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

§1.2 Business to be transacted in writing.

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 10/20/10 Paper No.: ———

TO SPE OF : ART UNIT 2819

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/074607 Patent No.: 7332928 B2

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Virginia Tolbert
Certificates of Correction Branch
571-272-0460

Thank You For Your Assistance

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

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

Comments: All of the changes presented are ok to enter.

/Rexford Barnie/ SPE 2819

/Jason Crawford/ 11/9/2010

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

JAMES L. DAVISON
19822 226TH AVENUE N.E.
WOODINVILLE WA 98077

MAILED

NOV 22 2010

OFFICE OF PETITIONS

In re Application of :
Ashwin Rao :
Application No. 11/074,613 : DECISION ON PETITION
Filed: March 8, 2005 :
Attorney Docket No. TW0501.US :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 5, 2010, to revive the above-identified application.

This application became abandoned for failure to timely pay the issue and publication fees on or before October 12, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed July 9, 2010. Accordingly, the date of abandonment of this application is October 13, 2010.

The petition is hereby **GRANTED**.

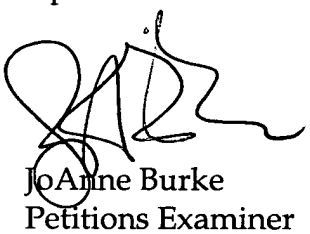
The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $755 and the publication fee of $300, (2) the petition fee of $810; and (3) a proper statement of unintentional delay.

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

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

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

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



JoAnne Burke
Petitions Examiner
Office of Petitions

cc: John Whitaker
Whitaker Law Group
1218 Third Ave.
Suite 1809
Seattle, WA 98101

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED
JAN 24 2012
OFFICE OF PETITIONS

In re Application of :
Takashisa Ueda :
Application No. 11/074,695 : ON PETITION
Filed: March 9, 2005 :
Attorney Docket No. UEDA3002D2/FJD :

This is a decision on the petition under 37 CFR 1.313(a), filed January 20, 2012, to withdraw the above-identified application from issue.

The petition is **DISMISSED**.

Petitioner requests that the present application be withdrawn from issue for consideration of the request to withdraw the previously filed Terminal Disclaimer filed on January 20, 2012.

37 CFR 1.313(a) states, in part:

> Applications may be withdrawn from issue for further action at the initiative of the Office or 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.

As such, a grantable petition requesting withdrawal of an application from issue must be accompanied by: (1) a showing of good and sufficient reasons why withdrawal of the application from issue is necessary; and (2) the requisite petition fee under 37 CFR 1.17(h). The petition fee of $130 has been charged to petitioner's deposit account.

However, the petition does not set forth good and sufficient reasons as to why withdrawal of the application from issue is necessary. The mere submission of a request to withdraw the previously filed Terminal Disclaimer does not make withdrawal of the application from issue necessary. There are other avenues open to applicant to have the request considered other than by way of petition.

Following the part of 37 CFR 1.313(a) cited above, 37 CFR 1.313(a) goes on to state:

> A petition under this section is not required if a request for continued examination under § 1.114 is filed prior to payment of the issue fee.

The filing of a request for continued examination (RCE) under 37 CFR 1.114 with a submission and the fee set forth in 37 CFR 1.17(e) would have been a proper available option to have the IDS considered. It is well documented that the filing of the petition under 37 CFR 1.182 satisfies the submission requirement under 37 CFR 1.114. *See* MPEP 706.07(h)(II).

For the above reasons, this application will not be withdrawn from issue under the provisions of 37 CFR 1.313(a).

The issue fee in this application has not been received in this application.

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

This matter is being referred to Technology Center AU 3674 for appropriate action on the request to withdraw the previously filed Terminal Disclaimer filed January 20, 2012.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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ALEXANDRIA, VA 22314-1176

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FEB 07 2012

OFFICE OF PETITIONS

In re Patent No. :
Takahisa Ueda :
Application No. 11/074,695 : DECISION ON PETITION
Filed: March 9, 2005 :
Attorney Docket No. UEDA3002D2/FJD :

This is a decision on the petition under 37 CFR 1.182, filed January 20, 2012 and resubmitted January 31, 2012, requesting withdrawal of the terminal disclaimer filed February 5, 2007 to obviate the double patenting rejection over US Patent No. 5,370,405.

The petition is **DISMISSED**.

MPEP 1490 states:

> Under appropriate circumstances, consistent with the orderly administration of the examination process, the nullification of a recorded terminal disclaimer may be addressed by filing a petition under 37 CFR 1.182 requesting withdrawal of the recorded terminal disclaimer. Petitions seeking to reopen the question of the propriety of the double patenting rejection that prompted the filing of the terminal disclaimer have not been favorably considered. The filing of a continuing application other than a CPA, while abandoning the application in which the terminal disclaimer has been filed, will typically nullify the effect of a terminal disclaimer. The filing of a Request for Continued Examination (RCE) of an application under 37 CFR 1.114 will not nullify the effect of a terminal disclaimer, because a new application has not been filed, but rather prosecution has been continued in the existing application.

A review of the record reveals that a terminal disclaimer was submitted on February 5, 2007 to overcome a rejection of claims 16-21 made in the Office action of September 5, 2006 for obviousness-type double patenting over the claims of the Japanese Patent 62-135653 (see Ueda 5134030 for translation) in view of Ogino (4,455,334).

In response, on February 5, 2007, the above-noted disclaimer was filed. In the accompanying remarks, applicant noted:

> "Applicant submitted herewith is a terminal disclaimer with respect to U.S. Patent 5,370,405. The submission of this terminal disclaimer obviates these double patenting rejections. With regards to the rejection under 35 USC 103(a) over Japanese Patent 63-135653 in view of Ogino, is respectfully transversed."

Petitioner, in response to the final Office action of September 5, 2006 contends that the claims have been amended to overcome the obviousness-type double patenting rejection, the terminal disclaimer should be nullified or withdrawn. Petitioner overlooks that such "withdrawal" is also asserted, on the record, by petitioner to be predicted upon an improper rejection, that such "withdrawal" was made after receipt and recordation of the terminal disclaimer that was originally proffered to overcome the aforementioned rejection, and further, as noted in the above-quoted section of the MPEP, petitions touching on the propriety of the original rejection will not be entertained.

It is clear, in light of the above, that petitioner is seeking to reopen the question of the propriety of the rejection made in the Office action of September 5, 2006. Specifically, petitioner is seeking to have the Patent and Trademark Office (Office), on petition, determine the propriety *vel non* of the original rejection.

Such would not be an appropriate exercise of 37 CFR 1.182. Petitioner is reminded that it is the long-established policy of the Patent and Trademark Office to maintain the line of demarcation between petitionable and appealable subject matter. *See* MPEP 1201. When the question of whether or not a given set of claims I one application or patent is distinct, or lies within the aegis of 35 USC 121, from another set of claims in another application or patent with respect to obviousness double patenting arises, the question relates to the merits of an invention, and the appropriate remedy for resolution of that issue ultimately lies by appeal as provided by statute. See e.g. In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985). As noted by the court in In re Faust, 378 F.2d 966, 153 USPQ 813 (CCPA 1967) "the terminal disclaimer eliminates the necessity of considering what are most often exceedingly difficult questions, *i.e.*, whether the subject matter of the appealed claims is obvious in view of the patent claims relied on as the basis for 'double patenting,' thus conserving judicial man hours both here and in the Patent Office." Further, it is well settled that the Commissioner will not, on petition, usurp the functions or impinge upon the jurisdiction of the Board. See In re Dickerson, 299 F.2d 954, 958, 133 USPQ 39, 43 (CCPA 1962); Bayley's Restaurant v. Bailey's of Boston, Inc., 170 USPQ 43, 44 (Comm'r Pat. 1971).

Petitioner had the opportunity to challenge the need for a terminal disclaimer, on appeal, but instead freely chose to file a terminal disclaimer to avoid the rejection. Moreover, petitioner has provided no explanation as to why filing of the terminal disclaimer, as opposed to contesting the propriety of the rejection, was caused or contributed to by circumstances beyond petitioner's control. Such does not afford proper legal or public policy grounds for requesting nullification of the terms of free dedication to the public contained in the previously filed terminal disclaimer

by way of appeal, much less on petition. Cf. Ex Parte Anthony, 230 USPQ 467 (PBAI 1982) aff'd. No. 84-1357 (Fed. Cir. June 14, 1985).

Even assuming, *arguendo*, the relief requested should be considered on petition, petitioner is reminded that, as a general rule, public policy does not favor the restoration to the patentee [applicant] of something that has been freely dedicated to the public, particularly where the public interest is not protected in some manner, *e.g.*, intervening rights in the case of a reissue patent. See Altoona Publix Theatres v. American Tri-Ergon Corp., 294 U.S. 477, 24 USPQ 308 (1935). Petitioner has failed to provide a reasonable, much less any, assurance that the public interest will, or can be, protected if the relief requested in this petition are given favorable consideration. In this regard, an applicant's use, and Office acceptance, of a terminal disclaimer is in the public interest because such encourages the disclosure of additional developments, the earlier filing of patent applications, and the earlier expiration of patents whereby the inventions covered become freely available to the public. See In re Jentoft, 392 F.2d 633, 157 USPQ 363 (CCPA 1968). It is brought to petitioner's attention that the principle against recapturing something that has been intentionally dedicated to the public dates back at least to Leggett v. Avery, 101 U.S. 246 (1879). While petitioner may now consider the previously filed disclaimer to be unnecessary, or unnecessarily limiting, petitioners are, nevertheless, confronted with what has been characterized as "an unhappy circumstance", rather than a circumstance(s) necessitating relief. Jentoft at 639 n. 6, 157 USPQ at 368 n. 6.

Nevertheless, petitioner has a suitable remedy on hand for their predicament, which does not require the extraordinary remedy of invoking 37 CFR 1.182 to withdraw the terminal disclaimer. The PTO will not normally consider an extraordinary remedy, when the rules already provide an avenue for obtaining the relief sought. See Cantello v. Rasmussen, 220 USPQ 664, 664 (Comm'r Pat. 1982). As explained in MPEP 1490, the effect of a recorded, but unwanted terminal disclaimer in this application may be overcome merely by filing a continuing application under 37 CFR 1.53. Petitioners should note that the rules of practice were amended December 1, 1997 to eliminate the filing of continuing applications under 37 CFR 1.60 and 1.62.

Petitioner submitted a petition fee of $130 with the instant petition. The petition fee required under 37 CFR 1.17(f) is $400. Accordingly, the balance due of $270 is being charged to petitioner's Deposit Account No. 02-3732.

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

/dab/
David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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ALEXANDRIA, VA 22314-1176

MAILED

MAR 26 2012

OFFICE OF PETITIONS

In re Application of :
Takahisa Ueda :
Application No. 11/074,695 : DECISION ON PETITION
Filed: March 9, 2005 :
Attorney Docket No. UEDA3002D2/FJD :

This is a decision on the renewed petition filed March 9, 2012, requesting under 37 CFR 1.182 that the acceptance of the terminal disclaimer filed February 5, 2007 be withdrawn The $400 petition fee has been received.

The petition is **GRANTED**.

Petitioners assert that, as the claims for which the aforementioned terminal disclaimer was originally proffered have now been amended [cancelled] 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. The undersigned has consulted with the examiner in charge of this application, and has found that the examiner concurs with petitioners' assertion. Furthermore, prosecution has been reopened by the filing of a Request for Continued Examination. 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 the April M. Wise at (571) 272-1642.

/dab/
David Bucci
Petitions Examiner
Office of Petitions

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NEIL F. MARKA
8322-A TRAFORD LANE
SPRINGFIELD, VA 22152

MAILED

AUG 12 2011

OFFICE OF PETITIONS

In re Patent No. 7,788,586
Issue Date: August 3, 2010
Application No. 11/074,744
Filed: March 9, 2005
Inventor: John L. DEROSA

DECISION ON PETITION

This is a decision on the petition for expungement of information, filed December 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 June 2, 2009 was erroneously filed for the above identified application and requests this assignment record be expunged from the file, the cover sheet and the assignment document returned. Petitioner alleges that the Office permitted the attorney for J.P. Walsh & J. L. Marmo Enterprises, Inc., Thomas P. Pavelko, to record a 1998 contract as an assignment document.

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. See MPEP 302.07 for examples of the types of descriptions of the interest conveyed or transaction to be recorded that can be identified.

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. Petitioner should note that the "assignment documents" and "corrective documents" are not limited to assignments, but include any documents affecting title to a patent or application. See MPEP § 313.

Therefore, the rules of practice and the procedures before the USPTO provide an avenue for the requested relief without relying upon extraordinary measures. That is, the chain of title can be clarified in the assignment records through the recording of a corrective document. 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).

It is well settled that the Office is not the appropriate forum for resolving a dispute concerning the ownership of an application or patent, and, as such, the USPTO will not permit itself to become embroiled in ownership disputes, particularly as it does not have the means or the authority to resolve such disputes. Indeed, the USPTO has no authority to decide ownership issues. See Cedars-Sinai Medical Center v. Watkins, 11F.3d 1573, 1581 n.10, 29 USPQ 2d 1188, 1194 n.10 (Fed. Cir. 1993), *cert. denied*, 114 S. Ct. (1994). Rather, state law governs contractual obligations and transfers of property rights, including those relating to patents. See Regents of the University of New Mexico v. Knight, 66 USPQ2d 1001, 1008 (Fed. Cir. 2003).

The USPTO cannot settle disputes as to title as a judicial tribunal is the appropriate forum to resolve such controversy. See Jim Arnold Corp. v. Hydrotech Sys., Inc., 109 F.3d 1567, 1572, 42 USPQ2d 1119, 1123 (Fed. Cir. 1997)("the question of who owns the patent right and on what terms typically is a question exclusively for state courts"); Roach v. Crouch, 24 N.W. 2d 400, 33 USPQ2d 1361 (Iowa 1994)(patent ownership issue properly triable in state court); In re Haines, 1900 C.D. 102, 103 (Comm'r Pat. 1900)(same).

If petitioner is successful in resolving this dispute, the proper documentation should be promptly submitted to the USPTO for recordation against the patent.

A petition to expunge assignment documents is properly addressed under 37 CFR 1.182 and a fee of $400.00 is required. The $400 petition fee has been charged to petitioner's Deposit Account No. 13-1720.

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

Thurman K. Page
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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TRASKBRITT, P.C.
P.O. BOX 2550
SALT LAKE CITY UT 84110

MAILED

SEP 2 1 2010

OFFICE OF PETITIONS

In re Application of :

Hays, Jeffrey :
Application No. 11/074,879 : DECISION ON PETITION
Filed: March 08, 2005 : TO WITHDRAW
Attorney Docket No. **3351-8826US** : 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 20, 2010

The request is **NOT APPROVED**.

The Office has revised its change in procedure for request to withdraw from representation applies to requests filed on or after May 12, 2008.

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 Real and Frame does not correspond with our records. Please send correction copy of the 3.73B with correct Real and Frame.

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

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

/Tredelle D. Jackson/
Paralegal Specialist
Office of Petitions

cc: **PERKINS COIE LLP**
607 FOURTEENTH STREET, NW
WASHINGTON, DC 20005

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED
MAR 17 2011
OFFICE OF PETITIONS

In re Application of	:	
Anisse Taleb	:	
Application No. 11/074,928	:	DECISION GRANTING PETITION
Filed: March 9, 2005	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 4147-109	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, March 16, 2011 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on February 28, 2011 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 2626 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

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

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OFFICE OF PETITIONS

GILBRETH & ASSOCIATES, P.C.
PO BOX 2428
BELLAIRE TX 77402-2428

In re Application of :
Waid and Waid :
Application No. 11/075,029 :
Filed: March 7, 2005 : DECISION ON PETITION
Attorney Docket No. 27720/02 : UNDER 37 C.F.R. § 1.137(B)
Title: METHODS AND APPARATUS :
FOR SOLVING MATHEMATICAL :
PROBLEMS FOR ENTERTAINMENT :

This is a decision on the petition pursuant to 37 C.F.R. § 1.137(b), filed March 19, 2012, to revive the above-identified application.

This petition pursuant to 37 C.F.R. § 1.137(b) is **GRANTED**.

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R § 1.113 in a timely manner to the final Office action mailed May 25, 2011, which set a shortened statutory period for reply of three months. An after-final amendment was received on November 1, 2011 along with a three month extension of time, and an advisory action was mailed on November 29, 2011. No further response was received and no additional extensions of time under the provisions of 37 C.F.R § 1.136(a) were available. Accordingly, the above-identified application became abandoned on November 26, 2011. A notice of abandonment was mailed on January 18, 2012.

On March 19, 2012, Petitioner filed a RCE, the petition fee, an amendment, and the proper statement of unintentional delay.

The fee that is associated with the filing of the RCE will be charged to Deposit Account No. 07-1245, as authorized on the first page of the RCE.

The RCE has been accepted as the required reply under 37 C.F.R. § 1.137(b)(1). As such, the first three requirements of Rule 1.137(b) have been met. The fourth requirement of Rule 1.137(b) is not applicable, as a terminal disclaimer is not required.[1]

The Technology Center will be notified of this decision. The Technology Center's support staff will notify the Examiner of this decision, so that the submission under 37 C.F.R. § 1.114 - the amendment submitted on November 1, 2011 - can be processed in due course.

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

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[2] All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

Paul Shanoski
Senior Attorney
Office of Petitions

1 See Rule 1.137(d).
2 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).

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

In re Patent No. 7,422,741 :
Issue Date: September 9, 2008 :
Application No. 11/075,047 : NOTICE
Filed: March 7, 2005 :
Attorney Docket No. 28967/39700A

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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CANTOR COLBURN LLP
20 CHURCH STREET
22ND FLOOR
HARTFORD, CT 06103

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OFFICE OF PETITIONS

In re Application of	:	
Spiridon Spireas	:	
Application No. 11/075,170	:	NOTICE
Filed: March 8, 2005	:	
Atty Docket No.: MPC0176US	:	

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 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) 272-3204.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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101 Columbia Road
P.O Box 2245
Morristown NJ 07962-2245

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MAR 01 2011

OFFICE OF PETITIONS

In re Application :
Kirkland, et al. :
Application No. 11/075,171 : PATENT TERM ADJUSTMENT
Filing or 371(c) Date: March 8, 2005 :
Dkt. No.: H0008320-5822/400.1237US0 :

This is in response to the application for patent term adjustment under 37 CFR 1.705(b) filed December 27, 2010.

The request for reconsideration of patent term adjustment is **GRANTED**.

Applicants do not contest the adjustment of 248 days accorded pursuant to 37 CFR 1.703(a). Applicants do not contest the reduction of 30 days assessed in connection with the reply filed March 3, 2008. Applicants do not contest the reduction of two days assessed in connection with the reply filed February 2, 2009. Applicants do, however, contest the reduction of 480 days assessed in connection with the information disclosure statement filed November 3, 2006.

Applicants' arguments have been carefully considered and found persuasive.

In view thereof, as of the time of allowance, the application is entitled to a patent term adjustment of 216 days (248 days of adjustment pursuant to 37 CFR 1.703 reduced 32 days for applicant delays pursuant to 37 CFR 1.704).

The $200.00 patent term adjustment application required per 37 CFR 1.18(e) has been charged to the authorized deposit account.

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).

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

Telephone inquiries 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

Enclosure: Adjusted PAIR Calculation

CC: JOSEPH KENDRICK
Fogg & Powers LLC
5810 W 78th St.
Suite 100
Minneapolis, MN 55439

PTA Calculations for Application: 11/075171			
Application Filing Date:	03/08/2005	PTO Delay (PTO):	248
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	512
Post-Issue Petitions:	0	Total PTA (days):	216
PTO Delay Adjustment:	480		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
106	02/27/2011	ADJUSTMENT OF PTA CALCULATION BY PTO	480		
93	10/18/2010	MAIL NOTICE OF ALLOWANCE			
92	10/13/2010	ISSUE REVISION COMPLETED			
91	10/13/2010	DOCUMENT VERIFICATION			
90	10/13/2010	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
89	10/13/2010	CASE DOCKETED TO EXAMINER IN GAU			
88	10/12/2010	EXAMINER'S AMENDMENT COMMUNICATION			
87	10/12/2010	ALLOWABILITY NOTICE			
86	08/04/2010	DATE FORWARDED TO EXAMINER			
85	08/02/2010	RESPONSE AFTER NON-FINAL ACTION			
84	06/08/2010	ELECTRONIC REVIEW			
83	06/08/2010	EMAIL NOTIFICATION			
82	06/08/2010	MAIL NON-FINAL REJECTION			
81	06/04/2010	NON-FINAL REJECTION			
79	03/20/2010	DATE FORWARDED TO EXAMINER			
78	03/17/2010	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
77	03/17/2010	REQUEST FOR CONTINUED EXAMINATION (RCE)			
76	03/20/2010	DISPOSAL FOR A RCE / CPA / R129			
75	03/17/2010	WORKFLOW - REQUEST FOR RCE - BEGIN			
74	03/02/2010	EMAIL NOTIFICATION			
73	03/02/2010	MAIL ADVISORY ACTION (PTOL - 303)			
72	02/26/2010	ADVISORY ACTION (PTOL-303)			
71	02/08/2010	DATE FORWARDED TO EXAMINER			
70	02/05/2010	AMENDMENT AFTER FINAL REJECTION			

69	01/01/2010	MAIL POST CARD			
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66	12/18/2009	FINAL REJECTION			
65	11/20/2009	CORRESPONDENCE ADDRESS CHANGE			
64	09/16/2009	DATE FORWARDED TO EXAMINER			
63	08/18/2009	RESPONSE AFTER NON-FINAL ACTION			
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61	05/15/2009	NON-FINAL REJECTION			
60	03/11/2009	DATE FORWARDED TO EXAMINER			
59	02/02/2009	RESPONSE AFTER NON-FINAL ACTION		2	58
58	10/31/2008	MAIL NON-FINAL REJECTION			
57	10/29/2008	NON-FINAL REJECTION			
56	08/26/2008	DATE FORWARDED TO EXAMINER			
55	07/16/2008	RESPONSE AFTER NON-FINAL ACTION			
54	04/17/2008	MAIL NON-FINAL REJECTION			
53	04/14/2008	NON-FINAL REJECTION			
52	03/20/2008	DATE FORWARDED TO EXAMINER			
51	03/03/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)		30	43
50	03/20/2008	DISPOSAL FOR A RCE / CPA / R129			
49	03/03/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
48	03/03/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
47	01/17/2008	MAIL ADVISORY ACTION (PTOL - 303)			
46	01/16/2008	ADVISORY ACTION (PTOL-303)			
45	01/11/2008	DATE FORWARDED TO EXAMINER			
44	01/02/2008	AMENDMENT AFTER FINAL REJECTION			
43	11/02/2007	MAIL FINAL REJECTION (PTOL - 326)			
42	10/31/2007	FINAL REJECTION			
41	09/05/2007	DATE FORWARDED TO EXAMINER			
40	08/31/2007	RESPONSE AFTER NON-FINAL ACTION			
39	06/26/2007	MAIL NON-FINAL REJECTION			
38	06/20/2007	NON-FINAL REJECTION			
37	04/12/2007	DATE FORWARDED TO EXAMINER			
36	04/05/2007	RESPONSE AFTER NON-FINAL ACTION			
35	03/02/2007	MAIL NON-FINAL REJECTION			
34	03/01/2007	NON-FINAL REJECTION			
		INFORMATION DISCLOSURE STATEMENT			

33	03/08/2005	CONSIDERED			
32	11/03/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
31	02/10/2007	DATE FORWARDED TO EXAMINER			
30	02/02/2007	RESPONSE TO ELECTION / RESTRICTION FILED			
29	01/09/2007	CASE DOCKETED TO EXAMINER IN GAU			
28	01/05/2007	MAIL RESTRICTION REQUIREMENT	242		-1
27	11/27/2006	RESTRICTION/ELECTION REQUIREMENT			
26	11/03/2006	REFERENCE CAPTURE ON IDS			
25.7	11/03/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		480	21
25	11/03/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
24	04/03/2006	CASE DOCKETED TO EXAMINER IN GAU			
23	07/29/2005	RECEIPT OF ALL ACKNOWLEDGEMENT LETTERS			
22	07/29/2005	RECEIPT OF ACKNOWLEDGMENT LETTER			
21	07/11/2005	APPLICANT RESPONSE RECEIVED			
20	07/12/2005	RECEIPT OF ACKNOWLEDGMENT LETTER			
19	06/24/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
18	06/24/2005	CASE DOCKETED TO EXAMINER IN GAU			
17	03/08/2005	REFERENCE CAPTURE ON IDS			
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16	03/08/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15	06/13/2005	APPLICATION DISPATCHED FROM OIPE			
14	06/14/2005	APPLICATION IS NOW COMPLETE			
13	06/02/2005	ADDITIONAL APPLICATION FILING FEES			
12	06/02/2005	APPLICANT HAS SUBMITTED NEW DRAWINGS TO CORRECT CORRECTED PAPERS PROBLEMS			
11	06/02/2005	REQUEST FOR APPLICANT STATEMENT REGARDING POTENTIAL NASA INTEREST (45-DAY LETTER) MAILED			
10	05/06/2005	CORRECTED PAPER			
8	04/28/2005	AGENCY REFERRAL LETTER MAILED			
7	04/28/2005	AGENCY REFERRAL LETTER MAILED			
6	04/26/2005	REFERRED FOR NASA PROPERTY RIGHTS REVIEW BY L&R LARS			

5	04/26/2005	REFERRED BY L&R FOR THIRD-LEVEL SECURITY REVIEW. AGENCY REFERRAL LETTER GENERATED			
4	04/26/2005	REFERRED BY L&R FOR THIRD-LEVEL SECURITY REVIEW. AGENCY REFERRAL LETTER GENERATED			
3	03/28/2005	REFERRED TO LEVEL 2 (LARS) BY OIPE CSR			
2	03/22/2005	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	03/08/2005	INITIAL EXAM TEAM NN			

Search Another: Application# [ ] Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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RUTAN & TUCKER, LLP.
611 ANTON BLVD
SUITE 1400
COSTA MESA CA 92626

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OFFICE OF PETITIONS

In re Application of	:	
WITCHEY, et al	:	
Application No. 11/075,266	:	DECISION ON PETITION
Filed: March 7, 2005	:	TO WITHDRAW
Attorney Docket No. 021404.0010US1	:	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 10, 2012.

The request is **NOT APPROVED.**

A review of the file record indicates that Hani Z. Sayed does not have power of attorney in this patent application. See 37 C.F.R. § 10.40. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is not applicable.

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

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

/Diane Goodwyn/
Diane Goodwyn
Petitions Examiner
Office of Petitions

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

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In re Patent No. 7,314,167 :
Issued: January 1, 2008 :
Application No. 11/075,493 : ON PETITION
Filed: March 8, 2005 :
Attorney Docket No. 023503-0359428 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed June 17, 2011.

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

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

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

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

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

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/075,552	03/08/2005	Timothy G. Haines	3293.17US02	9393

24113 7590 07/29/2011

PATTERSON THUENTE CHRISTENSEN PEDERSEN, P.A.
4800 IDS CENTER
80 SOUTH 8TH STREET
MINNEAPOLIS, MN 55402-2100

EXAMINER	
CARTER, TARA ROSE E	
ART UNIT	**PAPER NUMBER**
3733	

MAIL DATE	DELIVERY MODE
07/29/2011	PAPER

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

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

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Brad Pedersen
Patterson, Thuente, Skaar & Christensen, P.A.
4800 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55402-2100

In re Application of: Timothy HAINES	)
Application No. 11/075,552	) **DECISION ON PETITION**
Filed: March 8, 2005	) **UNDER 37 C.F.R. 1.84(a)(2)**
For: METHODS AND APPARATUS FOR IMPROVED DRILLING AND MILLING TOOLS FOR RESECTION	) **TO ACCEPT COLOR**) **DRAWINGS**)

This is a decision on the petition under 37 C.F.R. ə 1.84(a)(2), filed December 22, 2008, requesting acceptance of color drawings. The petition requests that all the drawings, which are in color, be accepted in lieu of black and white drawings.

A grantable petition under 37 C.F.R. ə 1.84(a)(2) must be accompanied by a fee set forth under 37 C.F.R. ə 1.17(h), three (3) sets of the color drawings in question, a black and white photocopy of said drawings, and the specification must contain, or be amended to contain, the following language as the first paragraph in that portion of the specification relating to the brief description of the drawings:

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

The petition was filed with the fee set forth under 37 C.F.R. ə 1.17(h), three (3) sets of the color drawings in question, a black and white photocopy of said drawings, and the amendment to the specification, as set forth above. However, the petition's explanation of why the color drawings are necessary does not meet the criteria of 37 C.F.R. ə 1.84(a) (2). It is noted that color drawings are **not** the "only practical medium" by which to disclose the subject matter sought to be patented. This is evidenced by the substitute drawings filed on January 10, 2011. The drawings, done in black ink, replaced the color drawings.

Accordingly, the petition is **DENIED**.

/Eduardo C. Robert/
S.P.E.
Technology Center 3700

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MAYER BROWN, LLP
PO BOX 2828
CHICAGO, IL 60690

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AUG 27 2010

OFFICE OF PETITIONS

In re Application of
Hyo Sol Jang
Application No. 11/075,730
Filed: March 10, 2005
Attorney Docket No. 1230388-05030037

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 5, 2010.

The request is **NOT APPROVED**.

The Office will not decide request to withdraw from representation as practitioner of record which are filed after the patent has issued. Sections 2540 and 2542 of the Manuel of Patent Procedures (MPEP explain that a practitioner does not have to request permission to withdraw as practitioner of record under 37 CFR 1.36 in order to change the address in a patented filed and to directed notices, receipts and other communications relating to maintenance fees. These requests will be placed in the application but will not be treated on their merits. The above mentioned sections of the MPEP recommend the designation of a fee address or submission of a change in correspondence address in the patented file for directing correspondence relating to maintenance fee payments and other correspondences after issuance. See Form PTO/SB/47, entitled, *"Fee Address" Indication Form* and Form PTO/SB/123, entitled, *Change of Correspondence Address, Patent*

Accordingly, the request to withdraw from record cannot be approved because the request does not include an acceptable current correspondence address for future communications from the Office.

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

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

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

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

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OFFICE OF PETITIONS

In re Application of :
Walter C. Milliken et al. :
Application No. 11/076,216 : DECISION ON PETITION
Filed: March 9, 2005 :
Attorney Docket No. **03-4046A** :

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 timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of January 13, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is April 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 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.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See* In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $1,110 extension of time fee submitted with the petition on August 20, 2010, was subsequent to the maximum extendable period for reply, petitioner may request a refund of this fee by writing to the following address: Mail Stop 16, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany petitioner's request.

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

This application is being referred to Technology Center AU 2432 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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CROWELL & MORING LLP
INTELLECTUAL PROPERTY GROUP
P.O. BOX 14300
WASHINGTON DC 20044-4300

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FEB 07 2012

OFFICE OF PETITIONS

In re Application of
Marc Lengning et al.
Application No. 11/076,255
Filed: March 10, 2005
Attorney Docket No. 080437.53341US

ON PETITION

This is a decision on the petition filed January 17, 2012 under 37 CFR 1.181 to withdraw the holding of abandonment.

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

A decision was rendered by the Board of Patent Appeals and Interferences on December 19, 2011. A Notice of Abandonment was mailed January 13, 2012 citing abandonment in view of the decision by the Board of Patent Appeals and Interference rendered on December 19, 2011 and because the period for seeking court review of the decision had expired, thus there were no allowed claims.

Petitioner argues that the period for response had not yet lapsed as the response for seeking court review is two months from the date of the decision and on January 26, 2012, submitted a Request for Continued Examination and an amendment as the submission under 37 CFR 1.114 as well as the fee.

Per MPEP 706.07(h), a request for continued examination under 37 CFR 1.114 was filed in this application after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit or the commencement of a civil action. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on January 26, 2012 has been entered.

Accordingly, the response was timely and the Notice of Abandonment mailed January 13, 2012 was mailed prematurely in error and is hereby withdrawn. No petition fee is due and none has been charged.

This matter is being referred to Technology Center 2612 for processing the RCE filed January 26, 2012.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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RAY L. WEBER
RENNER, KENNER, GRIEVE, BOBAK,
TAYLOR & WEBER
400 First National Tower
Akron OH 44308

MAILED

DEC 15 2010

OFFICE OF PETITIONS

In re Application of :
DYKO et al. :
Application No. 11/076,314 : NOTICE
Filed: 03/10/2005 :
Attorney Docket No. ABR.B0402A :

This is a Notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed October 25, 2010.

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) 272-3211.

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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RAY L. WEBER
RENNER, KENNER, GRIEVE, BOBAK,
TAYLOR & WEBER
400 First National Tower
Akron OH 44308

In re Application of
DYKO, MARK P. et al. :
Application No.: 11/076,314 :
Filing or 371(c) Date: March 10, 2005 :
Attorney Docket Number: ABR.B0402A :

FEB 14 2011
DECISION ON
PETITION

This is a decision on the Petition to Withdraw Holding of Abandonment received in the United States Patent and Trademark Office (USPTO) on January 18, 2011.

This petition is **GRANTED**.

The application was held abandoned for failure to timely submit the Issue Fee and Publication fee as required by the Notice of Allowance mailed August 4, 2010 which set forth a three (3) month statutory period of reply. The Notice of Abandonment was mailed on November 18, 2010.

Petitioner states that the issue fee transmittal and payment were timely filed via the USPTO on October 25, 2010. Petitioner submitted a copy of the original submission which included a properly completed Certificate of Mailing/Transmission.

In view of the foregoing, the holding of abandonment for failure to timely pay the issue fee is hereby withdrawn and the application restored to pending status.

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 756-1547.

Kay D. Pinkney
Application Assistance Unit
Office of Data Management

UNITED STATES PATENT AND TRADEMARK OFFICE

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.
11/076,470	03/08/2005	Robert P. Morris	I299/US	5733

49278 7590 02/08/2011

SCENERA RESEARCH, LLC
5400 Trinity Road
Suite 303
Raleigh, NC 27607

EXAMINER	
KHAN, MEHMOOD B	

ART UNIT	PAPER NUMBER
2617	

MAIL DATE	DELIVERY MODE
02/08/2011	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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FEB 08 2011
DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

SCENERA RESEARCH, LLC
5400 Trinity Road
Suite 303
Raleigh NC 27607

In re Application of
MORRIS, ROBERT P.
Application No. 11/076,470
Filed: March 8, 2005
For: **MOBILE PHONE HAVING A TV REMOTE STYLE USER INTERFACE**

DECISION ON REQUEST

This is a decision on the request for continued suspension of action under 37 C.F.R. § 1.103(a) filed November 2, 2010.

Applicant requests a second period of suspension for 6 months. The reason for the request is the Petitioner's ownership of this application and other applications of the Petitioner has been challenged. As stated in the Petition to Suspend, the Petitioner has filed legal action in federal court seeking declaratory judgment to quiet title in this application by confirming the Petitioner's ownership. The Petitioner asserts that action in this application should be suspended for six months to allow time for the court to consider the Petitioner's declaratory judgment claim. Until the court confirms the Petitioner's ownership, or the matter is otherwise resolved, prosecution of this application could be prejudicial to the Petitioner as well as to the interests of third parties. For example, and without intending to represent to the Office its likelihood of success, the Petitioner notes that it would be prejudiced as a result of expending resources, such as costs and time, prosecuting this application for the benefit of another party if the Petitioner's ownership in this application was not confirmed.

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

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

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

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

Pursuant to Petitioner's request, suspension on this application is **GRANTED**. Ex parte prosecution is SUSPENDED FOR A PERIOD OF 6 MONTHS from the mailing date of this letter. At the end of this period, applicant is required to notify the examiner and request continuance of prosecution or a further suspension. See MPEP § 709.

Wanda L. Walker

Wanda L. Walker, Director
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/076,470	03/08/2005	Robert P. Morris	I299/US	5733

49278 7590 09/27/2011

SCENERA RESEARCH, LLC
5400 Trinity Road
Suite 303
Raleigh, NC 27607

EXAMINER	
KHAN, MEHMOOD B	
ART UNIT	PAPER NUMBER
2617	

MAIL DATE	DELIVERY MODE
09/27/2011	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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SCENERA RESEARCH, LLC
5400 Trinity Road
Suite 303
Raleigh NC 27607

In re Application of:
Robert P. MORRIS
Appl. No.: 11/076,470
Filed: March 8, 2005
For: **MOBILE PHONE HAVING A TV REMOTE STYLE USER INTERFACE**

DECISION ON PETITION
UNDER 37 CFR § 1.103(a)

This is a decision on the petition for suspension of prosecution under 37 CFR § 1.103(a) filed on 09 August 2011.

The petition is **GRANTED**.

Pursuant to applicant's request filed 09 August 2011, action by the Office is suspended on this application under 37 CFR § 1.103(a) for a period of three (3) months from the mailing date of this letter. At the end of this period, applicant is required to notify the examiner and request continuance of prosecution or a further suspension. See MPEP § 709.

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

Any inquiry concerning this decision should be directed to John Peng whose telephone number is (571) 272-7272.

/John Peng/

John Peng, TQAS
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/076,470	03/08/2005	Robert P. Morris	I299/US	5733

49278 7590 02/14/2012

SCENERA RESEARCH, LLC
5400 Trinity Road
Suite 303
Raleigh, NC 27607

EXAMINER	
KHAN, MEHMOOD B	

ART UNIT	PAPER NUMBER
2617	

MAIL DATE	DELIVERY MODE
02/14/2012	PAPER

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

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

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SCENERA RESEARCH, LLC
5400 Trinity Road
Suite 303
Raleigh NC 27607

In re Application of:
Robert P. MORRIS
Appl. No.: 11/076,470
Filed: March 8, 2005
For: **MOBILE PHONE HAVING A TV REMOTE STYLE USER INTERFACE**

DECISION ON PETITION
UNDER 37 CFR § 1.103(a)

This is a decision on the petition for suspension of prosecution under 37 CFR § 1.103(a) filed on December 21, 2011.

The petition is **GRANTED**.

Pursuant to applicant's request filed 09 August 2011, action by the Office is suspended on this application under 37 CFR § 1.103(a) for a period of three (3) months from the mailing date of this letter. At the end of this period, applicant is required to notify the examiner and request continuance of prosecution or a further suspension. See MPEP § 709.

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

Any inquiry concerning this decision should be directed to John Peng whose telephone number is (571) 272-7272.

/John Peng/

John Peng, TQAS
Technology Center 2600
Communications

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/076,604	03/10/2005	Majd Alwan	00775-03	6339

20350 7590 10/15/2010

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

EXAMINER	
JIAN, SHIRLEY XUEYING	
ART UNIT	**PAPER NUMBER**
3769	

MAIL DATE	DELIVERY MODE
10/15/2010	PAPER

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

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

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

In re Application of:
ALWAN, MAJD et al
Serial No. 11/076,604
Filed: March 10, 2005
Docket: 00775-03
Title: SYSTEM AND METHOD FOR THE INFERENCE OF ACTIVITIES OF DAILY LIVING AND INSTRUMENTAL ACTIVITIES OF DAILY LIVING AUTOMATICALLY

DECISION ON PETITION
UNDER 37 CFR § 1.181

This is a decision on the request filed October 12, 2010 under 37 CFR 1.181 requesting withdrawal of the finality of the last Office action mailed August 12, 2010.

The petition is **Granted.**

After consulting with the examiner, it was agreed the finality of the Office action of August 12, 2010 should be withdrawn. As such, the Office action mailed on August 12, 2010 will be designated as non-final Office action. The period to respond to the Office action of August 12, 2010 remains unchanged. Since the finality is being withdrawn, any amendment responding to the Office action of August 12, 2010 will be treated as a 37 CFR § 1.111 amendment.

The application is being forwarded to the examiner via Supervisory Patent Examiner of Art Unit 3736 awaiting for the applicant's response to the last Office action of August 12, 2010. Any inquiry regarding this decision should be directed to Henry C. Yuen, Special Programs Examiner, at (571) 272-4856.

Petition granted.

Angela D. Sykes, Director
Technology Center 3700

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Alexandria, VA 22313-1450
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SPRINKLE IP LAW GROUP
1301 W 25TH STREET
SUITE 408
AUSTIN TX 78705

MAILED
JAN 12 2012
OFFICE OF PETITIONS

In re	:	
Patent No. 7,590,728	:	DECISION ON PETITION
Issued: September 15, 2009	:	
Application No. 11/076,652	:	
Filed: March 10, 2005	:	

This is a decision on the petition under 37 CFR 1.182, filed December 15, 2011, for a duplicate Letters Patent.

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

The Publishing Division is directed to issue a duplicate Letters Patent.

Any questions concerning this decision may be directed to the undersigned at (571)272-3207. Any questions concerning issuance of the duplicate Letters Patent should be directed to Ollie Person at (703)756-1555.

A copy of this decision is being forwarded to the Publishing Division for issuance of a duplicate Letters patent.

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

Cliff Congo
Petitions Attorney
Office of Petitions

cc: Ollie Person, P/OPPD (FAX 571-270-9764)
Kimberly Terrell, P/OPPD (FAX 571-270-9958)

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : **8-16-10**

TO SPE OF : ART UNIT **2884**

SUBJECT : Request for Certificate of Correction for Appl. No.: **11076729** Patent No.: **7750294**

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (C of C)
Randolph Square – 9D10-E
Palm Location 7580

Omega Lewis
Certificates of Correction Branch

703-756-1575

Thank You For Your Assistance

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

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

Comments: _____

_____

_____

_____

_____

/David P. Porta/ **_2884__**
SPE **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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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

MAR 08 2011

OFFICE OF PETITIONS

In re Application of :
Magnus BJORKLUND et al. :
Application No. 11/077,025 : DECISION ON PETITION
Filed: March 11, 2005 :
Attorney Docket No. **09059.0058-01** :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 04, 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 August 03, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed May 03, 2010. Accordingly, the date of abandonment of this application is August 04, 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 Issue and Publication fees, and the submission required by 37 CFR 1.114; (2) the petition fee of $1620; and (3) a proper statement of unintentional delay.

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

The Issue fee of $1510 and Publication fee of $300 have been charged to Deposit Account No. 06-0916 as authorized.

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

This application is being referred to Technology Center AU 3716 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the papers submitted in accordance with 37 CFR 1.114.

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 4/9/2010

TO SPE OF : ART UNIT 1638 (1600)

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/077,089 Patent No.: 7,687,237

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, LTE
Randolph Sq. Ste 9D62A
703-756-1590

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

KATHLEEN KERR BRAGDON, PH.D.
SUPERVISORY PATENT EXAMINER

SPE Kath K Bragdon ART UNIT 1600 - QAS

for AnneMarie Grunberg AU ~~1600~~ 1638

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/077,185	03/09/2005	Jan-Eric W. Ahlfors	NWL-001US1	2643

83682 7590 07/12/2011

Nevrivy Patent Law Group P.L.L.C
1055 Thomas Jefferson St., N.W.
Suite M-100
Washington, DC 20007

EXAMINER	
LEAVITT, MARIA GOMEZ	
ART UNIT	PAPER NUMBER
1633	
MAIL DATE	DELIVERY MODE
07/12/2011	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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July 12, 2011

Nevrivy Patent Law Group P.L.L.C
1055 Thomas Jefferson St., N.W.
Suite M-100
Washington DC 20007

In re Application of :
Jan-Eric Ahlfors et al. : **DECISION ON PETITION**
Application No. 11077185 :
Filed: 3/9/2005 :
Attorney Docket No. **NWL-001US1** :

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84(a)(2), received in the United States Patent and Trademark Office (USPTO) June 3, 2005.

The petition is **DISMISSED.**

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

1. The fee set forth under 37 C.F.R. 1.17(h),
2. Three (3) sets of the color drawings in question, (One (1) set for EFS filings), and
3. The specification containing the following language as the first paragraph in that portion of the specification relating to the brief description of the drawings.

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

The petition did not meet the following requirement(s). 1 ☐ 2 ☑ 3 ☐

In the replacement drawings for Figs. 14-15A filed 6/23/2005, there is only one color copy in the file record. Three copies are required.

A renewed petition filed under 37 C.F.R. 1.84(a)(2) must be filed within TWO (2) MONTHS of this decision. If a renewed petition is not filed within the TWO (2) Months of this decision the drawings will be printed in black and white.

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

/Don Fairchild/
Office of Data Management
Publications Branch

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: 42783-1276	
Application Number: 11/077,231	Filing Date (or 371(b) or (f) Date): 03/11/2005
Patent Number: 7,664,491	Issue Date: 02/16/2010
First Named Inventor: Raymond VANDER VEEN	
Title: ADVANCED CALL FORWARDING USER INTERFACE FOR MOBILE COMMUNICATION DEVICE	

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 /SM/	Date 08/13/2010
Name (Print/Typed) /Stephen Martin/	Registration Number 56,740

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

☑ *Total of 1 forms are submitted.

The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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

PTO/SB/131 (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.

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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TORONTO, ON M5V 3M2
CANADA

Mail Date: 08/23/2010

Applicant	: Raymond Vander Veen	: DECISION ON REQUEST FOR
Patent Number	: 7664491	: RECALCULATION of PATENT
Issue Date	: 02/16/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/077,231	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 03/11/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **146** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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OFFICE OF PETITIONS

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

In re Patent No. 8,007,444	:	
Kokate et al.	:	DECISION ON
Issue Date: August 30, 2011	:	REQUEST FOR
Application No. 11/077,322	:	RECONSIDERATION OF
Filed: March 10, 2005	:	PATENT TERM ADJUSTMENT
Attorney Docket No. 10527-1135002 / 01-011US0	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705(d)," filed October 31, 2011,[1] requesting that the patent term adjustment determination for the above-identified patent be changed from eight hundred and forty-four (844) days to nine hundred and seventy-two (972) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by eight hundred and thirty-nine (839) days is **GRANTED to the extent indicated herein.**

BACKGROUND

On August 30, 2011, the above-identified application matured into US Patent No. 8,007,444 with a patent term adjustment of 844 days. This request for reconsideration of patent term adjustment was timely filed within two months of the issue date of the patent. See 37 C.F.R. § 1.705(d).

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

Patentee disputes four calculations:

[1] It is noted that October 30, 2011 fell on a Sunday.

1. Patentee asserts that two periods of reduction were improperly calculated;

2. Patentee asserts that one additional reduction should be assessed, and;

3. Patentee agrees that the over three-year period stops with the filing of a RCE, but argues that the three-year period should restart with the mailing of a notice of allowance.

Regarding the first two calculations that are in dispute:

Patentee disputes the period of reduction of 1 day entered for applicant delay and the period of reduction of 90 days entered for applicant delay, each pursuant to 35 U.S.C. § 154(b)(2)(C) and 37 CFR 1.704(b). These reductions have been reconsidered, and it is determined that entry of a reduction for the first reply timely filed pursuant to 35 U.S.C. § 21(b) is not warranted, and that a reduction of 88 days is warranted for the second reply. Accordingly, the periods of reduction of 1 day and 90 days are being removed, and periods of reduction of zero days and 88 days, respectively, have been entered.

Regarding the third calculation that is in dispute:

Patentee asserts that an eight-day reduction is warranted as a result of the submission of an Information Disclosure Statement (IDS) on July 18, 2011. A notice of allowance was mailed on April 20, 2011. The aforementioned IDS was filed on July 18, 2011, and a "notice of non-compliant information disclosure statement" was mailed seven days later on July 25, 2011. The Office agrees that this warrants a reduction eight days pursuant to 37 C.F.R. § 1.704(c)(10), as the date on which the supplemental response was filed is included in the period of delay. A reduction of eight days has been entered.

Regarding the third calculation that is in dispute: whether the over three-year period that has ceased with the filing of a RCE should restart upon the mailing of a notice of allowance:

RELEVANT STATUTE AND REGULATIONS

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

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

> (i) any time consumed by continued examination of the application requested by the applicant under section 132(b);
> (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or
> (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 C.F.R. § 1.702(b) provides that:

> Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:
> (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);
> (2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);
> (3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;
> (4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or
> (5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

At issue is the period not included in the B-delay for "any time consumed by continued examination of the application requested by the applicant under section 132(b)." See U.S.C. 154(b)(1)(B)(i). **The Office maintains that the entire 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.** As such, the over three-year period begins on March 11, 2008 and ends on March 29, 2009, the day before the first RCE was filed, which amounts to 384 days.

Patentee argues that the 132-day[2] period between the mailing of the notice of allowance on April 20, 2011 and the issuance of the patent on August 30, 2011 should be included in the period of B-delay, as this time "was not 'consumed by continued examination of the application."[3] As such, Patentee argues that the over three-year period begins on March 11, 2008, pauses on March 30, 2009 (the day of the filing of the first RCE), restarts on April 20, 2011 with the mailing of the notice of allowance, and ends on August 30, 2011 with the issuance of the patent.

Patentee's argument has been considered, but not found persuasive. Counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. 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.

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"[4] 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,

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[2] Patentee has miscalculated this period to constitute 133 days.
[3] Petition, page 3.
[4] Id.

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

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)[5]. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. *Websters Collegiate Dictionary*, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application

[5] Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

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[6] 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).

It follows that the patent term adjustment totals 839 (642 examination delay plus 384 B delay minus zero overlap minus 187 applicant delay) days.

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

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. To the extent that Patentee disputes the effect of the RCE cutoff on B delay, 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.

Any subsequent filing pertaining to this matter should indicate that the attorney handling this matter is Paul Shanoski, and may be submitted by mail,[7] hand-delivery,[8] or facsimile.[9] Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web.[10]

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 **eight hundred and thirty-nine (839) days.**

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

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

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[7] Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
[8] Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.
[9] (571) 273-8300: please note this is a central facsimile number.
[10] https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 8,007,444 B2

DATED : **August 30, 2011** **DRAFT**

INVENTOR(S) : Kokate 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 844 days

Delete the phrase "by 844 days" and insert – by 839 days--

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11/2/10

TO SPE OF : ART UNIT 3726

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/077,381 Patent No. 7,757,381

CofC mailroom date 10/21/10

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

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: _____

_____

_____

_____

/JOHN C HONG/

_____

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WELLS ST. JOHN P.S.
601 W. FIRST AVENUE, SUITE 1300
SPOKANE, WA 99201

Mail Date: 08/02/2010

Applicant	: Homer M. Manning	: DECISION ON REQUEST FOR
Patent Number	: 7655968	: RECALCULATION of PATENT
Issue Date	: 02/02/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/077,388	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 03/10/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **276** 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.
11/077,430	03/10/2005	Jonathan J. Shakes	5924-00600	6072

35690 7590 09/14/2011

MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C.
P.O. BOX 398
AUSTIN, TX 78767-0398

EXAMINER	
BURGESS, RAMYA PRAKASAM	

ART UNIT	PAPER NUMBER
3651	

NOTIFICATION DATE	DELIVERY MODE
09/14/2011	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):

patent_docketing@intprop.com
ptomhkkg@gmail.com

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SEP 13 2011

Robert C. Kowert
MEYERTONS, HOOD, KIVLIN, KOWERT &
GOETZEL, P.C.
P.O. Box 398
AUSTIN, TX 78767

In re Application of	:	
Jonathan J. Shakes et al.	:	DECISION ON PETITION
Application No. 11/077,430	:	TO WITHDRAW
Filed: March 10, 2005	:	RESTRICTION REQUIREMENT
For: METHOD AND APPARATUS FOR	:	
MULTI-DESTINATION ITEM	:	
SELECTION USING MOTES	:	

This decision is responsive to applicants' petition under 37 CFR 1.144 filed on April 14, 2008 to request withdrawal of the election requirement as set forth in the Office action mailed March 20, 2007 and thereafter made final in the Office action mailed June 19, 2007. Applicants further request an examination on the merits of all pending claims.

The petition is **DENIED**.

A review of the record reveals that the Office action mailed March 20, 2007 set forth a restriction requirement requiring an election between four inventions identified as:

Invention I, claims 1-6, drawn to a material handling facility;

Invention II, claims 7-14, drawn to a method for picking orders;

Invention III, claims 15-18, drawn to a computer readable medium with instructions for managing a material handling facility; and

Invention IV, claims 19-22, drawn to a receptacle for holding picked items.

Applicants elected Invention IV with traverse in the response filed April 20, 2007. The examiner, upon reconsideration, adhered to the restriction requirement and made the restriction requirement final. This petition was timely filed.

Applicants' petition alleges that the restriction requirement is improper because the examiner failed to provide proper rationales for restriction requirement with regard to inventions being related as process and apparatus for its practice, combination/subcombination and subcombinations useable together. Applicants further allege that claims 7 and 15 do not recite restrictable subcombinations. Applicants further allege that no serious burden on the examiner exists.

With respect to applicants' allegation that the examiner failed to provide proper rationales for restriction requirement with regard to the inventions being related as process and apparatus for its practice, a review of the record indicates the rationales used in the March 20, 2007 restriction requirement relating Inventions, II and I, II and IV, III and I, III and IV as process and apparatus for its practice was commensurate with MPEP 806.05(e). MPEP 806.05(e) states *"a restriction between process and apparatus is proper if either or both of the following can be shown: (A) that the process as claimed can be practiced by another materially different apparatus or by hand; or (B) that the apparatus as claimed can be used to practice another materially different process."* In the instant case the examiner noted "the apparatus could be used to perform different picking procedures, i.e. automatic picking by a robot." Applicant argues the claimed agent could be an automatic picking robot as outlined in applicant's specification; this however serves only to further the examiners assertion that the process as claimed can be practiced by at least two, i.e. either of, by human agent or an automated robot agent, materially different apparatus. As such, the restriction of the inventions as process and apparatus for its practice is considered proper.

With respect to applicants' allegation that the examiner failed to provide proper rationales for restriction requirement with regard to inventions I and IV being related as combination and subcombination under MPEP 806.5(c). MPEP 806.5(c) states *"the burden is on the examiner to suggest an example of separate utility. If applicant proves or provides an argument, supported by facts, that the utility suggested by the examiner cannot be accomplished, the burden shifts to the examiner to document a viable separate utility or withdraw the requirement."* In the instant case the examiner stated a separate utility of the subcombination being capable of being used in "conventional picking procedures." Applicants have failed to provide an argument against the examiner's stated utility. Hence, the restriction between invention I and IV as combination/subcombination is deemed proper.

With respect to applicants' allegation that per MPEP 806.05(d), claims 7 and 15 do not recite restrictable subcombinations, applicant argues the separate utility of invention II identified by the examiner i.e. "such as for use in an order picking method wherein the step of sending a message to the mote by an agent is omitted", is not relevant. Applicants further argue both claims 7 and 15 recite "sending a message to the mote by an agent is omitted." However, applicant's statement is not consistent with the language of claims 7 and 15, as claim 7 recites "a control system sends a message ..."and claim 15 merely recites "sending a message" without any identification of what or who does the sending of the message. The aforementioned is prima facie evidence of the two claims distinctness and separate utility. The separate utility for claim 15 is being use in a system that did not require the message being sent by a control system/agent. Accordingly, the restriction between invention II and III as subcombinations useable together is considered proper.

With respect to applicants' allegation that no serious burden on the examiner exists, the mandatory classification of invention I is class 700/214; invention II is class 700/216, invention III is class 700/215 and/or class 235/383, and invention IV is class 206, or class 340, or class 235/435. Such fields of search are mutually exclusive and their searches are not inherently correlated to their optional cross referencing. Such an expansive search on clearly divergent

inventions that have acquired separate status in the art would be burdensome to the examiner. As such, the restriction between inventions I, II, III and IV is considered proper.

For the foregoing reasons, the examiner's restriction requirement is proper and hereby maintained. Claims 1-4 and 19-22 remain withdrawn from consideration.

The application is being returned to the Board of Appeals and Interferences for a decision on applicant's appeal.

Inquiries related to this decision may be directed to Supervisory Patent Examiner Gene Crawford at (571) 272-6911.

Dave Talbot, Director
Technology Center 3600
(571) 272-5150

GC: 8/22/11

LM

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ADVANCED LIQUID LOGIC, INC.
C/O WARD AND SMITH, P.A.
1001 COLLEGE COURT, P.O. BOX 867
NEW BERN NC 28563-0867

MAILED

AUG 05 2010

OFFICE OF PETITIONS

In re Patent No. 7,569,129 :
Issue Date: August 4, 2009 :
Application No. 11/077,569 : DECISION ON PETITION
Filed: March 10, 2005 :
Attorney Docket No. 060885-00011.D001DV :

This is a decision on the Request For Certificate Of Correction Of Patent Applicant's Mistake (37 C.F.R. §1.323), filed on July 6, 2010, requesting correction on the Title Page of the subject patent to identify the correct assignee's name and residence. The Request is being treated as a Petition Under 37 CFR §3.81(b). A completed Certificate of Correction Form (PTO/SB/44) was submitted with the petition.

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

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

"Advance Liquid Logic, Inc., Research Triangle Park, NC (US)"

to:

--Duke University, Durham, NC (US)--

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

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

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

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

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. 7,569,129.

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

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

In re Application of	:	
Tatsutoshi Abe, et al.	:	
Application No. 11/077,667	:	DECISION GRANTING PETITION
Filed: March 11, 2005	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 393032051300	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, August 30, 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 September 21, 2011 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 2461 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

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

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AUG 10 2011

OFFICE OF PETITIONS

Paper No.

APNEOS CORPORATION
2033 RALSTON AVENUE #41
BELMONT CA 94002

In re Application of	:	
Sotos et al.	:	
Application No. 11/077,796	:	DECISION ON PETITIONS
Filed: March 10, 2005	:	UNDER 37 C.F.R. §§ 1.137(B)
Attorney Docket Number: APN-003	:	AND 1.181(A)
Title: SYSTEM AND METHOD FOR	:	
TREATMENT OF UPPER AIRWAY	:	
DISORDERS	:	

This is a decision on the "PETITION UNDER 37 CFR 1.137(b) TO WITHDRAW THE HOLDING OF ABANDONMENT," filed on July 18, 2011. Petitioner has both requested the withdrawal of the holding of abandonment and asserted that "the entire delay" is "unintentional." Moreover, it is noted that Petitioner has included the $810 fee that is associated with the filing of a petition pursuant to 37 C.F.R. § 1.137(b). As such, this submission is being construed to contain both a petition under 37 C.F.R. § 1.181(a) to withdraw the holding of abandonment and a petition pursuant to 37 C.F.R. § 1.137(b) revive the above-identified application.

The petition pursuant to 37 C.F.R. § 1.181 is **DISMISSED.**

The petition pursuant to 37 C.F.R. § 1.137(b) is **GRANTED.**

BACKGROUND

The above-identified application became abandoned for failure to submit the issue and publication fees in a timely manner in reply to the Notice of Allowance and Issue Fee Due, mailed March 11, 2009, which set a shortened statutory period for reply of three months. No extensions of time are permitted for transmitting issue fees[1] or publication fees.[2] Accordingly, the

1 See MPEP § 710.02(e)(III).
2 See 37 C.F.R. § 1.211(e).

above-identified application became abandoned on June 12, 2009. On June 15, 2009, both the issue and publication fees were received. A Notice of Abandonment was mailed on July 7, 2009.

The petition pursuant to 37 C.F.R. § 1.181:

With this petition, Petitioner has indicated that a response was submitted to the Office on June 11, 2009, however the response "was not accompanied by a Certificate of Mailing." Moreover, the response of June 15, 2009 has been reviewed by the undersigned, and it does not appear to have been sent via Express Mail. As such, the date of receipt is the actual date of receipt, pursuant to 37 C.F.R. § 1.8(a).

It follows that the present set of facts does not support a finding that the holding of abandonment should be withdrawn.

The petition pursuant to 37 C.F.R. § 1.137(b):

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in 37 C.F.R. § 1.17(m);
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
(4) Any terminal disclaimer (and fee as set forth in 37 C.F.R. § 1.20(d)) required pursuant to paragraph (d) of this section.

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

With this petition, Applicant has submitted the petition fee and a statement that is being construed as the proper statement of unintentional delay. As set forth above, the issue and publication fees were received on June 15, 2009. As such, requirements one through three of Rule 1.137(b) have been met. The fourth requirement of Rule 1.137(b) is not applicable, as a terminal disclaimer is not required.[3]

The Office of Patent Publication will be notified of this decision so that the present application can be processed into a patent.

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

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[4] All other inquiries concerning the status of the application should be directed to the Office of Patent Publication at 571-272-4200.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

---

3 See Rule 1.137(d).
4 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.

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IRVINE CA 92618

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SEP 26 2011
OFFICE OF PETITIONS

In re Application of	:	
HUANG, et al	:	
Application No. 11/078,226	:	DECISION ON PETITION
Filed: March 29, 2005	:	
Attorney Docket No. JCLA15591	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 9, 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 September 2, 2011, as required by the Notice of Allowance and Fee(s) Due, mailed June 2, 2011, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on September 3, 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 and publication fee of $300; (2) the petition fee of $1620; 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

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MAR 24 2011

OFFICE OF PETITIONS

GOWLING LAFLEUR HENDERSON LLP (RIM)
160 ELGIN STREET, SUITE 2600
OTTAWA ON K1P 1C3 CA CANADA

In re Application of :
Michael Shenfield et al. :
Application No. 11/078,331 : ON PETITION
Filed: March 14, 2005 :
Attorney Docket No. **T8468521US** :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 15, 2010, to revive the above-identified application.

The application became abandoned for failure to submit a corrected specification in a timely manner in reply to the Supplemental Notice of Allowability, mailed July 16, 2010, which set a period for reply of thirty (30) days. Accordingly, this application became abandoned on August 17, 2010.

The petition is hereby **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of corrected specification, (2) the petition fee of $1,620; and (3) a proper statement of unintentional delay.

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

This application is being referred to the Technology Center AU 2191 via Office of Data Management for appropriate action by the Examiner in the normal course of business.

JoAnne Burke
Petitions Examiner
Office of Petitions

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KILPATRICK TOWNSEND & STOCKTON LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO CA 94111-3834

In re Application of :
Johnson, David Matthew :
Application No. 11/078,354 : ON PETITION
Filed: March 14, 2005 :
Attorney Docket No. 026975-000210US :

This is a decision on the petition under 37 CFR 1.181, filed October 4, 2011, requesting the withdrawal of the holding of abandonment in the above-identified application and has been so treated.

The petition to withdraw the holding of abandonment is **GRANTED.**

A Notice of Appeal and a Pre-Appeal Brief Request for Review were filed on January 27, 2011, in response to a final Office action issued on October 27, 2010. On May 13, 2011, a Notice of Panel Decision from Pre-Appeal Brief Review was mailed. A Notice of Abandonment was mailed September 26, 2011.

Petitioner states that the Notice of Abandonment was premature. Petitioner believes, with an extension of time, the period for reply should be until November 13, 2011.

The Notice of Panel Decision from Pre-Appeal Brief Review set forth a time period for filing an appeal brief as such: one month from the mailing of the decision or the balance of the two-month time period running from the receipt of the notice of appeal, whichever is greater. Further, the Notice stated that time period was extendable under 37 CFR 1.136.

As the Notice was mailed May 13, 2011, almost four months after the Notice of Appeal was originally filed, petitioner was given the one-month time period to reply. Combined with a maximum extension of time of five months, the period for reply could potentially be extended to November 13, 2011.

On October 13, 2011, petitioner submitted an Appeal Brief with a four-month extension of time.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status. A petition to withdraw the holding of abandonment under the provisions of 37 CFR 1.181 does not require a fee and none has been charged.

This matter is being referred to Technology Center AU 3693 for further processing.

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

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

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

MAILED

SEP 16 2010

OFFICE OF PETITIONS

In re Patent No. 7432251	:	DECISION ON REQUEST
Saghatelyan et al.	:	FOR
Issue Date: 10/07/2008	:	RECONSIDERATION OF
Application No. 11/078479	:	PATENT TERM ADJUSTMENT
Filed: 03/14/2005	:	
Atty Docket No.	:	
03495.0331-00	:	

This is a decision on the petition filed on December 5, 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 thirty-six (36) days.

The Office apologizes for the delay in responding to the subject petition.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by thirty-six (36) days is **GRANTED**.

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 **thirty-six (36)** days.

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

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,432,251 B2

DATED : **Oct. 7, 2008** **DRAFT**

INVENTOR(S) : Saghatelyan 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 0 days.

Delete the phrase "by 0 days" and insert – by 36 days--

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AUG 17 2010

OFFICE OF PETITIONS

HAHN LOESER & PARKS, LLP
One GOJO Plaza
Suite 300
AKRON OH 44311-1076

In re Application of :
Kevin M. Crucs :
Application No. 11/078,560 : DECISION ON PETITION
Filed: March 11, 2005 :
Attorney Docket No. 116385.00076 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 1, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed December 11, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned at midnight March 11, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (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) 272-3213.

This application is being referred to Technology Center AU 2167 for appropriate action by the Examiner in the normal course of business on the reply received July 1, 2010.

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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EDWARDS ANGELL PALMER & DODGE LLP
P.P. BOX 55874
Boston, MA 02205

FEB 25 2011

In re Application of	:	
Freilich et al	:	
Serial No.: 11/078,600	:	PETITION DECISION
Filed: March 11, 2005	:	
Attorney Docket No.: 81279(49384)	:	

This is a decision on the PETITION FOR ACCEPTANCE OF COLOR DRAWINGS UNDER 37 CFR 1.84(a)(2). The petition was filed June 9, 2008. Entry of color drawings requires: 1) three sets of the color drawings, 2) a proper amendment to the specification indicating color photographs or drawings are present in the file, and 3) the required fee under 37 CFR 1.17(h).

A review of the application record indicates that the petition meets all the requirements for acceptance of color drawings. This is not be construed that all of the drawings are accepted, only that the color drawings are acceptable.

The petition is **GRANTED**.

Should there be any questions with respect to this decision, please contact Cris L Rodriguez, by mail addressed to: Director, Technology Center 3700, at the address listed above, or by telephone at 571-272-4964 or by facsimile transmission at 571-273-8300.

Cris L. Rodriguez
SPE, Art Unit 3732
February 23, 2011

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HAYNES AND BOONE, LLP
IP SECTION
2323 VICTORY AVENUE, SUITE 700
DALLAS TX 75219

In re Patent No. 7, 477,842
Issued: January 13, 2009
Application No. 11/078,667
Filed: March 11, 2005
Attorney Docket No.: M-15490 US (70064.18)

ON PETITION

This is a decision regarding your request for acceptance of a fee deficiency submission and loss of small entity status filed February 2, 2012, which is being treated under 37 CFR 1.28.

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

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

Your fee deficiency submission in the amount of $565.00 under 37 CFR 1.28 has been applied and is hereby accepted. The petition is therefore **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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

PAPER NO.:

DATE : **11/08/10**

TO SPE OF : ART UNIT **2467 Attn: KUMAR PANKAJ (SPE)**

SUBJECT : Request for Certificate of Correction for Appl. No.: **11/078738** Patent No.: **7773581**

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 (RSQ)
2800 South Randolph Street, Suite 9XXXX
Arlington, VA 22206
PALM Location 7580

Please check the Drawings

Tasneem Siddiqui
Certificates of Correction Branch
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: _____

_____

_____

_____

_____

/Pankaj Kumar/ **2467**
SPE **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/078,899	03/10/2005	Irina M. Conboy	STAN-348 (S02-231)	2888

7590 10/14/2010

Stanford University Office of Technology Licensing
Bozicevic, Field & Francis LLP
1900 University Avenue
Suite 200
East Palo Alto, CA 94303

EXAMINER	
KELLY, ROBERT M	

ART UNIT	PAPER NUMBER
1633	

MAIL DATE	DELIVERY MODE
10/14/2010	PAPER

ACKNOWLEDGEMENT OF REQUEST

Notice of Allowance/Allowability Mailed

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

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

FORM PTOM327-5 (Rev. 02/08)

UNITED STATES PATENT AND TRADEMARK OFFICE

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

October 13, 2010

Stanford University Office of Technology Licensing
Bozicevic, Field & Francis LLP
1900 University Avenue
Suite 200
East Palo Alto CA 94303

In re Application of	:	
Irina M. Conboy, et al	:	**DECISION ON PETITION**
Application No. 11078899	:	
Filed: 03/10/2005	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. **STAN-348 (S02-231)**	:	***DRAWINGS***

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) March 10, 2005.

The petition is **GRANTED**.

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

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

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

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

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

/Kimberly Terrell/
Manager
Office of Data Management
Publications Branch

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Application of
Howard Leigh Malm

Application No. 11078905

Filed: March 9,2005

Attorney Docket No. REM10001

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

This is a decision on the electronic petition under 37 CFR 1.102 (c)(1), filed 28-JAN-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.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 10/26/10

TO SPE OF : ART UNIT 3676 Bomar Thomas (Spe)

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/078,956 Patent No.: 7398827

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Certificates of Correction Branch
703-756-1571 _____

Thank You For Your Assistance

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

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

Comments: _____

_____

_____

_____

_____

SPE

3676
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

TOD R NISSLE
PO BOX 55630
PHOENIX AZ 85078

MAILED
APR 03 2012
OFFICE OF PETITIONS

In re Application of	:	
Pingree and Beninsig	:	
Application No. 11/079,030	:	DECISION ON PETITIONS
Filed: March 14, 2005	:	PURSUANT TO
Attorney Docket No. 1328-P-1	:	37 C.F.R. §§ 1.137(B) AND
Title: METADATA MANAGEMENT	:	1.181(A)
CONVERGENCE PLATFORMS, SYSTEMS	:	
AND METHODS	:	

This is a decision on the petition pursuant to 37 C.F.R. § 1.181(a), filed January 14, 2008, requesting that the holding of abandonment in the above-identified application be withdrawn, as well as the petition to revive the application pursuant to 37 C.F.R. § 1.137(b) that was filed February 28, 2012.

The petition pursuant to 37 C.F.R. § 1.181(a) is **DISMISSED.**

The petition pursuant to 37 C.F.R. § 1.137(b) is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed May 17, 2007, which set a shortened statutory period for reply of three months. No response was received, and no extensions of time under the provisions of 37 C.F.R. § 1.136(a) were requested. Accordingly, the above-identified application became abandoned on August 18, 2007. A notice of abandonment was mailed on January 7, 2008.

The petition pursuant to 37 C.F.R. § 1.181(a):

This petition cannot be treated on the merits, as it has not been executed in accordance with 37 C.F.R. § 1.33(b)(4). More specifically, this petition has been signed by one of the two joint inventors. 37 C.F.R. § 1.33(b)(4) states, *in toto*:

> 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:
>
> All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

As such, this petition must be dismissed.

It is noted on June 29, 2007, the Office mailed a "DECISION ON PETITION TO WITHDRAW FROM RECORD" to the former attorney of record. This communication expressly indicated "[t]here is an outstanding Office action mailed May 17, 2007 that requires a reply by the applicant," and a copy of this communication was sent to each of the two joint inventors at the addresses which appear on the declaration that was included on initial deposit.

The petition pursuant to 37 C.F.R. § 1.137(b):

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in 37 C.F.R. § 1.17(m);
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
(4) Any terminal disclaimer (and fee as set forth in 37 C.F.R. § 1.20(d)) required pursuant to paragraph (d) of this section.

With this petition, Petitioner has submitted an amendment, the petition fee, and the proper statement of unintentional delay. As such, the first three requirements of Rule 1.137(b) have been met. The fourth requirement of Rule 1.137(b) is not applicable.

It follows this petition is granted.

The Technology Center will be notified of this decision, and jurisdiction over this application is transferred to the Technology Center, so that the application may receive further processing. The Technology Center's support staff will notify the Examiner of this decision, so that the amendment that was received on February 28, 2012 can be processed in due course.

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

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[1] All other inquiries concerning this application should be directed to the Technology Center.

Paul Shanoski
Senior Attorney
Office of Petitions

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

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	11079081
Filing Date	15-Mar-2005
First Named Inventor	Hakan Thysell
Art Unit	3723
Examiner Name	EILEEN MORGAN
Attorney Docket Number	328214US8
Title	METHOD AND TOOL FOR MAINTENANCE OF HARD SURFACES, AND A METHOD FOR MANUFACTURING SUCH A TOOL

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	/Aldo Martinez/
Name	Aldo Martinez
Registration Number	61357

UNITED STATES 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 5, 2012

In re Application of :

Hakan Thysell

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11079081

Filed : 15-Mar-2005

Attorney Docket No : 328214US8

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed April 5, 2012 , to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

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

Petitioner is advised that the issue fee paid in this application cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.

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

This application file is being referred to Technology Center AU 3723 for processing of the request for continuing examination under 37 CFR 1.114 .

Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Date : September 8, 2010

Patent No. :7082021
Ser. No. :11/079557
Inventor(s) : David Y. Chan et al.
Issued :July 24, 2006
Title :CIRCUIT INTERRUPTER WITH IMPROVED SURGE SUPPRESSION

Re: Request for Certificate of Correction

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

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

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

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

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

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

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

By mail:	Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450
By hand:	Customer Service Window Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(703) 872-9306 ATTN: Office of Petitions
Electronic Filing	uspto.gov/ebc/index.html (must be registered as an e-filer to submit responses) Support 1-866-217-9197 571-272-4100

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

For Mary Diggs
Decisions & Certificates
of Correction Branch
(703) 756-1580 or (703) 756-1541

Carter, Deluca, Farrell & Schmidt, LLP
445 Broad Hollow Road, Suite 420
Melville, NY 11747

/arg

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Patent No. 7094080
Issue Date: August 22,2006
Application No. 11079629
Filed: March 14,2005
Attorney Docket No. 2188002US2AP

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

This is a decision on the electronic petition, filed December 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 December 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)
7094080	2006-08-22	11079629	2005-03-14	182-539

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

SMALL ENTITY

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

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

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

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

SURCHARGE

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

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

The appropriate maintenance fee must be submitted with this petition.

STATEMENT

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

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

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

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

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

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

○ A sole patentee

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

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

○ The assignee of record of the entire interest

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

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Kathleen A. Costigan/	Date (YYYY-MM-DD)	2010-12-12
Name	Kathleen A. Costigan	Registration Number	56006

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No.

PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK NJ 08933-7003

MAILED
MAR 15 2011
OFFICE OF PETITIONS

In re Application of :
Breslin et al. : DECISION ON APPLICATION
Application No. 11/079,647 : FOR
Patent No. 7,741,356 : PATENT TERM ADJUSTMENT
Filed: March 14, 2005 :
Issued: June 22, 2010 :
Docket No. PRD2200USNP :
Title: NOVEL COMPOUNDS AS OPIOID :
RECEPTOR MODULATORS :

This is a decision on the "PETITION UNDER 37 C.F.R. § 1.181 RE DECISION ON APPLICATION FOR PATENT TERM ADJUSTMENT" filed July 19, 2010. Patentee requests that the determination of patent term adjustment under 35 U.S.C. § 154(b) be corrected from 1009 days to 1107 days. More specifically, Patentee contends that a single period of adjustment for Office delay pursuant to 37 C.F.R. § 1.702(a)(1) should be 428 days, and not 330 days.

The petition to change the patent term adjustment determination under 35 U.S.C. § 154(b) from 1009 days to a 1107 days is **DISMISSED.**

RELEVANT BACKGROUND

On April 9, 2007 (14 months and 330 days after the filing of this application), the United States Patent and Trademark Office (USPTO) entered an Office action under 35 U.S.C. § 132(a) (a restriction requirement). The USPTO entered a subsequent Office action under 35 U.S.C. § 132(a) (a restriction requirement) on July 16, 2007 (14 months and 428 days after the filing of this application), which indicated, *in pertinent part* "[t]he Restriction Requirement of April 09, 2007 is rescinded and is

replaced by this action."[1] Patentee argues that the examination delay pursuant to 37 C.F.R. § 1.702(a)(1) should be 428 days, not 330 days.

Pursuant to 37 C.F.R. § 1.702(a)(1):

> "Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to: (1) Mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 in an international application;"

On January 13, 2009, Applicants filed a petition requesting, *inter alia*, that the aforementioned delay pursuant to 37 C.F.R. § 1.702(a)(1) should be 428 days, not 330 days. The Office dismissed this request via the mailing of a decision on May 18, 2010.

RELEVANT STATUTES

35 U.S.C. § 131 provides that:

> The Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor.

35 U.S.C. § 132 provides that:

> (a) Whenever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application; and if after receiving such notice, the applicant persists in his claim for a patent, with or without amendment, the application shall be reexamined. No amendment shall introduce new matter into the disclosure of the invention.
> (b) The Director shall prescribe regulations to provide for the continued examination of applications for patent at the request of the applicant. The Director may establish appropriate fees for such continued examination and shall provide a 50 percent

[1] Restriction requirement of July 16, 2007, page 2.

> reduction in such fees for small entities that qualify for reduced fees under section 41(h)(1) of this title.

35 U.S.C. § 133 provides that:

> Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Director in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Director that such delay was unavoidable.

35 U.S.C. § 154(b)(1)(A), provides, in relevant part:

> Subject to the limitations under [35 U.S.C. § 154(b)(2)], if the issue of an original patent is delayed due to the failure of the Patent and Trademark Office to –
>
> provide at least one of the notifications under section 132 of this title or a notice of allowance under section 151 of this title not later than 14 months after…the date on which an application was filed under section 111(a) of this title;
>
> the term of the patent shall be extended 1 day for each day after the end of this [fourteen-month period] until [the response] is taken.

DECISION

Patentee in essence argues that the restriction requirement of July 16, 2007 "vacated" the restriction requirement of April 9, 2007, and as such the restriction requirement of April 9, 2007 should be treated as not having been issued for purposes of determining whether the issuance of the patent was delayed due to the failure of the USPTO to mail an action under 35 U.S.C. § 132 within 14 months after the date the application was filed under 35 U.S.C. § 111(a). Patentee's arguments have been considered but are not persuasive.

The vacatur of an Office action sets aside or withdraws any rejection, objection or requirement in an Office action, as well as the requirement that the applicant timely reply to the Office action to avoid abandonment under 35 U.S.C. § 133. The vacatur of an Office action signifies that the Office action has been set aside, voided, or withdrawn as of the date of the vacating Office action or notice. The vacatur of an Office action,

however, does **not** signify that the vacated Office action is void *ab initio* and is to be treated as if the USPTO had never issued the Office action. The patent examination process provided for in 35 U.S.C. §§ 131 and 132 contemplates that Office actions containing rejections, objections or requirements will be issued, and that the applicant will respond to these Office action, "with or without amendment." (35 U.S.C. § 132(a)). The mere fact that an examiner or other USPTO employee upon further reflection determines that an Office action, or that a rejection, objection or requirement in an Office action, is not correct and must be removed does not warrant treating the Office action as void *ab initio* and as if the USPTO had never issued the Office action.

The USPTO appreciates that there may be situations in which it is appropriate to treat an Office action or notice issued in an application as void *ab initio* and as if the USPTO had never issued the Office action. However, these would be extremely rare situations, such as the issuance of an Office action or notice by an employee who does not have the authority to issue that type of Office action or notice, the issuance of an Office action or notice in the wrong application, or the issuance of an Office action or notice containing language not appropriate for inclusion in an official document. In essence, the situations in which it is appropriate to treat an Office action or notice issued in an application as void *ab initio* and as if the USPTO had never issued the Office action are the situations in which it is appropriate to expunge an Office action or notice from the USPTO's record of the application. That is simply **not** the case in this situation.

Pursuant to 35 U.S.C. § 154(b)(1)(A)(i), patentees are entitled to day-to-day adjustment if the USPTO fails to provide a notification under section 132 of this title not later than 14 months after the date on which an application was filed under section 111(a) of this title. The record of the above-identified patent indisputably indicates that the USPTO entered an Office action under 35 U.S.C. § 132, specifically a restriction requirement, on April 9, 2007, which is 14 months and 330 days after the date on which the application was filed under 35 U.S.C. § 111(a). The fact that the Office later set aside the restriction requirement of April 9, 2007 does not negate the fact that the Office responded within the meaning of 35 U.S.C. § 154(b)(1)(A)(i) and 37 CFR 1.702(a)(1) on April 9,

2007. Unless expunged from the record (which is not warranted in this situation), for purposes of calculating patent term adjustment, the Office action entered by the examiner on April 9, 2007 was properly used to determine whether the USPTO delayed the issuance of the above-identified patent by failing to provide a notification under 35 U.S.C. § 132 within 14 months after the date on which the application was filed under 35 U.S.C. § 111(a). *See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term*, 65 *Fed. Reg.* 54366 (Sept. 18, 2000) (final rule).

CONCLUSION

For the above-stated reasons, a review of the petition and file wrapper of the above-identified patent reveals that the patent term adjustment under 35 U.S.C. § 154(b) is not entitled to an adjustment of 1107 days based on the examination delay pursuant to 37 C.F.R. § 1.702(a)(1). Therefore, the petition to change the patent term adjustment indicated on the above-identified patent to 1107 days is dismissed.

In view thereof, no adjustment to the patent term will be made.

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.

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,[2] hand-delivery,[3] or facsimile.[4] Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web.[5]

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[2] Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
[3] Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.
[4] (571) 273-8300: please note this is a central facsimile number.
[5] https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3225.[6]

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

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

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Paper No.

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OFFICE OF PETITIONS

In re Application of	:	
Breslin et al.	:	DECISION ON APPLICATION
Application No. 11/079,647	:	FOR
Patent No. 7,741,356	:	PATENT TERM ADJUSTMENT
Filed: March 14, 2005	:	
Issued: June 22, 2010	:	
Docket No. PRD2200USNP	:	
Title: NOVEL COMPOUNDS AS OPIOID RECEPTOR MODULATORS	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PETITION DECISION" filed April 15, 2011. Patentee requests that the determination of patent term adjustment under 35 U.S.C. § 154(b) be corrected from 1009 days to 1107 days. More specifically, Patentee contends that a prior decision of the Office was both erroneous and unconstitutional.

The request for reconsideration of the patent term adjustment under 37 C.F.R. § 1.705(b) is **DENIED**. [1]

THERE WILL BE NO FURTHER RECONSIDERATION OF THIS MATTER BY THE OFFICE.

RELEVANT BACKGROUND

On April 9, 2007 (14 months and 330 days after the filing of this application), the United States Patent and Trademark Office (USPTO) entered an Office action under 35 U.S.C. § 132(a) (a restriction requirement). The USPTO entered a subsequent Office action under 35 U.S.C. § 132(a) (a restriction requirement) on July 16, 2007 (14 months and 428 days after the filing of this

[1] This decision is a final agency action within the meaning of 5 U.S.C. § 704 for the purposes of seeking judicial review. See MPEP § 1002.02.

application), which indicated, *in pertinent part* "[t]he Restriction Requirement of April 09, 2007 is rescinded and is replaced by this action."[2] Patentee argues that the examination delay pursuant to 37 C.F.R. § 1.702(a)(1) should be 428 days, not 330 days.

Pursuant to 37 C.F.R. § 1.702(a)(1):

> "Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to: (1) Mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 in an international application;"

On January 13, 2009, Applicants filed a petition requesting, *inter alia*, that the aforementioned delay pursuant to 37 C.F.R. § 1.702(a)(1) should be 428 days, not 330 days. The Office dismissed this request via the mailing of a decision on May 18, 2010.

On July 19, 2010, Patentee filed a petition requesting that the aforementioned delay pursuant to 37 C.F.R. § 1.702(a)(1) should be 428 days, not 330 days. The Office dismissed this request via the mailing of a decision on March 15, 2011 which was signed by Senior Attorney Paul Shanoski.

RELEVANT STATUTES

35 U.S.C. §§ 3(b)(3)(A) and (B) provides that:

> "(3) OTHER OFFICERS AND EMPLOYEES.- The Director shall-
>
> (A) appoint such officers, employees (including attorneys), and agents of the Office as the Director considers necessary to carry out the functions of the Office; and
>
> (B) define the title, authority, and duties of such officers and employees and delegate to them such of the powers vested in the Office as the Director may determine. The Office shall not be subject to any administratively or statutorily imposed limitation on positions or personnel, and no positions or personnel of the

[2] Restriction requirement of July 16, 2007, page 2.

Office shall be taken into account for purposes of applying any such limitation."

35 U.S.C. § 131 provides that:

"The Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor."

35 U.S.C. § 132 provides that:

"(a) Whenever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application; and if after receiving such notice, the applicant persists in his claim for a patent, with or without amendment, the application shall be reexamined. No amendment shall introduce new matter into the disclosure of the invention.
(b) The Director shall prescribe regulations to provide for the continued examination of applications for patent at the request of the applicant. The Director may establish appropriate fees for such continued examination and shall provide a 50 percent reduction in such fees for small entities that qualify for reduced fees under section 41(h)(1) of this title."

35 U.S.C. § 154(b)(1)(A), provides, in relevant part:

"Subject to the limitations under [35 U.S.C. § 154(b)(2)], if the issue of an original patent is delayed due to the failure of the Patent and Trademark Office to –

provide at least one of the notifications under section 132 of this title or a notice of allowance under section 151 of this title not later than 14 months after…the date on which an application was filed under section 111(a) of this title;

the term of the patent shall be extended 1 day for each day after the end of this [fourteen-month period] until [the response] is taken."

DECISION

In the petition filed on July 19, 2010, Patentee essentially argued that the restriction requirement of July 16, 2007 "vacated" the restriction requirement of April 9, 2007, and as

such the restriction requirement of April 9, 2007 should be treated as not having been issued for purposes of determining whether the issuance of the patent was delayed due to the failure of the USPTO to mail an action under 35 U.S.C. § 132 within 14 months after the date the application was filed under 35 U.S.C. § 111(a). The decision which was mailed on March 15, 2011 set forth, *in pertinent part*:

> "The vacatur of an Office action sets aside or withdraws any rejection, objection or requirement in an Office action, as well as the requirement that the applicant timely reply to the Office action to avoid abandonment under 35 U.S.C. § 133. The vacatur of an Office action signifies that the Office action has been set aside, voided, or withdrawn as of the date of the vacating Office action or notice. The vacatur of an Office action, however, does **not** (emphasis included) signify that the vacated Office action is void *ab initio* and is to be treated as if the USPTO had never issued the Office action. The patent examination process provided for in 35 U.S.C. §§ 131 and 132 contemplates that Office actions containing rejections, objections or requirements will be issued, and that the applicant will respond to these Office action, "with or without amendment." (35 U.S.C. § 132(a)). The mere fact that an examiner or other USPTO employee upon further reflection determines that an Office action, or that a rejection, objection or requirement in an Office action, is not correct and must be removed does not warrant treating the Office action as void *ab initio* and as if the USPTO had never issued the Office action.
>
> The USPTO appreciates that there may be situations in which it is appropriate to treat an Office action or notice issued in an application as void *ab initio* and as if the USPTO had never issued the Office action. However, these would be extremely rare situations, such as the issuance of an Office action or notice by an employee who does not have the authority to issue that type of Office action or notice, the issuance of an Office action or notice in the wrong application, or the issuance of an Office action or notice containing language not appropriate for inclusion in an official document. In essence, the situations in which it is appropriate to treat an Office action or notice issued in an application as void *ab initio* and as if the USPTO had never issued the Office action are the situations in which it is appropriate to expunge an Office action or notice from the USPTO's record of the application. That is simply **not** the case in this situation.
>
> Pursuant to 35 U.S.C. § 154(b)(1)(A)(i), patentees are entitled to day-to-day adjustment if the USPTO fails to provide a notification under section 132 of this title not later than 14 months after the date on which an application was filed under section 111(a) of this title. The record of the above-identified

> patent indisputably indicates that the USPTO entered an Office action under 35 U.S.C. § 132, specifically a restriction requirement, on April 9, 2007, which is 14 months and 330 days after the date on which the application was filed under 35 U.S.C. § 111(a). The fact that the Office later set aside the restriction requirement of April 9, 2007 does not negate the fact that the Office responded within the meaning of 35 U.S.C. § 154(b)(1)(A)(i) and 37 CFR 1.702(a)(1) on April 9, 2007. Unless expunged from the record (which is not warranted in this situation), for purposes of calculating patent term adjustment, the Office action entered by the examiner on April 9, 2007 was properly used to determine whether the USPTO delayed the issuance of the above-identified patent by failing to provide a notification under 35 U.S.C. § 132 within 14 months after the date on which the application was filed under 35 U.S.C. § 111(a). *See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term*, 65 *Fed. Reg.* 54366 (Sept. 18, 2000) (final rule)."
>
> Decision on petition, mailed on March 15, 2011, pages 3-5.

With the petition dated April 15, 2011, Patentee makes two arguments:

1. The decision dated March 15, 2011 is improper substantively, as the findings contained therein are "inconsistent with the legal authorities that the Petition Decision acknowledges to be applicable,"[3] and;

2. The decision dated March 15, 2011 is unconstitutional, as it was not signed by "the Director or any other Officer of the PTO."[4]

Regarding the first argument, **the Office holds that the vacatur of an Office action does not signify that the vacated Office action is void *ab initio* and is to be treated as if the USPTO had never issued the Office action**, as set forth on pages 3-4 of the decision mailed on March 15, 2011, for the reasons set forth therein.

Regarding the second argument, **the Office holds that the Director of the USPTO is free to delegate decision making authority as appropriate**. Since the file history has been reviewed in the preparation of this decision and the decision of March 15, 2011 is hereby ratified, no issue is believed to be

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[3] Petition dated April 15, 2011, page 2.
[4] Id.

present on the point of authority to sign the decision. Moreover, as this decision has been signed by the Director of the Office of Petitions, this issue has been rendered moot.

CONCLUSION

In view thereof, the patent term adjustment of 1009 days as set forth in the mailing of March 15, 2011 is correct.

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

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.

Anthony Knight
Director
Office of Petitions

cc: Joseph Lucci
Woodcock Washburn LLP
Circa Centre
2929 Arch Street, 12th Floor
Philadelphia, PA 19104-2891

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SOUTHFIELD, MI 48075

In re Application of
STYLES et al
Application No.: 11/079,658
Filing Date: 14 March 2005
Attorney Docket No.: 8111793 (JAGP 0101 PUSA)

DECISION ON PETITIONS
UNDER 37 CFR 1.78(a)(3)
AND 37 CFR 1.55(c)

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed on May 21, 2010 to accept an unintentionally delayed claim under 35 U.S.C. 120 for the benefit of priority to the prior-filed international application set forth in the supplemental application data sheet (ADS) filed on June 17, 2010. Because the supplemental ADS includes a corrected claim of foreign priority, the correspondence is also being treated as a petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim under 35 U.S.C. 119(a)-(d). No additional petition fee is required.

The renewed petition under 37 CFR 1.78(a)(3) is **GRANTED**.

The petition under 37 CFR 1.55(c) is **DISMISSED**.

I. Renewed Petition under 37 CFR 1.78(a)(3)

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

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

(1) the reference required by 35 U.S.C. 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;

(2) the surcharge set forth in 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 complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) a reference to the prior-filed nonprovisional application has been included in an ADS, as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. 120 to the prior-filed international application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

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

II. Petition under 37 CFR 1.55(c)

The present nonprovisional application was filed after November 29, 2000, and did not include a reference to the international application as a foreign application, for which benefit is now sought, within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application. Therefore, since the claim for priority is submitted after the period specified in 37 CFR 1.55(a)(1)(i), this is an appropriate petition under the provisions of 37 CFR 1.55(c).

A petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority requires:

(1) the claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country, and the filing date and be included either in an oath or declaration (37 CFR 1.63(c)(2)) or in an Application Data Sheet (37 CFR 1.76(b)(6);
(2) the surcharge as 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 1.55(a)(1) and the date the claim was filed was unintentional. (The Director may require additional information where there is a question whether the delay was unintentional.)

The petition fails to satisfy item (1) in that the filing date of the foreign application GB 0220712.4 appears to be incorrectly listed on the supplemental ADS. The supplemental ADS states the filing date as June 9, 2002[1], whereas the published international application lists the filing date as September 6, 2002.

Applicant is advised that a certified copy of the foreign priority application GB 0220712.4 along with any required processing fee under 37 CFR 1.17(i) must be filed before a patent is granted on the present application. 37 CFR 1.55(a)(2).

Applicant is further advised that the supplemental ADS includes a foreign priority claim to international application PCT/GB2003/003798, filed on September 2, 2003. 35 U.S.C. 365(a) specifies that a national application is entitled to foreign priority based on an international application which designated at least one country other than the United States, subject to the requirements of 35 U.S.C. 119(a)-(d). 35 U.S.C. 119(a) requires that the prior foreign application have a filing date within twelve months of the national application filing date. Because the present application was filed more than twelve months after the filing date of international application PCT/GB2003/003798, a claim of foreign priority to international application PCT/GB2003/003798 would not be proper.

Any questions concerning this matter may be directed to Bryan Lin at (571) 272-3303.

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

Bryan Lin
Legal Examiner
Office of PCT Legal Administration

[1] The first paragraph of the specification also lists the foreign priority date as June 9, 2002.

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PCT LEGAL ADMINISTRATION

In re Application of :
STYLES et al :
Application No.: 11/079,658 : DECISION ON PETITION
Filing Date: 14 March 2005 : UNDER 37 CFR 1.55(c)
Attorney Docket No.: 8111793 (JAGP 0101 PUSA) :

This is a decision on the renewed petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim under 35 U.S.C. 119(a)-(d).

The renewed petition under 37 CFR 1.55(c) is **GRANTED**.

The present application was filed after November 29, 2000, and did not include a reference to the foreign application, for which benefit is now sought, within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application. Therefore, since the claim for priority is submitted after the period specified in 37 CFR 1.55(a)(1)(i), this is an appropriate petition under the provisions of 37 CFR 1.55(c).

A petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority requires:

(1) The nonprovisional application claiming the benefit of an earlier filing date must be filed on or after November 29, 2000;

(2) the claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country, and the filing date and be included either in an oath or declaration (37 CFR 1.63(c)(2)) or in an Application Data Sheet (37 CFR 1.76(b)(6);

(3) the surcharge as set forth in 37 CFR 1.17(t);

(4) a statement that the entire delay between the date the claim was due under 37 CFR 1.55(a)(1) 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); and

(5) the above-identified nonprovisional application must be filed within 12 months of the filing date of the foreign application.

The above-identified pending nonprovisional application was filed on March 14, 2005, which is after November 29, 2000, and the parent application was filed within 12 months of September 6, 2002 (the filing date of the foreign application to which benefit is now being claimed). On September 8, 2010, a supplemental Application Data Sheet was received which identifies the foreign application for which priority is claimed by application number, country and filing date. The required petition fee has been submitted. Lastly, petitioner has provided an adequate statement of unintentional delay.

All requirements being met, the petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority under 35 U.S.C. § 119(a)-(d) is granted.

A Corrected Filing Receipt which reflects the above-noted foreign application accompanies this decision on petition.

This matter is being referred to Technology Center AU 3664 for examination, including consideration by the examiner of record of the foreign priority claim under 35 U.S.C. § 119(a)-(d).

Any questions concerning this matter may be directed to Bryan Lin at (571) 272-3303.

Bryan Lin
Legal Examiner
Office of PCT Legal Administration

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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NOV 23 2010

OFFICE OF PETITIONS

XENOPORT, INC.
3410 CENTRAL EXPRESSWAY
SANTA CLARA, CA 95051

In re Application of :
Kenneth C. Cundy :
Application No. 11/079,678 : ON PETITION
Filed: March 15, 2005 :
Attorney Docket No. X-0063 R1 :

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

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, November 24, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on February 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 an amendment , (2) the petition fee of $810, and (3) a proper statement of unintentional delay.

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

This application is being referred to Technology Center 1627 for further examination on the merits

Alicia Kelley
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 2-17-11

TO SPE OF : ART UNIT 3775

SUBJECT : Request for Certificate of Correction for Appl. No.: 11079773 Patent No.: 7857856

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: The changes to the specification appear to be grammatical changes and would not change the scope or introduce new matter. The changes to the claims do not change the scope of the claims or add new matter. /NWW/

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

/Thomas Barrett/ 3775

SPE Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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JONES DAY
222 EAST 41ST ST
NEW YORK NY 10017

MAILED
MAY 20 2011
OFFICE OF PETITIONS

In re Application of :
Arkin et al. :
Application No. 11/080,102 : ON APPLICATION FOR
Filed: March 14, 2005 : PATENT TERM ADJUSTMENT
Atty Docket No. 11731-008-999 :

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b), filed April 26, 2011. Applicants submit that the correct patent term adjustment to be indicated on the patent is five hundred eighty-five (585) days, not one hundred fifty-five (155) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

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

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

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

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

The Office acknowledges receipt the required $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.

---

[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.

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
Alexandria, VA 22313-1450
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In re Patent No. 7113991
Issue Date: September 26,2006
Application No. 11080133
Filed: March 15,2005
Attorney Docket No. VRT0076C1US

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

This is a decision on the electronic petition, filed November 18,2010 ,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 18,2010 . 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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NOV 22 2011

OFFICE OF PETITIONS

QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO CA 92121

In re Patent No. 8,019,333	:	DECISION ON REQUEST
Seckendorf, et al.	:	FOR
Issue Date:September 13, 2011	:	RECONSIDERATION OF
Application No. 11/080,228	:	PATENT TERM ADJUSTMENT
Filed: March 14, 2005	:	and
Atty Docket No.040136	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on October 27, 2011, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by nine hundred and sixty-four (964) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by nine hundred and sixty-six (966) days is **GRANTED to the extent indicated herein.**

The above-cited patent issued on September 13, 2011. The instant petition was filed on October 27, 2011, within two months of the issue date of the patent and is, therefore, timely. Patentees dispute certain periods of reduction to the patent term adjustment. Specifically, patentees state:

> …the Office mailed a Notice of Allowance (NOA) on December 27, 2010. The Applicants responded on March 28, 2011, with the Issue Fee payment, a rule 1.48 request for correction of inventorship and an amendment under § 1.312. The Office mailed a letter on June 7, 2011 to the Applicants stating that the Declaration was incomplete. The Applicants corrected this in a filing made on August 5, 2011. If an applicant delay for the filing of an incomplete papers is calculated under 37 CFR § 1.704(c)(7), this period would start on March 28, 2011, and end on August 5, 2011 (a

period of 130 days). No further delay should attaché under the provisions of § 1.704(b) or § 1.704(c)(10) since these periods share every calendar day in common with the 130-day period set out above and Applicant delay days are only to be counted to the extent that they are not overlapping. Thus, the delay periods of 72, 48, 40, and 1 day need to be excluded from the Applicant delay calculation in favor of the 130 day delay calculated under § 1.704(c)(7). The Office added the above four Applicant Delay periods without regard to the overlap between them.

Excerpt taken from "Request for Reconsideration of Patent Term Adjustment under 37 CFR § 1.705(d), filed October 27, 2011, p. 2.

A review of the file history reveals that after the mailing of the Notice of Allowance and Issue Fee Due on December 27, 2010, and payment of the issue fee on March 28, 2011, three periods of reduction to the patent term adjustment under 37 CFR 1.704(c)(10)[1] were warranted. These periods are as follows:

- Beginning March 28, 2011, with the filing of the petition under 37 CFR 1.48, and ending June 7, 2011 with the mailing of the examiner's response—**a period of 72 days.**
- Beginning March 28, 2011, with the filing of an amendment under 37 CFR 1.312, and ending August 15, 2011, with the mailing of the examiner's response—a **period of 141 days.**

---

[1] 37 CFR 1.704(c)(10)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 periods of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:
>
> (10) Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the periods of adjustment set forth in § 1.703 shall be reduced by the lesser of:
>
> (i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or other such paper; or
>
> (ii) Four months…

- Beginning August 5, 2011, with the filing of the Application Data Sheet (ADS), and ending on August 12, 2011, with the mailing of the corrected filing receipt—a period of **8 days**.

It is noted that the periods of reduction to the patent term adjustment for filing of the petition under 37 CFR 1.48 and the amendment under 37 CFR 1.312 entirely overlap and that the greater period of 141 days exceeds the four month, or 120 day period of reduction allowed by 37 CFR 1.704(c)(10). Accordingly, it is appropriate to enter only a period of reduction of 120 days for these two filings. **It is concluded that the periods of reduction of 48 and 72 days, totaling 120 days, are warranted and will not be removed.**

It is further noted that entry of a period of reduction to the patent term adjustment of 8 days for the filing of the ADS on August 5, 2011, is warranted. Further to this point, the maximum period of reduction to the patent term adjustment under 37 CFR 1.704(c)(10) for the filing of the petition under 37 CFR 1.48 and the amendment under 37 CFR 1.312 is 120 days and said period ended July 26, 2011. The ADS was not filed until August 5, 2011; therefore, any reduction to the patent term adjustment warranted for this filing is not encompassed in the 120-day reduction to the patent term adjustment entered for the filings made March 28, 2011. **Accordingly, a period of reduction to the patent term adjustment of 8 days is being entered.**

It is noted that the periods of reduction of 1 day, i.e. from March 27, 2011, to March 28, 2011, and 40 days are unwarranted and are being removed.

In view thereof, the patent term adjustment is 966 days (1,125 days of Office delay - 0 days of overlap - 159 days of applicant delay).

Deposit account 17-0026 will be charged $200.00 for the petition fee required by 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.

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 and sixty-six (966)** days.

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 8,019,333 B2

DATED : Sep. 13, 2011

INVENTOR(S) : Seckendorf 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 (933) days

Delete the phrase "by 933 days" and insert – by 966 days--

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Alexandria, VA 22313-1450
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JONES DAY
222 EAST 41ST ST
NEW YORK NY 10017

MAILED

OCT 18 2011

OFFICE OF PETITIONS

In re Application of	:	
Adelman et al.	:	
Patent Number: 7,989,468	:	DECISION ON
Issue Date: 08/02/2011	:	APPLICATION FOR
Application No. 11/080283	:	PATENT TERM ADJUSTMENT
Filing or 371(c) Date: 03/14/2005	:	and
Attorney Docket No.	:	NOTICE OF INTENT TO ISSUE
11731-0006-999	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on September 30, 2011, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by six hundred fifty-five (655) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by six hundred fifty-five (655) days is **GRANTED**.

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

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **six hundred fifty-five (655) 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 : 7,989,468 B2

DATED : **August 2, 2011**

INVENTOR(S) : Adelman 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 730 days.

Delete the phrase "by 730 days" and insert – by 655 days--

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COMMISSIONER FOR PATENTS
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WWW.USPTO.GOV

Paper No.

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

MAILED

AUG 26 2010

OFFICE OF PETITIONS

In re Application of	:	
Klaus David, Matthias	:	DECISION ON PETITION
Hilderbrand, Gabriel Cristache,	:	PURSUANT TO
Rolf Sigle, and Jose Diaz	:	37 C.F.R. § 1.183
Cervera	:	
Application No. 11/080,557	:	
Filed: March 16, 2005	:	
Attorney Docket No. Q86619	:	
Title: METHOD FOR CONTROLLING	:	
THE SLEEP MODE ON A MOBILE	:	
TERMINAL, CORRESPONDING MOBILE	:	
TERMINAL, AND CORRESPONDING	:	
RADIO ACCESS NODE	:	

This is in response to the petition filed pursuant to 37 C.F.R. § 1.183 on April 16, 2010. Petitioner seeks the entry of a concurrently filed Rule 1.131 declaration, and seeks the waiver of the requirement present in 37 C.F.R. § 1.131 that each of the inventors sign the declaration of prior inventorship.

This petition pursuant to 37 C.F.R. § 1.183 is **DISMISSED.**

BACKGROUND

The above-identified application was filed on March 16, 2005, with a 37 C.F.R. § 1.63 declaration signed by each joint inventor. On October 21, 2009, a final Office action was mailed. As part of the response to this Office communication, Applicants filed a "DECLARATION UNDER 37 CFR § 1.131," so as to attempt to overcome certain rejections contained therein.

Messrs. David, Hilderbrand, Sigle, and Cervera have executed this Rule 1.131 declaration, but Mr. Cristache has not.

Petitioner has filed this petition, seeking the acceptance of the Rule 1.131 declaration without the signature of inventor Cristache. Petitioner has indicated that the signature of inventor Cristache cannot be obtained as he cannot be located.[1]

RELEVANT REGULATIONS AND PORTION OF THE MPEP

37 C.F.R. § 1.183 sets forth, *in toto*:

> In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, sua sponte, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(f).

37 C.F.R. § 1.131(a) sets forth, *in pertinent part*:

> When any claim of an application or a patent under reexamination is rejected, the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under §§ 1.42, 1.43, or 1.47, may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based.

In addition, MPEP § 715.04(I)(B) sets forth, *in toto*:

> An affidavit or declaration by less than all named inventors of an application is accepted where it is shown that less than all named inventors of an application invented the subject matter of the claim or claims under rejection. For example, one of two joint inventors is accepted where it is shown that one of the joint inventors is the sole inventor of the claim or claims under rejection.

ANALYSIS

Here, there has not been a party qualified under 37 C.F.R. §§ 1.42, 1.43, or 1.47. In addition, Petitioner does not contend that less than all of the named inventors of the application invented the subject matter of the claims under rejection. Accordingly, the proper parties to sign the revised Rule 1.131 declaration include all of the joint inventors.

---

1 Petition, page 1

This petition cannot be granted, as **Petitioner has not asserted, much less established, the existence of an extraordinary situation such that justice requires the waiver of the requirement that the Rule 1.131 declaration be executed by each joint inventor.**

On renewed petition, Petitioner will need to assert the existence of an extraordinary situation, such that justice requires the waiver of the requirement that each inventor must execute the Rule 1.131 declaration.

Petitioner will note that Rule 1.47 is not applicable to the current set of facts, however it does involve a parallel set of circumstances - the unavailability of an inventor.

Petitioner has asserted that Mr. Cristache "could not be reached after a diligent search,"[2] but Petitioner has not submitted adequate proof that diligent efforts have been made to locate the non-signing inventor. *As Petitioner has set forth that the non-signing joint inventor cannot be found or reached, petitioner is required to establish that a diligent effort was made to locate the non-signing inventor.* However **the petition is silent as to any search that might have been performed for Mr. Cristache:** the sending of a letter[3] is not a search. There is no indication that the Rule 47 applicant attempted to verify the address of the non-signing inventor or to determine his forwarding address, and to send the complete application papers to that address for consideration by the inventor.[4] Petitioner must provide a showing detailing the attempts that were made to obtain a forwarding address or to locate the non-signing inventor by means such as through E-mail, telephone, and the Internet. If this search is sufficiently broad so as to provide a reasonable opportunity to locate this individual, and it is then averred that such attempts failed, then Petitioner will have provided the necessary proof required under 37 C.F.R. § 1.47 that the non-signing inventor cannot be reached. Details of the efforts to locate the non-signing inventor are to be set forth in an affidavit or declaration of facts by a person having first hand knowledge of the details.

Prior to filing a renewed petition, Petitioner must attempt to locate the non-signing inventor.

---

2 Id.
3 Kobke declaration of facts, paragraph 2.
4 See MPEP § 409.03(d).

If Petitioner is able to secure the signature of this individual on the Rule 1.131 declaration, the submission of the same would be considered fully responsive to this decision.

If Petitioner is not able to secure the signature of this individual on the Rule 1.131 declaration, Petitioner must then indicate the steps taken to obtain this individual's signature on the Rule 1.131 declaration.

CONCLUSION

The time period for filing a renewed petition is governed by 37 C.F.R. § 1.181(f). Therefore, if reconsideration of this decision is desired, any response to this decision must be submitted within **TWO MONTHS** from the mail date of this decision, and **extensions of time under 37 C.F.R. § 1.136(a) are not permitted.** The reply should include a cover letter entitled "Renewed Petition pursuant to 37 C.F.R. § 1.183." This is not a final agency action within the meaning of 5 U.S.C § 704.

Any subsequent filing pertaining to this matter should indicate 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]

If responding by mail, Petitioner is advised not to place the undersigned's name on the envelope. Only the information that appears in the footnote should be included - adding anything else to the address will delay the delivery of the response to the undersigned.

The general phone number for the Office of Petitions that should be used for status requests is (571) 272-3282. Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225.[9] All other inquiries concerning

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

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

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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JAN 11 2011

OFFICE OF PETITIONS

Paper No.

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

In re Application of	:	
Klaus David, Matthias	:	DECISION ON RENEWED
Hilderbrand, Gabriel Cristache,	:	PETITION PURSUANT TO
Rolf Sigle, and Jose Diaz	:	37 C.F.R. § 1.183
Cervera	:	
Application No. 11/080,557	:	
Filed: March 16, 2005	:	
Attorney Docket No. Q86619	:	
Title: METHOD FOR CONTROLLING	:	
THE SLEEP MODE ON A MOBILE	:	
TERMINAL, CORRESPONDING MOBILE	:	
TERMINAL, AND CORRESPONDING	:	
RADIO ACCESS NODE	:	

This is in response to the renewed petition filed pursuant to 37 C.F.R. § 1.183 on October 25, 2010. Petitioner seeks the entry of a concurrently filed Rule 1.131 declaration.

The above-identified application was filed on March 16, 2005, with a 37 C.F.R. § 1.63 declaration signed by each joint inventor. On October 21, 2009, a final Office action was mailed. As part of the response to this Office communication, Applicants filed a "DECLARATION UNDER 37 CFR § 1.131," so as to attempt to overcome certain rejections contained therein.

An original petition pursuant to 37 C.F.R. § 1.183 was filed on April 16, 2010, along with a Rule 1.131 declaration that was executed by Messrs. David, Hilderbrand, Sigle, and Cervera. Mr. Cristache did not execute the declaration, and Petitioner sought the acceptance of the Rule 1.131 declaration without the

signature of the same. The original petition was dismissed via the mailing of a decision on August 26, 2010.

With this renewed petition, Petitioner has included a Rule 1.131 declaration that has been executed by formerly non-signing joint inventor Cristache.

It follows that each of the five joint inventors has executed the Rule 1.131 declaration. Accordingly, this renewed petition pursuant to 37 C.F.R. § 1.183 is **DISMISSED AS MOOT.**

The Technology Center will be notified of this decision, and jurisdiction over this application is transferred to the Technology Center, so that the application may receive further processing. The Technology Center's support staff will notify the Examiner of this decision, so that the present application can receive further processing in due course.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[1] All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

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

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500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

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JUN 03 2011

OFFICE OF PETITIONS

In re Patent No. 7,785,619 :
Moneymaker et al. : DECISION ON REQUEST FOR
Issue Date: August 31, 2010 : RECONSIDERATION OF
Application No. 11/080,790 : PATENT TERM ADJUSTMENT
Filed: March 15, 2005 :
Attorney Docket No. 15298US03 :
Title: PHARMANUTRIENT :
COMPOSITION(S) AND SYSTEM(S) :
FOR INDIVIDUALIZED, RESPONSIVE :
DOSING REGIMENS :

This is a decision on the petition filed on November 1, 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 to six hundred thirty-five (635) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by six hundred thirty-five (635) days is **DISMISSED.**

Patentees contend that the three year guarantee pursuant to 35 USC § 154(b)(1)(B) should be 145 days instead of the presently accorded 144 days. Thus the patent term should be 635 days.

The period of adjustment to which the patent is entitled under 37 CFR 1.702(a) is 509 (497 + 12) days,

The period of adjustment to which the patent is entitled under 37 CFR 1.702(b) is 278 days. The calculation begins on the day after the date that is three years after the date the application was filed under 35 U.S.C. 111(a). See 37 CFR 1.703(b). As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on March 16, 2008 and ends on December 18, 2008, the day before the RCE was filed, and is 278 days. See 35 U.S.C.

154(b)(1)(B)(i).

The time taken up by the notice of appeal is excluded from the period of B-delay pursuant to 37 CFR 1.703(b)(4) in connection with the Notice of Appeal filed August 7, 2008. The reduction of 134 days commenced August 7, 2008; the date that the Notice of Appeal was filed, and ended December 18, 2008, the day before the filing of the request for continued examination. See, 37 CFR 1.703(b)(4).

As such, the patent term adjustment is 634, not 635 days.

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

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

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

Charlema Grant
Attorney
Office of Petitions

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AUG 3 1 2010

OFFICE OF PETITIONS

TAKEDA SAN DIEGO, INC.
10410 SCIENCE CENTER DRIVE
SAN DIEGO CA 92121

In re Application of :
Zhang et al. :
Application No. 11/080,992 :
Filed: March 15, 2005 :
Attorney Dkt. No. DPP4-5016-US :
For: DIPEPTIDYL PEPTIDASE :
INHIBITORS :

ON APPLICATION FOR
PATENT TERM ADJUSTMENT

This is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(b)" filed May 19, 2010. Applicants request that the determination of patent term adjustment be corrected from two hundred sixty-six (266) days to one thousand one hundred ninety-two (1,192) days.

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

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

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

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

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

To the extent that applicant otherwise requests reconsideration of the patent term adjustment at the time of the mailing of the notice of allowance, the application for patent term adjustment is **DISMISSED** to the extent indicated herein.

On February 24, 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 266 days. The instant application for patent term adjustment was timely filed on May 19, 2010.

---

[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.

Applicants contend that the response submitted on August 8, 2007 was a preliminary amendment and not a supplemental response. Applicants argue the first non-final Office action was mailed on October 16, 2007, thus the filing on August 8, 2007 should not be considered a supplemental response.

Applicants' argument has been considered but deemed to be unpersuasive. A written restriction requirement, a written election of species requirement, a requirement for information under 37 CFR 1.105, an action under Ex parte Quayle, 1935 Comm'r Dec. 11 (1935), and a notice of allowability (PTOL-37) are each an action issued as a result of the examination conducted pursuant to 35 U.S.C. 131. As such, each of these Office actions is a notification under 35 U.S.C. 132. Therefore, the first action in this application was the restriction requirement mailed on June 19, 2007.

Accordingly, the submission of the reply on August 8, 2007 after the initial response to the restriction requirement on July 19, 2007, was properly deemed to be a supplemental reply pursuant to 37 CFR 1.704(c)(8). 37 CFR 1.704(c) provides that:

> Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:
>
> (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;

Thus, the 20 day reduction was warranted and will not be removed.

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

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

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

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

Anthony Knight
Director
Office of Petitions

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Paper No.

WONG, CABELLO, LUTSCH,
RUTHERFORD & BRUCCULERI, L.L.P.
20333 SH 249 6th Floor
HOUSTON TX 77070

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OFFICE OF PETITIONS

In re Application of	:	
Rodman et al.	:	DECISION ON APPLICATION
Application No. 11/080,995	:	FOR
Filed: March 15, 2005	:	PATENT TERM ADJUSTMENT
Atty Docket No. 199-0436US	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT," filed August 25, 2011. Applicants request verification of the initial determination of patent term adjustment of six hundred seventy-four (674) days.

The request for correction of the initial determination of patent term adjustment (PTA) is **GRANTED**.

The Office has updated the PALM screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is EIGHT HUNDRED EIGHT (808) days. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On August 8, 2011, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 674 days. On August 25, 2011, applicants timely[1] submitted an application for patent term adjustment (with required fee). Applicants dispute the reduction of 118 days associated with an information disclosure statement (IDS) filed on August 25, 2010. Applicants maintain that it is unreasonable

[1] The Issue Fee payment is not yet of record. The fee is due November 8, 2011.

to assert that applicants failed to engage in reasonable efforts to conclude prosecution during a time when prosecution was closed (a notice of appeal was filed on June 8, 2010 and the subsequent non-final Office action was mailed on December 21, 2010).

Applicants state that this application is not subject to a terminal disclaimer.

The calculation of patent term adjustment has been reviewed and it is determined that no reduction is warranted for the filing of the IDS on December 1, 2010. This reduction was incorrectly entered pursuant to 37 CFR 1.704(c)(8) for applicants having filed an IDS after filing an appeal brief. Pursuant to 37 CFR 1.704(c)(8),

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

is a circumstance that constitutes a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application.

The filing of the IDS in this instance is not a failure to engage in reasonable efforts to conclude examination. An appeal brief filed after a notice of appeal is not considered a reply within the meaning of this section (or §1.704(b)). In turn, an IDS filed after an appeal brief is not a supplemental reply or other paper filed **after a reply has been filed**. The reduction of 118 days is not warranted and is removed.

The review of the calculations further revealed that entry of an additional period of adjustment for examination delay is warranted. Specifically, the Office failed to respond to an appeal taken under section 134, within 4 months after the date on which the appeal was taken. See 35 U.S.C. 154(b)(1)(A)(ii) and 37 CFR 1.702(a)(2). Pursuant to 37 CFR 1.703(a)(4), this period of adjustment is calculated as:

> The number of days, if any, in the period beginning on the day after the date that is four months after the date an appeal brief in compliance with § 41.37 of this title was filed and ending on the date of mailing of any of an examiner's answer under § 41.39 of this title, an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first;

In this instance, an appeal was taken on August 5, 2010, when a compliant appeal brief (and fee) was filed. A non-final Office action was mailed on December 21, 2010, four months and 16 days later. Pursuant to 37 CFR 1.703(a)(4), a period of adjustment of 16 days is being entered.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is EIGHT HUNDRED EIGHT (808) days.

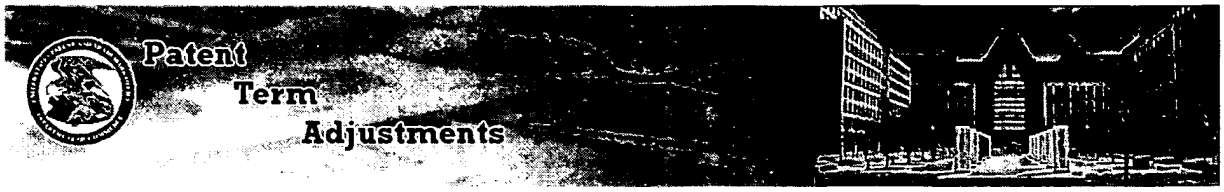
The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

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

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of adjusted PALM calculation.



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

Application Number*: 11080995 Search Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application: 11080995

Application Filing Date	03/15/2005	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	998
A Delays	998	PTO Manual Adjustment	134
B Delays	0	Applicant Delay (APPL)	324
C Delays	0	Total PTA (days)	808

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
111	08/27/2011		P028	Adjustment of PTA Calculation by PTO	16	0	
110	08/27/2011		P028	Adjustment of PTA Calculation by PTO	8	0	
109	08/27/2011		P028	Adjustment of PTA Calculation by PTO	110	0	
106	08/08/2011		MN/=.	Mail Notice of Allowance		0	
105	08/05/2011		OAR	Office Action Review		0	
104	08/05/2011		OAR	Office Action Review		0	
103	08/05/2011		IREV	Issue Revision Completed		0	
102	08/05/2011		N/=.	Notice of Allowance Data Verification Completed		0	
101	08/01/2011		OAR	Office Action Review		0	
100	08/01/2011		OAR	Office Action Review		0	
99	08/01/2011		ACRE	Allowed Case Returned to the Examiner for Clerical Processing		0	
98	08/01/2011		DVER	Document Verification		0	
97	07/26/2011		EX.R	Reasons for Allowance		0	
96	07/26/2011		CNTA	Allowability Notice		0	
95	07/18/2011		FWDX	Date Forwarded to Examiner		0	
94	07/14/2011		A.NE	Amendment after Final Rejection		0	
93	07/07/2011		MCTAV	Mail Advisory Action (PTOL - 303)		0	
92	07/05/2011		OAR	Office Action Review		0	
91	07/05/2011		CTAV	Advisory Action (PTOL-303)		0	
90	06/29/2011		FWDX	Date Forwarded to Examiner		0	
89	06/20/2011		A.NE	Amendment after Final Rejection		0	
88	04/19/2011		MCTFR	Mail Final Rejection (PTOL - 326)		0	
87	04/18/2011		CTFR	Final Rejection		0	
85	04/07/2011		FWDX	Date Forwarded to Examiner		0	
84	04/06/2011	03/21/2011	A...	Response after Non-Final Action		16	79
83	04/06/2011		XT/G	Request for Extension of Time - Granted		0	
86	01/21/2011		IDSC	Information Disclosure Statement considered		0	
82	01/21/2011		RCAP	Reference capture on IDS		0	
81	01/21/2011		M844	Information Disclosure Statement (IDS) Filed		0	
80	01/21/2011		WIDS	Information Disclosure Statement (IDS) Filed		0	
79	12/21/2010	12/05/2010	MCTNF	Mail Non-Final Rejection	16	63	
78	12/20/2010		CTNF	Non-Final Rejection		0	
77	12/01/2010		IDSC	Information Disclosure Statement considered		0	
76	12/01/2010	08/05/2010	EIDS.	Electronic Information Disclosure Statement		118	63
75	12/01/2010		WIDS	Information Disclosure Statement (IDS) Filed		0	
64	08/17/2010		FWDX	Date Forwarded to Examiner		0	
62	08/16/2010		APBR	Appeal Brief Review Complete		0	
63	08/05/2010		AP.B	Appeal Brief Filed		0	
61	06/08/2010		N/AP	Notice of Appeal Filed		0	
60	03/23/2010		MCTFR	Mail Final Rejection (PTOL - 326)		0	
59	03/19/2010		CTFR	Final Rejection		0	
56	02/09/2010		IDSC	Information Disclosure Statement considered		0	
55	02/09/2010	12/10/2009	EIDS.	Electronic Information Disclosure Statement		61	52
54	02/09/2010		WIDS	Information Disclosure Statement (IDS) Filed		0	
53	01/27/2010		FWDX	Date Forwarded to Examiner		0	
52	12/10/2009		A...	Response after Non-Final Action		0	
58	09/21/2009		IDSC	Information Disclosure Statement considered		0	
57	09/21/2009		IDSC	Information Disclosure Statement considered		0	
50	09/21/2009		RCAP	Reference capture on IDS		0	
49	09/21/2009		M844	Information Disclosure Statement (IDS) Filed		0	
48	09/21/2009		WIDS	Information Disclosure Statement (IDS) Filed		0	
47	09/21/2009		WIDS	Information Disclosure Statement (IDS) Filed		0	
46	09/16/2009		MCTNF	Mail Non-Final Rejection		0	
45	09/14/2009		CTNF	Non-Final Rejection		0	
51	08/28/2009	06/18/2009	EIDS.	Electronic Information Disclosure Statement		71	38

43	08/28/2009		IDSC	Information Disclosure Statement considered			0
40	08/28/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
39	07/09/2009		FWDX	Date Forwarded to Examiner			0
38	06/18/2009	04/21/2009	A...	Response after Non-Final Action		58	31
37	06/18/2009		XT/G	Request for Extension of Time - Granted			0
33	03/03/2009		DOCK	Case Docketed to Examiner in GAU			0
44	01/23/2009		IDSC	Information Disclosure Statement considered			0
35	01/23/2009		RCAP	Reference capture on IDS			0
34	01/23/2009		M844	Information Disclosure Statement (IDS) Filed			0
32	01/23/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
31	01/21/2009	05/15/2006	MCTNF	Mail Non-Final Rejection	982		0.5
30	01/16/2009		CTNF	Non-Final Rejection			0
19	01/06/2009		DOCK	Case Docketed to Examiner in GAU			0
20	06/12/2008		IDSC	Information Disclosure Statement considered			0
18	06/12/2008		EIDS.	Electronic Information Disclosure Statement			0
17	06/12/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
16	10/17/2007		W525	Withdraw Flagged for 5/25			0
15	10/15/2007		F525	Flagged for 5/25			0
21	02/26/2007		IDSC	Information Disclosure Statement considered			0
14.7	02/26/2007		EIDS.	Electronic Information Disclosure Statement			0
14	02/26/2007		WIDS	Information Disclosure Statement (IDS) Filed			0
13	10/21/2006		DOCK	Case Docketed to Examiner in GAU			0
12	03/22/2006		DOCK	Case Docketed to Examiner in GAU			0
11	01/20/2006		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
10	01/20/2006		DOCK	Case Docketed to Examiner in GAU			0
9	06/20/2005		OIPE	Application Dispatched from OIPE			0
8	06/20/2005		COMP	Application Is Now Complete			0
7	06/14/2005		FLFEE	Payment of additional filing fee/Preexam			0
6	06/14/2005		OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic			0
5	04/14/2005		INCD	Notice Mailed--Application Incomplete--Filing Date Assigned			0
3	04/06/2005		L194	Cleared by OIPE CSR			0
2	03/28/2005		SCAN	IFW Scan & PACR Auto Security Review			0
1	03/15/2005		IEXX	Initial Exam Team nn			0
0.5	03/15/2005		EFILE	Filing date			0

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FORT COLLINS, CO 80528

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APR 21 2011
OFFICE OF PETITIONS

In re Application of	:	
Paul Murray, et al.	:	
Application No. 11/081,248	:	DECISION ON PETITION
Filed: March 16, 2005	:	
Attorney Docket No. 200402333-2	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 11, 2011, to revive the above-identified application.

This application became abandoned for failure to timely pay the issue and publication fees on or before March 10, 2011, as required by the Notice of Allowance and Fee(s) Due, mailed December 10, 2010. Accordingly, the date of abandonment of this application is March 11, 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 and the publication fee of $300, (2) the petition fee of $1620; and (3) a proper statement of unintentional delay.

In view of the above, the petition is **GRANTED**.

The petition fee of $1620 has been charged to petitioner's deposit account.

Telephone inquiries concerning this decision should be directed to undersigned at (571) 272-1642. All other inquiries concerning this application should be directed to the Office of Data Management at their hotline 571-272-4200.

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

April M. Wise
Petitions Examiner
Office of Petitions

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MERIT MEDICAL SYSTEMS, INC.
C/O STOEL RIVES, LLP
ONE UTAH CENTER
201 SOUTH MAIN STREET -- SUITE 1100
SALT LAKE CITY UT 84111

MAILED

SEP 21 2010

OFFICE OF PETITIONS

In re Application of :
Nicholas Gerald Accisano, III, et al. :
Application No. 11/ 081,301 : ON PETITION
Filed: March 16, 2005 :
Attorney Docket No. 37621/33201 :

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

The petition is **GRANTED**.

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed March 10, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on June 11, 2009. The Notice of Abandonment was mailed December 1, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application under 37 CFR 1.53(b); (2) the petition fee of $1,620; and (3) a proper statement of unintentional delay.

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuing application No. 12/557,348.

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

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

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JUN 13 2011

OFFICE OF PETITIONS

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

In re Patent No. 7,853,697 : DECISION ON APPLICATION FOR
Issued: December 14, 2010 : PATENT TERM ADJUSTMENT
Application No. 11/081,639 :
Filing or 371(c) Date: March 17, 2005 :
Dkt. No.: 39700-664001US/NC40761US :

This is a decision on the application for patent term adjustment under 37 CFR 1.705(d) filed on February 14, 2011 requesting an increase in patent term adjustment from 1082 days to 1100 days.

The petition for reconsideration of the patent term adjustment is **DISMISSED**.

The above-identified application matured into U.S. Patent No. 7,853,697 on December 14, 2010. The patent issued with a patent term adjustment of 1082 days. The instant application for patent term adjustment was timely filed February 14, 2011.

Patentees contest the determination of overlap between the periods of adjustment under 37 CFR 1.702(a) and 1.702(b) and 37 CFR 1.702(a) and 1.702(e). Patentees assert that the calculation of adjustment is the result of 734 days under 37 CFR 1.702(a) + 441 days under 37 CFR 1.702(b) - 52 days under 37 CFR 1.704 - 23 overlapping days.

The calculation of adjustment has been carefully reviewed and no error has been found. Considering the excluded period, the Office has determined that there are 41 days of overlap.

As patentees have not been granted the relief requested, 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.

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

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED

OCT 01 2010

OFFICE OF PETITIONS

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
12275 EL CAMINO REAL, SUITE 200
SAN DIEGO CA 92130

In re Patent No. 7,666,172 :
Atil :
Issue Date: February 23, 2010 :
Application No. 11/081,767 :
Filed: March 15, 2005 :
Atty Docket No. 06HA-114830 :

DECISION ON REQUEST FOR RECONSIDERATION OF THE DISMISSAL OF A PRIOR REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT and NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION

This a decision on the "REPLY TO DECISION DISMISSING PATENTEE'S REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH,*" filed on May 21, 2010. Patentee requests 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 twelve (1112) 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 and twenty-five (1025) days is **GRANTED to the extent indicated herein.**

A review of the record shows that this patent is not subject to a terminal disclaimer.

On February 23, 2010, Application No. 11/081,767 matured into U.S. Patent No. 7,666,172, with a patent term adjustment of 618 days. On February 19, 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 "request is deemed ineligible for consideration for one

of the following reasons:" the decision listed seven reasons, and failed to articulate which particular reason was applicable.

This reply was timely filed within one month of the aforementioned decision. "No fee is required," since Patentee "is asserting in the reply that the dismissal for ineligibility is improper (decision on April 21, 2010)."

The Office notes that the decision of April 21, 2010 was issued in error as none of the seven reasons listed thereon is applicable to this patent. 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 **1025 days.**

The Office agrees that the period of applicant delay is 92 days.[1]

First, Patentee has omitted one period of examination delay. A response to a non-final office action was received on February 21, 2008, and a non-final office action was mailed four months and 116 days later on October 15, 2008. As such, a 116-day adjustment to the patent term is warranted, pursuant to 37 C.F.R. § 1.703(a)(2).

Secondly, the Office agrees that this patent issued three years and 710 days after the application was filed.[2] However, the B-delay does not total 710 days. A notice of appeal was filed on September 28, 2009, and a Notice of Allowance was mailed on December 23, 2009. The 87 days of the over three year period consumed by appellate review, beginning on September 28, 2009 and ending on December 23, 2009, are not included in the B-delay. See 35 U.S.C. § 154(b)(1)(B)(ii).

Moreover, the entire aforementioned 116-day adjustment to the patent term overlaps with the period of B-delay.

It follows that the B-delay totals 507 (710 over three years minus 87 days that are excluded minus 116 days of overlap) days, not 710 days.

---

[1] Petition, page 2.
[2] Id. at 3.

As such, the patent term adjustment is increased by 1025 (610 days of examination delay plus 507 "B-delay" minus 92 days of Applicant delay) days, not 1112 days.

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

This patent is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand and twenty-five (1025) days.**

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

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,666,172 B2

DATED : **February 23, 2010** **DRAFT**

INVENTOR(S) : Atil

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 618 days

Delete the phrase "by 618 days" and insert – by 1025 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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ARENT FOX LLP
1050 CONNECTICUT AVENUE, N.W.
SUITE 400
WASHINGTON DC 20036

MAILED

NOV 15 2010

OFFICE OF PETITIONS

In re Application of	:	
Patrizia Nanni, et al.	:	
Application No. 11/061,823	:	NOTICE
Filed: February 22, 2005	:	
Attorney Docket No. 023349-00302	:	

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

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-2991.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY OF COMMERCE AND
COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, DC 20231

6/7/2011

Patent No. :7882946
Inventor(s) :Stefan Hein et al.
Issued : 2/8/2011
Title : GUIDE ARRANGEMENT WITH AT LEAST ON GUIDE ROLLER FOR THE GUIDANCE OF WEBS IN TREATMENT INSTALLATIONS
Atty.doc./File No.

Request for Certificates of Correction

Consideration has been given to your request for the issuance of a Certificate of Correction, for the above – identified patent under the provisions of CFR 1.322.

Inspection of the application for the patent reveals item [75] is printed in accordance with the record please show evidence of a corrected filing receipt or supplemental declaration of oath.

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

Future written correspondence concerning this matter should be filed and directed to Decisions & Certificates of Correction Branch.

Henry Randall
Decisions & Certificates
of Correction Branch
(703) 756-1571

KEITH M. TACKETT
PATTERSON & SHERIDAN L.L.P
3040 POST OAK BOULEVARD
SUITE 1500
HOUSTON, TX 77056

HR

UNITED STATES PATENT AND TRADEMARK OFFICE

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

PATTERSON & SHERIDAN, L.L.P.
3040 POST OAK BOULEVARD
SUITE 1500
HOUSTON TX 77056

MAILED
JAN 03 2012
OFFICE OF PETITIONS

In re Patent No. 7,882,946 :
Issue Date: February 8, 2011 :
Hein et al. : DECISION ON PETITION
Application No. 11/081,879 :
Filed: March 17, 2005 :
Atty Docket No. ZIMR/0131US :

This is a decision on the "PETITION TO CORRECT INVENTOR'S NAME UNDER 37 C.F.R. § 1.181," filed December 14, 2011, which is properly treated as a petition under 37 CFR 1.182. Patentee petitions for the correction of the name of an inventor by way of a certificate of correction.

Patentee states that the application was filed erroneously listing the inventor as Karl-Heinz WENK, which is not the legal name of the inventor. Applicant states that the legal name of the inventor is Karl-Heinrich WENK, and his name has not changed, but was entered incorrectly in the original filing papers. The petition includes payment of the fee under 37 CFR 1.182.

The petition includes a supplemental declaration for patent signed by inventor WENK with his name identified as Karl-Heinrich WENK.

In view thereof, the petition is **GRANTED**.

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

Telephone inquiries regarding 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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MAR 25 2011

OFFICE OF PETITIONS

BORDEN LADNER GERVAIS LLP
1200 WATERFRONT CENTRE
200 BURRARD STREET, P.O. BOX 48600
VANCOUVER BC V7X 1T2 CA CANADA

In re Patent No. 7,706,510 :
Issue Date: April 27, 2010 :
Application No. 11/081,939 : DECISION ON PETITION
Filed: March 16, 2005 :
Attorney Docket No. 291010-00239 :

This is a decision on the petition, filed September 8, 2010, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the assignee's name on the Fee(s) Transmittal form PTOL-85(b) by way of a certificate of correction in the patent.

The request is **DISMISSED**.

Petitioner states that the correct assignee's name is Research In Motion Limited. Petitioner further states that the assignee's name was not correctly identified 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.

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

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

The request under 37 CFR 3.81(b) was not accompanied by a request for a certificate of correction as required by 3.81(b). *See also* MPEP 1481.01. As petitioner has failed to comply with the provisions of 37 CFR 3.81(b), the request cannot be granted at this time.

A review of Office database assignment records reflects that an assignment to Research In Motion Limited has been recorded. However, the request under 37 CFR 3.81(b) was not accompanied by a request for a certificate of correction as required by 3.81(b). Accordingly, the request cannot be

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

granted until a Certificate of Correction form (PTO/SB/44) is submitted to correct the front page of the Letters Patent to reflect that Research In Motion Limited was the assignee of record at the time of issuance of the application into a patent.

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 Internet: EFS-Web[2]

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

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

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

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

PTO/SB/44 (09-07)
Approved for use through 08/31/2013. OMB 0651-0033
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

Page _____ of _____

PATENT NO. :

APPLICATION NO.:

ISSUE DATE :

INVENTOR(S) :

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:

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

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

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

Privacy Act Statement

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

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

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

UNITED STATES PATENT AND TRADEMARK OFFICE

4-15-2011

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

Patent No : 7,706,510 B2
Ser. No. : 11/081,939
Inventor(s) : NG, Eric
Issued : April 27, 2010

Re: Request for Certificate of Correction

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

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

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

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

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

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

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

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

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

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

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

Eva James
For Mary Diggs
Decisions & Certificates
of Correction Branch
(571) 272-3422 or 703- 756 -1580

Geoffrey deKleine
Borden Ladner Gervais LLP
1200 Waterfront Center
200 Burrard, P.O. Box 48600
Vancouver, BC V7X1T2
Canada

ej

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OFFICE OF PETITIONS

BORDEN LADNER GERVAIS LLP
1200 WATERFRONT CENTRE
200 BURRARD STREET, P.O. BOX 48600
VANCOUVER BC V7X 1T2 CA CANADA

In re Patent No. 7,706,510
Issue Date: April 27, 2010
Application No. 11/081,939
Filed: March 16, 2005
Attorney Docket No. 291010-00239

DECISION ON PETITION

This is a decision on the renewed petition, filed, April 8, 2011, which is being treated as a request 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 request is **GRANTED**.

Petitioner states that the correct assignee name is Research In Motion Limited. Petitioner further states that the assignee's name was not correctly indicated 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.

Office assignment records reflect that Research In Motion Limited was the assignee of record before issuance of the patent. Accordingly, as the request complies with the provisions of 37 CFR 3.81(b), it is appropriate for a certificate of correction to be processed.

Inquiries concerning this decision should be directed to Alicia Kelley-Collier at (571) 272-6059. Any questions concerning the issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

This matter is being referred to the Certificates of Correction Branch for processing of a certificate of correction.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

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

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7,108,643	2006-09-19	11/082,139	2005-03-15	04WIL1NP

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.

A Joint Patentee and I certify that I am authorized to sign this submission on behalf of all the other patentees			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature.			
Signature	/Jeff Jenneve/	Date (YYYY-MM-DD)	2011-03-08
Name	Jeff Jenneve		

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

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Alexandria, VA 22313-1450
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In re Patent No. 7108643
Issue Date: September 19,2006
Application No. 11082139
Filed: March 15,2005
Attorney Docket No. 04WIL1NP

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

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

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Paper No.

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

MAILED
DEC 02 2011
OFFICE OF PETITIONS

In re Application of	:	
Perkins et al.	:	
Application No. 11/082,154	:	DECISION ON PETITION
Filed: March 15, 2005	:	
Atty Docket No. **33309.00420.**	:	
US20/ 420C	:	

This is a decision on the "PETITION FOR CORRECTION OF FILING DATE UNDER 37 CFR 1.10(c)," filed October 25, 2011, requesting that an information disclosure statement filed in the above-identified application be accorded a filing date of September 2, 2010, rather than the presently accorded filing date of September 3, 2010.

Petitioner maintains that on September 2, 2010, the application was filed by Express Mail No. EM 315458348 US with the U.S. Postal Service (USPS) in accordance with § 1.10(a). However, the USPTO accorded a mailing date of September 3, 2010. As proof of entitlement to the earlier filing date, applicants submit a true copy of the Express Mail mailing label; a true copy of the Post Office Receipt; and a copy of their Express Mail Corporate Account Mailing Statement.

Paragraph (a) of 37 CFR 1.10 states that:

> Any correspondence received by the U.S. Patent and Trademark Office (USPTO) that was delivered by the "Express Mail Post Office to Addressee" service of the United States

> Postal Service (USPS) will be considered filed with the USPTO on the date of deposit with the USPS.
>
> (1) Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS.
>
> (2) The date of deposit with USPS is shown by the "date in" on the "Express Mail" label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the USPTO receipt date as the filing date. See § 1.6(a).

Paragraph (c) of 37 CFR 1.10 states that:

> Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Director to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:
>
> (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
>
> (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and
>
> (3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

A review of the application papers presently accorded a filing date of September 3, 2010, reveals that "Express Mail" mailing label No. EM 315458348 US was placed on the paper titled

"SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT TRANSMITTAL LETTER," prior to the original mailing. Further, this transmittal letter identifies specifically all of the papers presently accorded a filing date of September 3, 2010.

Further, a review of the "Express Mail Post Office to Addressee" mailing label reveals that the handwritten "date-in" thereon is September 2, 2010. Moreover, the label clearly bears a USPS date-stamp of September 2, 2010. Further, the corporate account mailing statement associates this transaction with a date of September 2, 2010. Further, applicant has provided a log showing that the paper was deposited on September 2, 2010. This evidence is persuasive that the supplemental information disclosure statement and documents filed therewith were deposited in the Express Mail post office to addressee service of the USPS on September 2, 2010.

It is noted that the petition was filed more than a year after the Office accorded the papers a filing date of September 3, 2010. Neither the petition nor the record shows when applicant became aware of the date the Office accorded the paper or when such date became significant. Having considered the level of compliance with 37 CFR 1.10 at the time of filing of the documents, under the circumstances of this case, the petition is accepted as promptly filed.

In view thereof, the petition is **GRANTED**.

The Technology Center Art Unit 1633 has been advised of this decision. The application is, thereby, forwarded to the Technology Center 1633 for **correction of the filing date of the information disclosure statement (IDS) and all other documents with a date of receipt of September 3, 2010 to September 2, 2010**.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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FOLEY & LARDNER LLP
150 EAST GILMAN STREET
PO BOX 1497
MADISON WI 53701-1497

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NOV 28 2011

OFFICE OF PETITIONS

In re Application of	:	
Jonathan L. Hawes	:	
Application No. 11/082,182	:	ON REQUEST FOR
Filed: March 15, 2005	:	RECONSIDERATION OF
Attorney Docket Number: 098888-1872	:	PATENT TERM ADJUSTMENT

This is a decision on the petition under 37 CFR 1.705(b), filed November 10, 2011. Applicant believes that the PTA should be accorded an additional one thousand seventy-one (1071) days. Applicant requests 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, applicant is advised that he may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

In view thereof, the correct determination of PTA prior to issuance is **two hundred thirteen (213) days.**

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

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

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

Cliff Congo
Petitions Attorney
Office of Petitions

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

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OFFICE OF PETITIONS

In re Application of :
Kenneth L. Levy :
Application No. 11/082,217 : ON REQUEST FOR
Filed: March 15, 2005 : RECONSIDERATION OF
Attorney Docket Number: 098888-1873 : PATENT TERM ADJUSTMENT

This is a decision on the petition under 37 CFR 1.705(b), filed November 11, 2011. Applicant believes that the PTA should be accorded an additional two hundred sixty-six (266) days. Applicant requests 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, applicant is advised that he may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

In view thereof, the correct determination of PTA prior to issuance is **one thousand thirty-five (1035) days.**

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

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

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

Cliff Congo
Petitions Attorney
Office of Petitions

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : November 16, 2011

TO SPE OF : ART UNIT 2193 SPE Lewis Bullock, Jr.

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/082,405 Patent No.: 7,475,103 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 dependency in claim 35 be changed from "15" to "30" as requested by applicant?
See COCIN dated 11-8-2011

Antonio Johnson

Certificates of Correction Branch

(571)272-0483 Fax – (571)270-9846

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: _____

LEWIS A. BULLOCK, JR.
SUPERVISORY PATENT EXAMINER

SPE _____ **Art Unit** 2193

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 1-28-11

TO SPE OF : ART UNIT 2613

SUBJECT : Request for Certificate of Correction for Appl. No.: 11082520 Patent No.: 7532820

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.

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

Comments: _____

_____

_____

_____

_____

/Kenneth Vanderpuye/ AU 2613

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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Decision Date : November 21,2011

In re Application of :

Carlile Stevens

Application No : 11082524

Filed : 17-Mar-2005

Attorney Docket No : LUME P011US

DECISION ON PETITION

UNDER CFR 1.137(b)

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

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	11082524
Filing Date	17-Mar-2005
First Named Inventor	Carlile Stevens
Art Unit	2821
Examiner Name	MINH A
Attorney Docket Number	LUME P011US
Title	FLUORESCENT BALLAST WITH ISOLATED SYSTEM INTERFACE

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

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

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

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

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

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

☒ Applicant(s) status remains as SMALL ENTITY.

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

Issue Fee and Publication Fee :

Issue Fee and Publication Fee are not due.

☒ Issue Fee Transmittal is attached

Drawing corrections and/ or other deficiencies.

◉ Drawing corrections and/ or other deficiencies are not required

○ I certify, in accordance with 37 CFR 1.4.(D)(4), that drawing corrections and/ or other deficiencies have previously been filed on

○ Drawing corrections and/ or other deficiencies are attached.

☒ STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

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

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

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

○ A sole inventor

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

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

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

Signature	/robert a. mclauchlan/
Name	Robert McLauchlan
Registration Number	44924

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WYETH LLC
PATENT LAW GROUP
5 GIRALDA FARMS
MADISON NJ 07940

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SEP 24 2010

OFFICE OF PETITIONS

In re Application of :
Krishnendu GHOSH, et al :
Application No. 11/082,548 : DECISION ON PETITION
Filed: March 17, 2005 :
Docket No. AM101649 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 23, 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, November 24, 2009, which set a shortened statutory period for reply of **three (3) months**. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on February 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 an amendment, (2) the petition fee of $1620; and (3) a proper statement of unintentional delay.

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

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

This application is being referred to Technology Center AU 1624 for appropriate action by the Examiner in the normal course of business.

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

cc: KRISTINA L. KONSTAS
PFIZER INC.
150 EAST 42 STREET, 150-2-E 112
NEW YORK, NY 10017

UNITED STATES PATENT AND TRADEMARK OFFICE

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MCNAIR LAW FIRM, P.A.
P.O. BOX 447
GREENVILLE SC 29602-0447

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AUG 16 2010

OFFICE OF PETITIONS

In re Application of :
Thomas E. Browning, Jr. et al. :
Application No. 11/083,038 : ON PETITION
Filed: March 17, 2005 :
Attorney Docket No. **032893.00066** :

This is a decision on the petitions, filed (a) June 9, 2010, a request to withdraw the holding of abandonment under 37 CFR 1.181 (no fee) and (b) filed July 15, 2010, a petition to revive the above identified application under the unintentional provision of 37 CFR 1.137(b).

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

On February 17, 2010, the Office mailed a Notice of Allowance and Fee(s) Due, which set a three (3) month shortened statutory period to reply. The application became abandoned for failure to timely pay the issue and publication fees on or before May 17, 2010, as required by the Notice of Allowance and Fee(s) Due. On June 3, 2010, the Office mailed a Notice of Abandonment.

DISCUSSION OF PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

Petitioner has stated in the petition filed June 9, 2010, that the Part B – Fee Transmittal (PTOL -85(b)) Issue and Publication fees was transmitted to the Office by way of facsimile on March 22, 2010. The file record indicates receipt of the same on March 22, 2010. However, that document did not include the required payment of Issue and Publication fees. Petitioner did not give any authorization therein to charge a deposit account either. Therefore, the application was properly held to have gone abandoned on May 18, 2010, for non-payment of the Issue and Publication Fees.

PETITION FOR REVIVAL UNDER 37 CFR 1.137(b)

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

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,510 and the publication fee of $300, (2) the petition fee of $1,620; and (3) a proper statement of unintentional delay.

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.

Ramesh Krishnamurthy

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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MADISON WI 53701-1497

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JUN 03 2011
OFFICE OF PETITIONS

In re Application of	:	
Menzo Wentink	:	
Application No. 11/083,080	:	ON REQUEST FOR
Filed: March 18, 2005	:	RECONSIDERATION OF
Attorney Docket Number: 088245-2603	:	PATENT TERM ADJUSTMENT

This is a decision on the petition under 37 CFR 1.705(b), filed March 22, 2011. Applicant believes that the PTA should be adjusted from five hundred sixty-two (562) days to one thousand seven hundred thirty-seven (1737) days. Applicant requests this correction on the basis that the Office will take in excess of three years to issue this patent.

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

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

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

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

In view thereof, the correct determination of PTA prior to issuance is **five hundred sixty-two (562) days.**

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

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

Anthony Knight
Director
Office of Petitions

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

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

MAILED
NOV 15 2011
OFFICE OF PETITIONS

In re Application of :
Debashish Purkayastha, et al. :
Application No. 11/083,125 : DECISION GRANTING PETITION
Filed: March 17, 2005 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. I-2-0670.02US :

This is a decision on the petition under 37 CFR 1.313(c)(2), filed November 14, 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 September 15, 2011 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries 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 2467 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 10/28/10

TO SPE OF : ART UNIT 3766 Layno Carl SPE

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/053127 Patent No.: 7761159

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Certificates of Correction Branch
703-756-1571 _____

Thank You For Your Assistance

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

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

Comments: CORRECTS PATENT FILING DATE TO AGREE WITH FILING DATES IN IFW/PALM.

Carl N. Layno — SPE

3766 — Art Unit

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MAR 15 2012
OFFICE OF PETITIONS

DICKSTEIN SHAPIRO LLP
1825 EYE STREET NW
Washington DC 20006-5403

In re Patent No. 7,420,471 :
Issue Date: September 2, 2008 :
Application No. 11/083,353 : NOTICE
Filed: March 18, 2005 :
Attorney Docket No. S0606.0001/P032 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed March 1, 2012. 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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Decision Date : March 22, 2012

In re Application of :

Joann Ordille

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11083365

Filed : 17-Mar-2005

Attorney Docket No : 504028-D-US-NP

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed March 22, 2012 , to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

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

Petitioner is advised that the issue fee paid in this application cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.

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

This application file is being referred to Technology Center AU 2441 for processing of the request for continuing examination under 37 CFR 1.114 .

Office of Petitions

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

Electronic Petition Request	**PETITION TO WITHDRAW AN APPLICATION FROM ISSUE AFTER PAYMENT OF THE ISSUE FEE UNDER 37 CFR 1.313(c)**
Application Number	11083365
Filing Date	17-Mar-2005
First Named Inventor	Joann Ordille
Art Unit	2441
Examiner Name	DAVID YI
Attorney Docket Number	504028-D-US-NP
Title	METHOD AND APPARATUS FOR AUTOMATIC NOTIFICATION AND RESPONSE BASED ON COMMUNICATION FLOW EXPRESSIONS HAVING DYNAMIC CONTEXT

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	/Ajay Gambhir/
Name	Ajay Gambhir
Registration Number	44115

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1180 PEACHTREE STREET , NE
ATLANTA GA 30309-3521

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DEC 02 2010

OFFICE OF PETITIONS

In re Application of :
Ayares, et al. :
Application No. 11/083,393 : DECISION DISMISSING PETITION
Filed: March 17, 2005 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 10758.105019 REV1010 :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed August 10, 2010, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to prior-filed nonprovisional Application No. 10/646,970, filed August 21, 2003.

The petition is **DISMISSED**.

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

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

The instant petition is not accompanied by an amendment to the specification setting forth the desired claim. Therefore, a proper reference under 37 CFR 1.78(a)(2)(i) has not been provided. In this regard, the referenced claim is physically part of the petition and, as such, does not comply with 37 CFR 1.121, 1.52, or 1.4(c). Note that 37 CFR 1.121 states that amendments are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made. The pertinent section of 37 CFR 1.52 states that the claim (in this case, the claim for priority), must commence on a separate physical sheet. 37 CFR 1.4(c) states that each distinct subject must be contained in a separate paper since different matters may be considered by different branches of the United States Patent and Trademark Office.

Before the petition can be granted, petitioner must submit an amendment in compliance with the aforementioned rules, along with a renewed petition under 37 CFR 1.78(a)(3).[1]

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

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

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

Any questions concerning this matter may be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

Chris Bottorff
Supervisor
Office of Petitions

[1] The claim for priority may also be made in an Application Data Sheet in compliance with 37 CFR 1.121 and 37 CFR 1.76(b)(5).

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MAR 09 2011

OFFICE OF PETITIONS

In re Application of :
Ayares, et al. :
Application No. 11/083,393 : DECISION DISMISSING PETITION
Filed: March 17, 2005 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 10758.105019 REV1010 :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed December 21, 2010, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to prior-filed nonprovisional Application No. 10/646,970, filed August 21, 2003.

The petition is **DISMISSED**.

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

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

The instant petition is not accompanied by an amendment to the specification setting forth the desired claim. Therefore, a proper reference under 37 CFR 1.78(a)(2)(i) has not been provided. In this regard, the referenced claim is physically part of the petition and, as such, does not comply with 37 CFR 1.121, 1.52, or 1.4(c). Note that 37 CFR 1.121 states that amendments are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made. The pertinent section of 37 CFR 1.52 states that the claim (in this case, the claim for priority), must commence on a separate physical sheet. 37 CFR 1.4(c) states that each distinct subject must be contained in a separate paper since different matters may be considered by different branches of the United States Patent and Trademark Office.

The amendment submitted herewith is not acceptable as the amendment is encompassed within the petition. The amendment to the specification **MUST** commence on a separate sheet and cannot be contained within the petition.

Further, the reference to add the above-noted, prior-filed applications 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 applications. An incorporation by reference statement added after an application's filing date is not effective because no new matter can be added to an application after its filing date (*see* 35 U.S.C. § 132(a)). If an incorporation by reference statement is included in an amendment to the specification to add a benefit claim under 35 U.S.C. § 120 after the filing date of the application, the amendment would not be proper. When a benefit claim under 35 U.S.C. § 120 is submitted after the filing of an application, the reference to the prior application cannot include an incorporation by reference statement of the prior application. *See* Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980). *Note* MPEP §§ 201.06(c) and 608.04(b).

Before the petition can be granted, petitioner must submit an amendment in compliance with the aforementioned rules, along with a renewed petition under 37 CFR 1.78(a)(3).[1]

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

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Alexandria, VA 22314

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

Any questions concerning this matter may be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

Chris Bottorff
Supervisor
Office of Petitions

[1] The claim for priority may also be made in an Application Data Sheet in compliance with 37 CFR 1.121 and 37 CFR 1.76(b)(5).

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MAILED
MAR 24 2011
OFFICE OF PETITIONS

In re Application of :
Ayares, et al. :
Application No. 11/083,393 : DECISION DISMISSING PETITION
Filed: March 17, 2005 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 10758.105019 REV1010 :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed March 17, 2011, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to prior-filed nonprovisional Application No. 10/646,970, filed August 21, 2003. This is also a decision on the petition to expedite under 37 CFR 1.182.

DECISION UNDER 37 CFR 1.182

In general, the Office of Petitions reviews petitions and renders decisions on petitions in the order by which the petitions are filed. Consideration outside the general course of action requires a petition to expedite (and fee). As petitioners have met the minimum requirements for expedited treatment, the petition to expedite is grantable.

In view thereof, the petition to expedite under 37 CFR 1.182 is hereby **GRANTED**.

DECISION UNDER 37 CFR 1.78(a)(3)

The petition under 37 CFR 1.78(a)(3) is **DISMISSED**.

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

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

The instant petition fails to satisfy requirement (1) set forth above in that 37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a proper benefit claim is: "This application is a continuation of Application No. 10/---, filed---." A benefit claim that merely states: "This application claims the benefit of Application No. 10/---, filed---," does not comply with 37 CFR 1.72(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. Also, the status of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. See, MPEP Section 201.11, Reference to Prior Nonprovisional Applications. The amendment fails to comply with the provisions of 37 CFR 1.78(a)(2)(i) and is therefore unacceptable.

Before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) an Application Data Sheet or a substitute amendment (complying with 37 CFR 1.121 and 37 CFR 1.76(b)(5)), which states the relationship of the prior-filed application to this application, are required.

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

By mail:
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(571) 273-8300
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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

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APR 19 2011

OFFICE OF PETITIONS

In re Application of :
Ayares, et al. :
Application No. 11/083,393 : DECISION DISMISSING PETITION
Filed: March 17, 2005 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 10758.105019 REV1010 :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed April 12, 2011, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to prior-filed nonprovisional Application No. 10/646,970, filed August 21, 2003. This is also a decision on the petition to expedite under 37 CFR 1.182.

DECISION UNDER 37 CFR 1.182

In general, the Office of Petitions reviews petitions and renders decisions on petitions in the order by which the petitions are filed. Consideration outside the general course of action requires a petition to expedite (and fee). As petitioners have met the minimum requirements for expedited treatment, the petition to expedite is grantable.

In view thereof, the petition to expedite under 37 CFR 1.182 is hereby **GRANTED**.

DECISION UNDER 37 CFR 1.78(a)(3)

The petition under 37 CFR 1.78(a)(3) is **GRANTED**.

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

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

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

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

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

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3205. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to Technology Center Art Unit 1632 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed applications.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

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UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/083,393	03/17/2005	1632	765	10758.105019 REV1010	28	3

CONFIRMATION NO. 8938

CORRECTED FILING RECEIPT

20786
KING & SPALDING
1180 PEACHTREE STREET , NE
ATLANTA, GA 30309-3521

Date Mailed: 04/19/2011

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)

David Ayares, Blacksburg, VA;
Paul Rohricht, Mertztown, PA;

Assignment For Published Patent Application

Revivicor, Inc., Blacksburg, VA

Power of Attorney: The patent practitioners associated with Customer Number 20786

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/553,895 03/17/2004
and claims benefit of 60/559,816 04/06/2004
and is a CIP of 10/646,970 08/21/2003 PAT 7,795,493
which claims benefit of 60/404,775 08/21/2002

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 05/11/2005

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/083,393**

Projected Publication Date: Not Applicable

Non-Publication Request: No

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

Title

TISSUE PRODUCTS DERIVED FROM PORCINE ANIMALS LACKING ANY EXPRESSION OF FUNCTIONAL ALPHA 1,3 GALACTOSYLTRANSFERASE

Preliminary Class

800

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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MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

MAILED

SEP 21 2010

OFFICE OF PETITIONS

In re Application of :
Allan Dickner :
Application No. 11/083,533 : DECISION GRANTING PETITION
Filed: March 18, 2005 : UNDER 37 CFR 1.313(c)(3)
Attorney Docket No. 05822.0418USWO :

This is a decision on the petition under 37 CFR 1.313(c)(3), filed September 20, 2010, 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 in favor of a continuing application under 37 CFR 1.53(b).

The application is hereby withdrawn from issue, and the abandonment is hereby recognized.

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

/Irvin Dingle/
Irvin Dingle
Petitions Examiner
Office of Petitions

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MAILED
OCT 19 2011
PCT LEGAL ADMINISTRATION

In re Application of	:	DECISION ON
Allan Dickner	:	
Application No.: 11/083,533	:	
Filing Date: 18 March 2005	:	PETITION UNDER
Attorney's Docket No.: 05822.0418USWO	:	
For: A LOADING LEDGE	:	37 CFR 1.78(a)(3)

This is in response to applicant's communication "PETITION UNDER 37 CFR 1.78(a)(3) filed 05 August 2011.

In a decision from this Office on 19 July 2011 for application 12/886,101, the petition under 37 CFR §1.78(a)(3) was dismissed as requirement (1) was not met. The decision stated that the abandoned intermediate application, aforementioned application 11/083,533, did not contain a proper reference establishing the relationship to international application PCT/SE2007/001437.

On 05 August 2011, applicant filed a petition under 37 CFR 1.78(a)(3) to establish the proper relationship to application PCT/SE2007/001437.

The petition is **DISMISSED**.

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

(1) the reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section to the prior filed application, unless previously submitted:

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

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) of this section and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition satisfies items (2) – (3) under 37 CFR 1.78(a)(3) but not item (1).

Regarding item (1), although a proper reference to the prior-filed application, PCT/SE2003/001437, has been included in the supplemental Application Data Sheet (ADS), the supplemental ADS is not acceptable as it does not comply with 37 CFR 1.76. A signature of the applicant or representative is required on the supplemental ADS in accordance with 37 CFR 1.33.

Regarding item (2), the surcharge has been provided.

Regarding item (3), the proper statement has been provided.

CONCLUSION

For the reason above, the petition under 37 CFR 1.78(a)(3) is **DISMISSED**.

Any inquiries concerning this decision may directed to Rafael Bacares at (571) 272-3276.

Accordingly, before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) and Supplemental ADS signed in accordance with 37 CFR 1.33 is required.

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

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

Boris Milef
Legal Examiner
PCT Legal Administrative Office

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P.O. BOX 2903
MINNEAPOLIS MN 55402-0903

MAILED
DEC 20 2011
PCT LEGAL ADMINISTRATION

In re Application of	:	DECISION ON
Allan DICKNER	:	
Application No.: 11/083,533	:	RENEWED
Filing Date: 18 March 2005	:	PETITION UNDER
Attorney's Docket No.: 05822.418USWO	:	
For: A LOADING LEDGE	:	37 CFR §1.78(a)(3)

This is in response to applicant's communication "RENEWED PETITION TO ACCEPT A DELAYED CLIAM FOR PRIORITY IN COMPLIANCE WITH 37 CFR 1.78(a)(3)" filed 02 November 2011.

BACKGROUND

In a decision from this Office on 19 October 2011, the petition under 37 CFR §1.178(a)(3) was dismissed because item (1) was not satisfied.

On 02 November 2011, petitioner filed a renewed petition under 37 CFR 1.78(3) to establish the proper relationship to application PCT/SE2007/001437 by a supplemental ADS.

DISCUSSION

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

(1) the reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section to the prior filed application, unless previously submitted:

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

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) of this section and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

Regarding requirement (1) a proper reference to the prior-filed international application, PCT/SE2003/001437, has been included in the supplemental Application Data Sheet (ADS), and the ADS now contains a proper signature in accordance with 37 CFR 1.33.

Regarding requirement (2), the surcharge has been provided.

Regarding requirement (3), the proper statement has been provided.

Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C.§§120 and 365(c) to the prior-filed international application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

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

CONCLUSION

For the reasons above, the petition under 37 CFR 1.78(a)(3) is **GRANTED**.

Any questions concerning this matter may be directed to Rafael Bacares at (571) 272-3276.

Boris Milef
Legal Examiner
Office of PCT Legal Administration

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Commissioner for Patents
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Alexandria, VA 22313-1450
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Margaret Anderson
106 E. 6th Street, Suite 900
Austin TX 78701

MAILED

MAR 14 2011

OFFICE OF PETITIONS

In re Application of :
ALEXANDER J. COHNE, ET AL. :
Application No. 11/083,567 : DECISION ON PETITION
Filed: March 18, 2005 : TO WITHDRAW
Attorney Docket No. **QQ1-0144US** : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed January 27, 2011.

The request is **NOT APPROVED**.

The request cannot be approved because the Office no longer accept address changes to a new practitioner/customer number or law firm filed with a request, absent the filing of a power of attorney to the new representative.

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, the most current address information provided for the first named inventor. 37 CFR 3.71(c) states:

> *An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.*

The assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, the statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (*e.g.*, reel and frame number).

A courtesy copy of this decision is being mailed to the address on the request. However, 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 JoAnne Burke at 571-272-4584.

JoAnne Burke
Petitions Examiner
Office of Petitions

cc: LEE & HAYE, PLLC
601 W RIVERSIDE
SUITE 1400
SPOKANE, WA 99201

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Paper No.

CHRISTOPHER C. WINSLADE
McANDREWS, HELD & MALLOY, LTD.
34th Floor
500 West Madison St.
Chicago IL 60661

MAILED

OCT 26 2010

OFFICE OF PETITIONS

In re Application of	:	
Feng et al.	:	
Application No. 11/083,597	:	ON APPLICATION FOR
Filed: March 18, 2005	:	PATENT TERM ADJUSTMENT
Atty Docket No. 16323US02	:	

This is in response to the Request for Reconsideration of the Patent Term Adjustment under 37 C.F.R. § 1.705 filed August 5, 2010. Applicant submits that the correct patent term adjustment to be indicated on the patent is one thousand two hundred thirty-seven (1237) days, not nine hundred eighty-eight (988) 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.

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

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under

§ 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office cannot make a determination on the correctness of the patent term adjustment until the patent has issued.

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

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

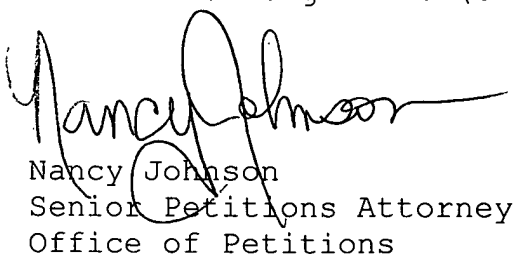
The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

---

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

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

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



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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King & Spalding LLP
P.O. Box 889
Belmont CA 94002-0889

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AUG 27 2010

OFFICE OF PETITIONS

In re Patent of Huang et al. :
Patent No. 7,589,252 :
Issue Date: September 15, 2009 :
Application No. 11/083,617 :
Filing Date: August 18, 2004 :
Attorney Docket No. 50665-8018.US02 :

DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

This is a decision on the correspondence, filed May 21, 2010, entitled, "STATEMENT OF FACTS UNDER 37 C.F.R. § 1.705(b)(2) IN SUPPORT OF APPLICATION FOR PATENT TERM ADJUSTMENT," filed May 21, 2010. The petition will be treated under 37 C.F.R. § 1.181.

The petition under 37 C.F.R. § 1.181 is **dismissed**.

Any request for reconsideration must be filed within two months of the mailing date of this decision. Extensions of time under 37 C.F.R. § 1.136 are NOT permitted. *See* 37 C.F.R. § 1.181(f).

The application matured into U.S. Patent No 7,589,252, on September 15, 2009, with a revised patent term adjustment of 274 days.

On April 5, 2010, patentees 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, which informed patentees that the request was dismissed. The Notice did not explicitly state the reason for the dismissal.

The present request for reconsideration was timely filed within one month of the mail date of the decision.

The petition argues the dismissal was in error because "...in spite of taking all due care to retroactively assess eligibility of our issued patentees, to understand the interim rules, and to learn to use new tools to assess eligibility, Applicants missed the deadline for requesting recalculation set forth in the interim rules."

Pursuant to 37 C.F.R. § 1.705(d), a request under 37 C.F.R. § 1.705(d) be filed within two months of the date a patent issues.

On September 30, 2008, the U.S. District Court for the District of Columbia issued a memorandum opinion in *Wyeth v. Dudas*, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d (BNA) 1538 (D.D.C. 2008). The opinion disagreed with the process used by the USPTO at the time to determine the number of days of overlap between delay under 35 U.S.C. § 154(b)(1)(A) ("A Delay") and delay under 35 U.S.C. § 154(b)(1)(B) ("B Delay").

On January 7, 2010, the Court of Appeals for the Federal Circuit issued a decision in *Wyeth v. Kappos*, 591 F.3d 1364, 93 U.S.P.Q. 2d (BNA) 1257 (Fed. Cir. 2010). The decision affirmed the district court's judgment.

If a party disagrees with the Office's calculation of a patent term adjustment the party may file "a civil action against the Director ... in the United States District Court for the District Columbia within 180 days after the grant of the patent." 35 U.S.C. § 154(b)(4). Patentees could have filed a civil action as late as March 14, 2010. A civil action was not filed on or before March 14, 2010, and the record fails to indicate a civil action has been filed.

On February 1, 2010, the USPTO published a Federal Register notice that, *inter alia*, announced a limited waiver of the two-month deadline for filing a petition for reconsideration of the patent term adjustment under 37 C.F.R. § 1.705(d). *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)*, 75 Fed. Reg. 5043 (February 1, 2010) ("Notice"). The Notice indicated the USPTO would permit patent owners to request recalculation of a patent's patent term adjustment up to 180 days after the grant of the patent in view of the Federal Circuit Court decision in *Wyeth v. Kappos*, 591 F.3d 1364 (Fed. Cir. 2010).[1]

It is undisputed that patentees failed to file a request for recalculation within 180 days of the date the patent issued. The request for recalculation was filed on April 5, 2010, which was over 200 days after the patent issued. The present petition was filed on May 21, 2010. Therefore, the request for recalculation was properly dismissed as untimely filed.

If patentees wish to argue a recalculation should be performed based on 37 C.F.R. § 1.705(d), a $200.00 petition fee is required. If patentees request waiver of the rule based on equitable grounds, then a $400.00 Rule 183 petition fee is required, as well.

[1] The Notice stated the Office was *sua sponte* waiving the two-month limit to file a request under 37 C.F.R. § 1.705(d) if request is filed within 180 days of the date the patent issued, the patent issued prior to March 2, 2010, and the sole basis for requesting reconsideration of the patent term adjustment is the Office's pre-*Wyeth* interpretation of 35 U.S.C. § 154(b)(2)(A).

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

By mail:	Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450
By hand:	Customer Service Window Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(571) 273-8300 ATTN: Office of Petitions
By internet:	EFS-Web www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

Telephone inquiries 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

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Ezra Sutton, Esq.
Plaza 9
900 Route 9
Woodbridge NJ 07095

MAILED

OCT 14 2010

OFFICE OF PETITIONS

In re Application of :
James W. Burrell IV :
Application No. 11/083,752 : ON PETITION
Filed: March 18, 2005 :
Attorney Docket No. :

This is a decision on the petitions filed June 25, 2010 and June 28, 2010 under the unintentional provisions of 37 CFR 1.137(b), to revive the above-identified application.

The petition is **DISMISSED**.

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

The application became abandoned for failure to timely file a proper reply within the meaning of 37 CFR 1.113 to the final Office action of December 8, 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). Accordingly, the date of abandonment of this application is March 9, 2010. A Notice of Abandonment was mailed on July 19, 2010.

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

1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item (1).

As to item 1, the amendment filed on April 21, 2010, does not *prima facie* place the application in condition for allowance, therefore the reply required must be a Notice of Appeal (and appeal fee), RCE, or the filing of a continuing application under 37 CFR 1.53(b). See attached courtesy copy of the advisory action.

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

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

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

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

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

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

Attachment: Advisory Action

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 11/083,752	**Applicant(s)** BURRELL, JAMES W.	
	Examiner DENNIS P. JOSEPH	**Art Unit** 2629	

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

THE REPLY FILED 21 April 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

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

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

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

NOTICE OF APPEAL

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

AMENDMENTS

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

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-18 and 22-24*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

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

REQUEST FOR RECONSIDERATION/OTHER

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

Applicant's amendments have not been entered because they raise new issue and have changed the scope of the claims. A request for reconsideration is respectfully required to continue prosecution of the case.

As discussed in the interview, more limitations about the touch aspect of the invention were added to the claims and they now recite the functions be "finger activated." This was added to differentiate the current inventnion from the prior art. However, this is new issue.

Again, the claim amendments have not been entered and a request for reconsideration is respectfully required to continue prosecution of the case. Thank you.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Ezra Sutton, Esq.
Plaza 9
900 Route 9
Woodbridge NJ 07095

MAILED

NOV 15 2010

OFFICE OF PETITIONS

In re Application of :
James W. Burrell IV :
Application No. 11/083,752 : ON PETITION
Filed: March 18, 2005 :
Attorney Docket No. :

This is a decision on the renewed petition filed November 1, 2010 under the unintentional provisions of 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the final Office action mailed, December 8, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on March 9, 2010. A Notice of Abandonment was mailed on July 19, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a RCE (Request for Continued Examination, with the required fee of $405, (2) the petition fee of $810, and (3) a proper statement of unintentional delay. Accordingly, the RCE is accepted as being unintentionally delayed.

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

This application is being referred to Technology Center AU 2629 for appropriate action by the Examiner in the normal course of business on the RCE received November 1, 2010.

/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

GAF MATERIALS CORPORATION
Attn: William J. Davis, Esq.
Legal Department, Building No. 8
1361 Alps Road
Wayne NJ 07470

MAILED

JUN 14 2011

OFFICE OF PETITIONS

In re Application of :
Larson et al. :
Application No. 11/083,786 : ON PETITION
Filed: March 18, 2005 :
Attorney Docket No. FDN-2854 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 6, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The two-month period for filing an appeal brief (accompanied by the fee required by 37 CFR 41.20(b)(2)), 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 for Pre-Appeal Brief Review.

This above-identified application became abandoned for failure to file a proper reply to the final Office Action of November 23, 2010. The final Office Action set a three (3) month shortened statutory period for reply. An amendment after final Office Action was filed on January 24, 2011. An Advisory Action mailed on March 10, 2011 informed petitioner the application was not placed in condition for allowance. A defective Pre-Appeal Brief Request was filed without a Notice of Appeal on May 23, 2011. Accordingly, this application became abandoned on May 24, 2011. This decision precedes the mailing of a Notice of Abandonment.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Notice of Appeal (accompanying fee) and a Request for Pre-Appeal Brief Review; (2) the petition fee of $1620; and (3) a proper statement of unintentional delay.

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

This application is being referred to Technology Center AU 3635 for appropriate action by the Examiner in the normal course of business on the reply received.

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

Charlema Grant
Attorney
Office of Petitions

Cc: Rachel J. Lin
Sills Cummis & Gross P.C.
One Rockefeller Plaza
New York, NY 10020

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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Trellis Intellectual Property Law Group, PC
1900 EMBARCADERO ROAD
SUITE 109
PALO ALTO, CA 94303

Mail Date: 08/30/2010

Applicant	: Yiren Huang	: DECISION ON REQUEST FOR
Patent Number	: 7660252	: RECALCULATION of PATENT
Issue Date	: 02/09/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/083,884	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 03/17/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **974** 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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BRINKS HOFER GILSON & LIONE/PML
INDIANAPOLIS OFFICE
CAPITAL CENTER, SUITE 1100
201 NORTH ILLINOIS STREET
INDIANAPOLIS IN 46204-4220

MAILED
MAR 21 2012
OFFICE OF PETITIONS

In re Application of
Arthur B. WYNANS et al. :
Application No. 11/083,909 :
Filed: March 18, 2005 : NOTICE UNDER 37 CFR. 1.28(c)
Patent No. 7,412,338 :
Issue Date: August 12, 2008 :
Attorney Docket No. 6270/164 (300179)

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

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

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

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

Inquiries related to this communication should be directed to Michelle R. Eason at (571) 272-4231.

Thurman K. Page
Petitions Examiner
Office of Petitions

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)
7,049,130	2006-05-23	11/084,007	2005-03-21	06882.0015-05000

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	/Eric P. Raciti/	Date (YYYY-MM-DD)	2010-12-30
Name	Eric P. Raciti	Registration Number	41475

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Patent No. 7049130
Issue Date: May 23,2006
Application No. 11084007
Filed: March 21,2005
Attorney Docket No. 06882.0015-05000

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

This is a decision on the electronic petition, filed December 30,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of December 30,2010 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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JAMES W. BADIE, ESQ.
SUITE 330
521 FIFTH AVENUE
NEW YORK, NY 10175-3399

MAILED
SEP 28 2011
OFFICE OF PETITIONS

In re Patent No. 7,225,828 :
Issue Date: June 5, 2007 :
Application No. 11/084,171 : ON PETITION
Filed: March 21, 2005 :
Patentee(s) Vincent Giagni, Jr. :

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

The petition is **GRANTED**.

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

Inquiries concerning this decision 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
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STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

MAILED
DEC 19 2011
OFFICE OF PETITIONS

In re Patent No. 7,228,816 :
Issued: June 12, 2007 :
Application No. 11/084,203 : ON PETITION
Filed: March 21, 2005 :
Attorney Docket No. 1851.1001 :

This is a decision on the petition under 37 CFR 1.378(c), filed November 3, 2011, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **DISMISSED.**

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Any petition for reconsideration of this decision must be accompanied by the petition fee of $400 as set forth in 37 CFR 1.17(f). The petition for reconsideration must include the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner.

A petition to accept the unintentionally delayed payment of a maintenance fee under 35 U.S.C. § 41(c) and 37 CFR 1.378(c) must be accompanied by: (1) a statement that the delay was unintentional; (2) payment of the appropriate maintenance fee, unless previously submitted; (3) payment of the surcharge set forth in 37 CFR 1.20(i)(2). This petition lacks item (3) listed above.

With regards to item (3), petitioner submitted $1,075.00 towards the required $1,640.00 surcharge fee, thus creating a $565.00 shortage. Therefore, as stated above a $400.00 petition fee is also required for any petition for reconsideration, bring the total to $965.00.

If this petition is not renewed or if renewed and not granted, then petitioner may request a refund of the maintenance and surcharge fees paid. The fee for requesting reconsideration is not refundable.

Additionally, joint patentee, Robert Turner, has certified that he is authorized to sign the petition on behalf of all the other patentees.

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

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

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

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

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

/Joan Olszewski/
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
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www.uspto.gov

STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

MAILED
DEC 21 2011
OFFICE OF PETITIONS

In re Patent No. 7,228,816 :
Issued: June 12, 2007 :
Application No. 11/084,203 : ON PETITION
Filed: March 21, 2005 :
Attorney Docket No. 1851.1001 :

CORRECTED DECISION

This is a decision on the petition under 37 CFR 1.378(c), filed November 3, 2011, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on June 13, 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.

Additionally, joint patentee, Robert Turner, has certified that he is authorized to sign the petition on behalf of all the other patentees.

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

/Joan Olszewski/
Joan Olszewski
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	11084241
Filing Date	21-Mar-2005
First Named Inventor	Frank Schwab
Art Unit	3733
Examiner Name	MARY HOFFMAN
Attorney Docket Number	P0022601.00
Title	DEVICE FOR DYNAMIC SPINAL FIXATION FOR CORRECTION OF SPINAL DEFORMITIES

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	/LEOGLENNA/
Name	Leo G. Lenna
Registration Number	42796

UNITED STATES 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 : January 11, 2012

In re Application of :

Frank Schwab

Application No : 11084241

Filed : 21-Mar-2005

Attorney Docket No : P0022601.00

DECISION ON PETITION

UNDER CFR 1.137(b)

This is an electronic decision on the petition under 37 CFR 1.137(b), filed January 11, 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

Sawyer Law Group, P.C.
P.O. Box 51418
Palo Alto CA 94303

MAILED

JAN 18 2011

OFFICE OF PETITIONS

In re Patent No. 7,442,570 :
Issue Date: October 28, 2008 :
Application No. 11/084,296 : DECISION ON PETITION
Filed: March 18, 2005 :
Attorney Docket No. IVS-105/3404P :

This is a decision on the Request For Certificate Of Correction Of Office Mistake Under 37 CFR §1.322, filed May 6, 2010, requesting correction on the Title Page of the subject patent, to accept the correct spelling of assignee's name. The Request is being treated as a petition under 37 CFR 1.322(a) for which no fee is required. A completed Certificate of Correction Form was submitted with the petition.

The petition under 37 CFR 1.322(a) is **GRANTED**.

Petitioner requests that the present Petition was submitted to correct the spelling of assignee's name omitted on the previously submitted PTOL-85b, filed September 17, 2008, and that such error was the fault of the Office. Accordingly, petitioner requests, in effect, that the Title Page of the above-identified patent be corrected, via issuance of a Certificate of Correction, to correct the spelling of the assignee's name identified thereon from:

"Invensence Inc."

to

--InvenSense Inc.

Telephone inquiries related this communication should be directed to the undersigned at (571)272-3213. Inquiries regarding this 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 granted the petition under 37 CFR 1.322(a) and directing issuance of the requested Certificate of Correction.

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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

MAILED
MAY 18 2011
OFFICE OF PETITIONS

In re Patent No. 7,515,707 :
Issue Date: April 7, 2009 :
Application No. 11/084,433 : NOTICE
Filed: March 18, 2005 :
Attorney Docket No. CHAES7.005AUS :

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

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-1642.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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BARNES & THORNBURG LLP
P.O. BOX 2786
CHICAGO IL 60690-2786

MAILED

MAY 10 2011

OFFICE OF PETITIONS

In re Application of :
Neuhauser, et al. :
Application No. 11/084,545 : DECISION
Filed/Deposited: 18 March, 2005 :
Attorney Docket No. 52579-113227 :
:

This is a decision on the petition filed on 25 February, 2011, pursuant to 37 C.F.R. §1.137(b) for revival of an application abandoned due to unintentional delay.

The petition under 37 C.F.R. §1.137(b) is **GRANTED**.

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(II).

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the final Office action mailed on 2 November, 2009, with reply due absent extension of time on or before 2 February, 2010.

Petitioner filed a request and fee for extension of time with a Pre-Appeal Brief Request and Notice of Appeal with fee on 2 March, 2010.

The Office mailed a Notice of Panel Decision on 23 April, 2010, with reply due absent extension of time on or before 23 May, 2010.

The application went abandoned by operation of law after midnight 23 May, 2010.

The Office mailed the Notice of Abandonment on 16 August, 2010.

On 25 February, 2011, Petitioner filed, *inter alia*, a petition pursuant to 37 C.F.R. §1.137(b), with fee, a reply in the form of pursuant 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 made a statement of unintentional delay that is incomplete. *Since the statement appearing in the petition varies from the language required by 37 C.F.R. §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 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.

---

[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.

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 2617 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.

[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.

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.

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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ROBERT L. MCDOWELL
1170 JACKSON HEIGHTS DRIVE
WEBSTER, NY 14580

MAILED
MAY 17 2011
OFFICE OF PETITIONS

In re Application of :
Eugene A. Larson, et al. :
Application No. 11/084,568 : DECISION ON PETITION
Filed: March 18, 2005005 : TO MAKE SPECIAL UNDER
Attorney Docket No. CK&L-02-US : 37 CFR 1.102(c)(1)
:

This is a decision on the petition under 37 CFR 1.102(c)(1), filed April 10, 2011, to make the above-identified application special based on applicant's age as set forth in M.P.E.P. § 708.02, Section IV.

The petition is **GRANTED**.

A grantable petition to make an application special under 37 CFR 1.102(c)(1) and MPEP § 708.02, Section IV: Applicant's Age must be accompanied by evidence showing that at least one of the applicants is 65 years of age, or more, such as a birth certificate or a statement by applicant. No fee is required

The instant petition includes a statement from applicant's representative that he is in possession of proof of applicant Eugene A. Larson's age. Accordingly, the above-identified application has been accorded "special" status.

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

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

The application is being forwarded to the Technology Center Art Unit 3739 for action on the merits commensurate with this decision.

/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
www.uspto.gov

HEWLETT-PACKARD COMPANY
INTELLECTUAL PROPERTY ADMINISTRATION
3404 E. HARMONY ROAD
MAIL STOP 35
FORT COLLINS CO 80528

MAILED
SEP 22 2011
OFFICE OF PETITIONS

In re Patent No. 7,901,749	:	
Issue Date: March 08, 2011	:	
Application No. 11/084,571	:	NOTICE UNDER 37 CFR. 1.28(c)
Filed: March 18, 2005	:	
Attorney Docket No. **200312810-2**	:	

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

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

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

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

Inquiries related to this communication should be directed to the Michelle R. Eason at (571) 272-4231.

Thurman Page
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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In re Patent No. 7178410
Issue Date: February 20,2007
Application No. 11084607
Filed: March 21,2005
Attorney Docket No.

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

This is a decision on the electronic petition, filed June 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 June 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
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)
7178410	2007-02-20	11084607	2005-03-21	

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			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	/Stephen C. Hall/	Date (YYYY-MM-DD)	2011-06-03
Name	Stephen C. Hall	Registration Number	57339

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 05/26/11

TO SPE OF : ART UNIT: **3634 Attn: MITCHELL KATHERINE W (SPE)**

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/084667 Patent No.: 7574826

CofC mailroom date: 12/15/10

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Note: Please check Claims 8 & 16

Tasneem Siddiqui
Certificates of Correction Branch
703-756-1814 & 703-756-1593

Thank You For Your Assistance

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

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

Comments: _____

/Katherine Mitchell/ _3634
SPE **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Natalie Bogdanos, Esq.
Enzo Therapeutics, Inc.
C/O Enzo Biochem, Inc.
527 Madison Avenue, 9th Floor
New York NY 10022

MAILED
FEB 02 2012
OFFICE OF PETITIONS

In re Application of :
Wu et al. :
Application No. 11/084,668 :
Filed: March 18, 2005 : DECISION ON PETITION
Atty Docket No. Enz-74 : UNDER 37 CFR 1.78(a)(6)
:

This is a decision on the PETITION UNDER 37 CFR 1.78(a)(6) FOR UNINTENTIONALLY DELAYED BENEFIT CLAIM filed December 19, 2011, to accept an unintentionally delayed claim of priority to provisional application No. 60/504,860.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority 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 the 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 under 37 CFR § 1.78(a)(6), must be accompanied by:

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

The instant application was filed after November 29, 2000. A review of the application as filed reveals that the claim for priority set forth on petition was not submitted on filing in the first sentence of the specification or in an application data sheet. The application as filed included a claim to intermediate application No. 10/849,067 but omitted the claim for benefit of the provisional application. The four and sixteen-month periods specified in 37 CFR § 1.78(a)(5)(ii) have expired. Thus, the instant petition is appropriate. In addition, the petition includes the required statement of unintentional delay and the required surcharge.

The referenced required by 35 U.S.C. 119(e) is included in an amendment. No request for continued examination is required for consideration of entry of this amendment after final.

The filing date of provisional application no. 60/504,860, for which priority is claimed, is September 22, 2003, which is within twelve months of the filing date of intermediate application No. 10/849,067 filed May 19, 2004.

It is noted that the filing fee was paid in provisional application No. 60/504,860.

All of the above requirements having been satisfied, the late claim for benefit of priority to the prior-filed application 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 applications 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 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the record of 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 application, accompanies this decision on petition.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3219. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being referred to Technology Center Art Unit 1647 for consideration by the examiner of the claim for benefit of priority under 35 U.S.C. § 119(e) of the prior-filed application as set forth in the amendment filed December 19, 2011.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/084,668	03/18/2005	1647	8672	Enz-74	113	39

CONFIRMATION NO. 2086

CORRECTED FILING RECEIPT

Natalie Bogdanos, Esq.
Enzo Therapeutics, Inc.
C/O Enzo Biochem, Inc.
527 Madison Avenue, 9th Floor
New York, NY 10022

Date Mailed: 01/30/2012

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)

Dianqing Dan Wu, Cheshire, CT;
Xiaofeng Li, West Hartford, CT;

Power of Attorney: None

Domestic Priority data as claimed by applicant

This application is a CIP of 10/849,067 05/19/2004
which claims benefit of 60/504,860 09/22/2003

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 05/11/2005

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/084,668**

Projected Publication Date: Not Applicable

Non-Publication Request: No

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

Title

Sclerostin and the inhibition of WNT signaling and bone formation

Preliminary Class

514

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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MAILED Paper No.

JUN 03 2011

OFFICE OF PETITIONS

Foley & Lardner LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON WI 53701-1497

In re Application No. 11/084,689	:	
Levy	:	DECISION ON
Filed: March 17, 2005	:	REQUEST FOR
Attorney Docket No. 098888-1874	:	RECONSIDERATION OF
Title: DIGITAL WATERMARKING FOR WORKFLOW BY TRACKING CONTENT OR CONTENT IDENTIFIERS WITH RESPECT TO TIME	:	PATENT TERM ADJUSTMENT

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed on May 13, 2011. Applicant submits that the correct patent term adjustment to be indicated on the patent is one thousand, three hundred and sixty-four (1364) days, not seven hundred and two (702) 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.

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

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under

§ 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office cannot make a determination on the correctness of the patent term adjustment until the patent has issued.

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

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

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

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months

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

after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

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

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

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

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FEB 04 2011

OFFICE OF PETITIONS

Bell & Manning, LLC
122 E. Olin Avenue, Suite 290
Madison, WI 53713

In re Patent of Robert H. Lasseter et al.	:	DECISION ON REQUEST
Patent No. 7,687,937	:	FOR RECONSIDERATION OF
Issue Date: March 30, 2010	:	PATENT TERM ADJUSTMENT
Application No. 11/084,737	:	AND NOTICE OF INTENT TO
Filing Date: March 18, 2005	:	ISSUE CERTIFICATE OF
Attorney Docket No. 032026-0867	:	CORRECTION

This is a decision on the petition filed June 23, 2010, which is being treated as a petition under 37 C.F.R. § 1.705(d) requesting the patent term adjustment indicated on the patent be corrected to indicate the term of the patent is extended or adjusted by one thousand one hundred forty-four (1144) days.

The petition to correct the patent term adjustment indicated on the patent to indicate the term of the patent is extended or adjusted by one thousand one hundred forty-four (1144) days. is **GRANTED to the extent indicated herein.**

The Office will *sua sponte* issue a certificate of correction setting forth a patent term adjustment of 860 days. Pursuant to 37 C.F.R. § 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, Patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to file any request for reconsideration of the patent term adjustment determination of 860 days. No extensions of time will be granted under 37 C.F.R. § 1.136.

No portion of this decision should be construed as a waiver of the requirement, set forth in 35 U.S.C. § 154(b)(4), that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. § 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Background

The issued patent sets forth a patent term adjustment determination of 861 days, which is the sum of 447 days of delay under 37 C.F.R. § 1.703(a) ("A Delay") and 503 days of delay under 37 C.F.R. § 1.703(b) ("B Delay") reduced by 41 days of overlap between the periods of A Delay and B Delay and reduced by 48 days of delay under 37 C.F.R. § 1.704 ("Applicant Delay").

A petition under 37 C.F.R. § 1.705(d) was timely filed on May 25, 2008. The petition asserted the correct patent term adjustment is 1,144 days.

The Office incorrectly treated the May 25, 2008 petition as a "Request for Recalculation of Patent Term Adjustment in View of *Wyeth*" filed pursuant to the procedures set forth in a February 2010 issued by the Office.[1] As a result, the Office issued a decision improperly dismissing the petition on June 2, 2010. The decision stated, "This Request is deemed ineligible for consideration." The decision did not address the merits of the petition.

Patentees filed the instant request for reconsideration on June 23, 2010. Patentees state the prior petition was not a Request for Recalculation of Patent Term Adjustment in View of *Wyeth*.

Discussion

The paper filed May 25, 2008, was not a Request for Recalculation of Patent Term Adjustment in View of *Wyeth*. Instead, the paper was a petition under 37 C.F.R. § 1.705(d). Therefore, the Office will consider the merits of the petition.

Delay Under 37 C.F.R. § 1.703(a)(4)

The patent term adjustment determination set forth on the patent included a 41-day increase for delay under 37 C.F.R. § 1.703(a)(4). As a result of arguments in the petition, the Office will review the propriety of the 41-day increase in patent term adjustment.

A Notice of Appeal was filed October 14, 2008. An appeal brief was filed December 3, 2008. The Office mailed a "Notice of Non-Compliant Appeal Brief" on February 3, 2009. A response to the February 3, 2009 notice was filed on March 4, 2009. The Office issued a non-final Office action on June 10, 2009.

37 C.F.R. § 1.703(a)(4) states the period of A Delay includes, with emphasis added,

> The number of days, if any, in the period beginning on the day after the date that is four months after the date an appeal *brief in compliance with § 41.37* of this title was filed and ending on the date of mailing of any of an examiner's answer under § 41.39 of this title, an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first.

Patentees argue a 41-day increase in patent term adjustment is warranted because the non-final Office action was mailed four months and 41 days after Patentees filed the December 3, 2008 brief.

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[1] *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), 75 *Fed. Reg.* 5043 (February 1, 2010), 1351 *Off. Gaz. Pat. Office* 204 (February 23, 2010).

The period set forth in 37 C.F.R. § 1.703(a)(4) begins on the day after the date an appeal brief "in compliance with [37 C.F.R.] § 41.37" is filed. The brief filed December 3, 2008, failed to comply with 37 C.F.R. § 41.37. In other words, the four-month period set forth in 37 C.F.R. § 1.703(a)(4) began on March 4, 2009. The Office issued a non-final Office action less than four months after March 4, 2009. Therefore, a 41-day increase in patent term adjustment is not warranted under 37 C.F.R. § 1.703(a)(4).

B Delay

The petition asserts the proper period of B Delay is 742 days. The Office agrees the number of days beginning March 19, 2008, the day after the date three years after the filing date, and ending March 30, 2010, the date the patent issued, is 742 days. However, the Office does not agree the period of B Delay is 742 days.

Pursuant to 37 C.F.R. § 1.703(b)(4), the period of B Delay does not include,

> The number of days, if any, in the period beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31 of this title and ending on the date of the last decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145, or on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first, if the appeal did not result in a decision by the Board of Patent Appeals and Interferences.

A Notice of Appeal was filed October 14, 2008. Prosecution of the application was reopened when the Office issued a non-final Office action on June 10, 2010. The number of days beginning on October 14, 2008, and ending June 20, 2010, is 240 days.

The proper period of B Delay is 502 (742 - 240) days.

Delay Under 37 C.F.R. § 1.704(c)(10)

The period of Applicant Delay includes a 4-day reduction under 37 C.F.R. § 1.704(b) and a 44-day reduction under 37 C.F.R. § 1.704(c)(10). The petition appears to dispute the propriety of the 44-day reduction in so far as the petition states the period of Applicant Delay is 4 days.

A Notice of Allowance was mailed November 18, 2009, and an application data sheet ("ADS") was filed February 15, 2009. 37 C.F.R. § 1.704(c)(10) states,

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

An ADS is a paper which will result in a reduction in patent term adjustment if filed after the issuance of a Notice of Allowance. An ADS was filed in this case after issuance of a Notice of Allowance. Therefore, a reduction in patent term adjustment is warranted under 37 C.F.R. § 1.704(c)(10).

The number of days beginning February 15, 2009, the date the ADS was filed, and ending March 30, 2010, the date the patent issued, is 44 days. Therefore, a 44-day reduction in patent term adjustment is warranted.

Conclusion

The proper period of A Delay is 406 days, which consists solely of a 406-day increase in patent term adjustment for delay under 37 C.F.R. § 1.703(a)(1).

The proper period of B Delay is 502 days.

The periods of A Delay and B Delay do not overlap.

The period of Applicant Delay is 48 days, which consists of 4 days of delay under 37 C.F.R. § 1.704(b) and 44 days of delay under 37 C.F.R. § 1.704(c)(10).

The proper patent term adjustment is 860 days, which is the sum of 406 days of A Delay and 502 days of B Delay reduced by 48 days of Applicant Delay.

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

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the patent is extended or adjusted by **eight hundred sixty (860)** 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.	:	7,687,937 B2
APPLICATION NO.	:	11/084,737
DATED	:	March 30, 2010
INVENTOR(S)	:	Robert H. Lasseter 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 861 days.

Delete the phrase "by 861 days" and insert -- by 860 days--

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14 PLAZA DRIVE
LATHAM NY 12110

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JAN 13 2011

OFFICE OF PETITIONS

In re Application of :
Harry B. Goodson IV et al. :
Application No. 11/084,738 : ON PETITION
Filed: March 16, 2005 :
Attorney Docket No. **FLO-010** :

This is a decision on the petition filed September 30, 2010 and re-submitted on December 7, 2010, under 37 CFR 1.181 to withdraw the holding of abandonment.

The petition under 37 CFR 1.181(b) is **GRANTED**.

In response to a Final Office Action mailed December 24, 2009 which set a three month period for reply, applicants filed an amendment. However, by way of an Advisory Action, applicants were advised that the response did not place the application in condition for allowance. In response thereof, a response was timely filed on March 24, 2010. Subsequently a Notice of Abandonment was mailed on September 16, 2010 with an indication that while a reply was filed August 11, 2010, a reply with an extension of time was due not later than June 24, 2010 and thus the August 11, 2010 reply was untimely.

Petitioner argues that while a reply was in fact filed August 11, 2010 curing the defective Terminal Disclaimer, petitioner never received notification that the Terminal Disclaimer filed March 24, 2010 was defective and thus had filed the August 11, 2010 as a result[1].

A review of USPTO records confirms that the applicant was not timely notified of the defective Terminal Disclaimer and if such notification had been mailed, applicant would have had time with an extension of time to file a response. In view thereof, the holding of abandonment is withdrawn. No petition fees are due and none have been charged.

This application is being forwarded to the Technology Center 3767 for treatment of the responses filed March 24, 2010 and August 11, 2010.

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

[1]The petition argues that "having not received a response from the Patent Office on or about August 11, 2010, applicant's practitioner surveyed the USPTO website and found an internal document "Terminal Disclaimer Approval Form used within the USPTO, dated April 22, 2010 which detailed that "the serial number on the terminal disclaimer filed is incorrect as it reads 11/084,783 and should read 11/084,738".

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110216

DATE : February 26, 2011

TO SPE OF : ART UNIT 2492

SUBJECT : Request for Certificate of Correction on Patent No.: 7,707,292

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 issued patent omitted several examiner amendments that were supplied with the notice of allowance on December 23, 2009.

/JOSEPH THOMAS/
Supervisory Patent Examiner, Art Unit 2492

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600 ATLANTIC AVENUE
BOSTON MA 02210-2206

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SEP 20 2010

OFFICE OF PETITIONS

In re Application of :
Bauer, et al. :
Application No. 11/084,777 : ON REQUEST FOR
Filed: March 18, 2005 : RECONSIDERATION OF
Attorney Docket Number: C1041.70016US02 : PATENT TERM ADJUSTMENT

This is a decision on the petition under 37 CFR 1.705(b), filed July 2, 2010. Applicants believe that they should be accorded an additional PTA of 407 days. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

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

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

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

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

In view thereof, the correct determination of PTA prior to issuance is **sixty-six (66) days** (312 days of PTO delay, reduced by 246 days of Applicant delay).

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

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

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

Anthony Knight
Director
Office of Petitions

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

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2040 MAIN STREET
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IRVINE CA 92614

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OFFICE OF PETITIONS

In re Patent No. 7,318,486 :
Issued: January 15, 2008 :
Application No. 11/084,803 : ON PETITION
Filed: March 18, 2005 :
Attorney Docket No. UDL14.004CP1 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed July 1, 2011.

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

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

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

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

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

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

IBIS Biosciences, Inc.
2251 Faraday Avenue
Suite 150
Carlsbad CA 92008

MAILED
MAR 13 2012
OFFICE OF PETITIONS

In re Patent No. 7,312,036 :
Issue Date: December 25, 2007 :
Application No. 11/085,320 : NOTICE
Filed: March 21, 2005 :
Attorney Docket No. DIBIS0056US1/10446 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed February 16, 2012. 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

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/085,366	03/21/2005	Samuel Sung Wan Park	PARK-1	4273

1054 7590 02/07/2011

LEONARD TACHNER, A PROFESSIONAL LAW CORPORATION
17961 SKY PARK CIRCLE, SUITE 38-E
IRVINE, CA 92614

EXAMINER	
CHAMBERS, TROY	

ART UNIT	PAPER NUMBER
3641	

MAIL DATE	DELIVERY MODE
02/07/2011	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE
BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte SAMUEL SUNG WAN PARK

Application 11/085,366
Technology Center 3600

DECISION ON PETITION

This is a decision on the "Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b)," filed May 25, 2010 ("Petition to Revive").

See 75 Fed. Reg. 15,689-90 (Mar. 30, 2010) for authority of the Chief Administrative Patent Judge.

FINDINGS

1. On January 24, 2008, Appellant filed an Appeal Brief.

2. On January 30, 2008, the Patent Appeal Center Specialist issued a Notification of Non-Compliant Appeal Brief (37 CFR 41.37). The Notification granted Appellant a period of one month or thirty days, whichever is longer, within which to file a corrected brief, i.e., until February 29, 2008.

3. On September 3, 2008, having received no response to the Notification of Non-Compliant Appeal Brief of January 30, 2008, the Primary Examiner issued a Notice of Abandonment.

4. On May 25, 2010, Appellants filed the present Petition and an Appeal Brief.

5. In respect to revival of an unintentionally abandoned application, 37 C.F.R. § 1.137(b) provides that:

> (b) *Unintentional.* If the delay in reply by applicant or patent owner was unintentional, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination prosecution terminated under §§ 1.550(d) or 1.957(b) or limited under § 1.957(c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:
>
> (1) The reply required to the outstanding Office action or notice, unless previously filed;
>
> (2) The petition fee as set forth in § 1.17(m);
>
> (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and
>
> (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

6. The Petition to Revive filed May 25, 2010 was accompanied by:

> (a) an Appeal Brief;
>
> (b) the Petition fee; and
>
> (c) A statement that "The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional."

7. There are no facts known by the Office that would cause the Office to question whether either the abandonment or delay in filing the Petition to Revive was unintentional.

8. Since the application was filed after June 8, 1995, on March 21, 2005, no terminal disclaimer is required.

9. A review of the Appeal Brief filed on May 25, 2010 indicates that it is compliance with 37 C.F.R. § 41.37.

DISCUSSION

As indicated above, Appellant has complied with all of the requirements of a petition under 37 C.F.R. § 1.137(b) for revival of an unintentionally abandoned application.

DECISION

In view of the foregoing, the Petition to Revive is GRANTED and the Appeal Brief of May 25, 2010 will be returned to the Examiner for preparation of an Examiner's Answer.

James T. Moore
Acting Chief Administrative Patent Judge

LEONARD TACHNER, A PROFESSIONAL LAW CORPORATION
17961 SKY PARK CIRCLE, SUITE 38-E
IRVINE CA 92614

UNITED STATES 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 : August 1,2011

In re Application of :

Samuel Park

Application No : 11085366

Filed : 21-Mar-2005

Attorney Docket No : PARK-1

DECISION ON PETITION

UNDER CFR 1.137(b)

This is an electronic decision on the petition under 37 CFR 1.137(b), filed August 1,2011 , 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

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	11085366
Filing Date	21-Mar-2005
First Named Inventor	Samuel Park
Art Unit	3641
Examiner Name	TROY CHAMBERS
Attorney Docket Number	PARK-1
Title	NON-LETHAL ELECTRICAL DISCHARGE WEAPON HAVING A BOTTOM LOADED CARTRIDGE

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	/Leonard Tachner/
Name	Leonard Tachner
Registration Number	26344

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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MICROSOFT CORPORATION
ONE MICROSOFT WAY
REDMOND WA 98052-6399

MAILED

OCT 06 2010

OFFICE OF PETITIONS

In re Patent No. 7,689,654 :
Issue Date: March 30, 2010 :
Application No. 11/085,373 : DECISION ON PETITION
Filed: March 21, 2005 :
Attorney Docket No. MSFT-01039US0 :

This is a decision on the Request To Correct Assignee On Issued Patent Under 37 C.F.R. §3.81(b), filed September 1, 2010, requesting correction on the Title Page of the subject patent to identify the correct assignee's name and residence. The Request is being treated as a Petition Under 37 CFR §3.81(b). A completed Certificate of Correction Form (PTO/SB/44) was previously submitted on May 12, 2010.

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

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

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

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

The requisite $100.00 fee (Fee Code 1811), as set forth under 37 CFR 1.20(a), has been submitted. However, the $130.00 processing fee (Fee Code 1464), as set forth under 37 CFR 1.17(i), was accompanied deposit account authorization to charge any required fees. As such, the fee has been charged as authorized. Further, Office assignment records are consistent with the requested correction. Accordingly, since the Petition complies with the provisions of 37 CFR 3.81(b), it is appropriate for the Office to issue a Certificate of Correction in accordance with the content of the Form PTO/SB/44 previously submitted on May 12, 2010.

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

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

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. 7,689,654.

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

cc: Vierra Magen Marcus & DeNiro LLP
575 Market Street, Suite 2500
San Francisco, California 94105

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
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CANTOR COLBURN LLP
20 CHURCH STREET
22ND FLOOR
HARTFORD, CT 06103

MAILED

NOV 03 2010

OFFICE OF PETITIONS

In re Application of :
Puhlick et al. :
Application No. 11/085,714 : ON PETITION
Filed: March 18, 2005 :
Attorney Docket No. YTP0004US :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July October 15, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to file a timely reply within the meaning of 37 CFR 1.113 to the final Office action of September 30, 2009. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that prima facie places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is December 31, 2009. A Notice of Abandonment was mailed April 27, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE), including the fee of $405 and the submission required by 37 CFR 1.114, (2) the petition fee of $810 and (3) 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) 272-6059.

This application is being referred to Technology Center 17965for further examination on the merits

A. Kelley

Alicia Kelley
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110811

DATE :

TO SPE OF : ART UNIT

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

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

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

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

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

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

Note your decision on the appropriated box.

☐ **Approved** All changes apply.

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

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

Comments:

The first line of the specification containing the cross reference to related application does not list this applicaiton as a divisional application. Thus, the first line should read -- This application is a divisional application of and claims priority to and benefit of US Application No. 09/958,432, now US Patent No. 6,926,164, filed on May 7, 2002, and entitled "Lockable Container for Prerecorded Storage Media".

/J. Gregory Pickett/
Supervisory Patent Examiner, Art Unit 3788

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.
11/085,716	21 March 2005	BROADHEAD ET AL.	2450132US2AP

SAND & SEBOLT
AEGIS TOWER, SUITE 1100
4940 MUNSON STREET, NW
CANTON, OH 44718-3615

EXAMINER	
ROBIN HYLTON	
ART UNIT	**PAPER**
3788	20111012

DATE MAILED:

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

Commissioner for Patents

Certificate of correction approved along with additional correction needed in the first line of the specification.

/ROBIN HYLTON/
Primary Examiner, Art Unit 3788

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110811

DATE :

TO SPE OF : ART UNIT 3788

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

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

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

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

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

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

Note your decision on the appropriated box.

☒ **Approved** All changes apply.

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

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

Comments:

The first line of the specification containing the cross reference to related application does not list this applicaiton as a divisional application. Thus, the first line should read -- This application is a divisional application of and claims priority to and benefit of US Application No. 09/958,432, now US Patent No. 6,926,164, filed on May 7, 2002, and entitled "Lockable Container for Prerecorded Storage Media".

/J. Gregory Pickett/
Supervisory Patent Examiner, Art Unit 3788

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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NOV 02 2010
OFFICE OF PETITIONS

In re Application of
Anthony G. Macaluso
Application No. 11/085,935
Filed: March 21, 2005
Attorney Docket No. 13817-0010001/

DECISION ON PETITION
TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed October 13, 2010.

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

A review of the file record indicates that on October 29, 2010 the power of attorney to Fish & Richardson P.C. (SD) 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: POLSINELLI SHUGHART PC
700 W. 47TH STREET
SUITE 1000
KANSAS CITY MO 64112-1802

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Paper No.

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

MAILED
FEB 21 2012
OFFICE OF PETITIONS

In re Application of :
Gan et al. : DECISION ON
Application No. 11/085,968 : PETITION
Filed: March 21, 2005 :
Atty Docket No. SKYWRKS.000GEN:

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) filed January 24, 2012.

The petition is **GRANTED**.

The above-identified application was abandoned for failure to file a proper reply to the final Office action mailed December 1, 2009. This Office action set a shortened statutory period for reply of three (3) months from the mail date of the action. No reply received and no extension of time obtained, the application became abandoned effective March 2, 2010. A courtesy Notice of Abandonment was mailed on June 23, 2010.

On petition, petitioner submitted a Request for Continued Examination (RCE) and submission under §1.114 (in the form of an amendment)(and RCE fee); paid the petition fee; and made the required statement of unintentional delay.

Technology Center AU 2891 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 January 24, 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
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P.O. Box 1450
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HITACHI C/O WAGNER BLECHER LLP
123 WESTRIDGE DRIVE
WATSONVILLE CA 95076

MAILED
DEC 02 2010
OFFICE OF PETITIONS

In re Application of :
Heybruck, et al. :
Application No. 11/086,064 : ON PETITION
Filed: March 22, 2005 :
Attorney Docket No. HSJ920050051US2

This is a decision on the petition under 37 CFR 1.1.137(b), filed on October 25, 2010, to revive the above-cited application.

The petition is **GRANTED**.

The record reflects that a Notice of Non-Compliant Amendment was mailed October 22, 2007, allowing a shortened period for reply of one month from its mailing date. A response was not received and the application became abandoned on November 23, 2007. A Notice of Abandonment was mailed April 2, 2008.

The amendment filed October 25, 2010, is noted.

The application is being forwarded to Technology Center 2100, GAU 2129 for further processing.

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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SEP 20 2011

OFFICE OF PETITIONS

ABEL LAW GROUP, LLP
7300 FM2222
Bldg 1, Ste 210
Austin TX 78730

In re Patent No. 7,930,480 : DECISION ON APPLICATION FOR
Issued: April 19, 2011 : PATENT TERM ADJUSTMENT
Application No. 11/086,066 :
Filing or 371(c) Date: March 21, 2005 :
Dkt. No.: HJP920030028US1 :

This is a decision on the application for patent term adjustment under 37 CFR 1.705(d) filed on June 20, 2011 requesting an increase in patent term adjustment from 244 days to 828 days.

The petition for reconsideration of the patent term adjustment is **DISMISSED**.

The above-identified application matured into U.S. Patent No. 7,930,480 on April 19, 2011. The patent issued with a patent term adjustment of 244 days. The instant application for patent term adjustment was timely filed June 20, 2011.

Patentees assert that the application is entitled to 584 days of patent term adjustment under 37 CFR 1.702(b).

Patentees' arguments have been carefully considered, but are not persuasive. In view of the request for continued examination filed October 22, 2007, the instant application did not accrue any adjustment under 37 CFR 1.702(b). The entire period of time consumed by continued examination is excluded from adjustment under 37 CFR 1.702(b). See, also, 35 USC 154(b)(1)(B)(i).

In view thereof, no adjustment to the patent term will be made.

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

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

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO, CA 92121

MAILED
JAN 19 2011
OFFICE OF PETITIONS

In re Application of :
Wang et al. :
Application No. 11/086,148 : ON PETITION
Filed: March 21, 2005 :
Attorney Docket No. 020295C1 :

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

The petition is **DISMISSED**.

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

The application became abandoned for failure to timely pay the issue and publication fees on or before November 8, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed August 6, 2010, which set a statutory period of reply of three (3) months. Accordingly, the application became abandoned on November 9, 2010.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed, (2) the petition fee as set forth in 37 CFR 1.17(m), 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. 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 petition lacks item (1), the required reply. Petitioner did not submit the issue fee of $1,510 and publication fee of $300 as required by the Notice of Allowance and Fee(s) Due, mailed August 6, 2010. While the Office recognizes that the petitioner submitted a Request for Continued Examination (RCE) with the present petition, the RCE cannot be accepted at this time. Petitioner's attention is directed to 35 U.S.C. 41(a)(7) and 151 which requires payment of the issue fee as a condition of reviving an application abandoned for failure to pay the issue fee. Therefore, the filing of a RCE without payment of the issue fee or any outstanding balance thereof is not an acceptable reply in an application abandoned for failure to pay the issue fee or any portion thereof.

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**

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

Alicia Kelley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO, CA 92121

MAILED

MAY 24 2011

OFFICE OF PETITIONS

In re Application of :
Wang et al. :
Application No. 11/086,148 : ON PETITION
Filed: March 21, 2005 :
Attorney Docket No. 020295C1 :

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed April 27, 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 8, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed August 6, 2010, which set a statutory period of reply of three (3) months. Accordingly, the application became abandoned on November 9, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form issue fee of $1,510, publication fee of $300, (2) the petition fee of $1,620, and (3) a proper statement of unintentional delay. Accordingly, the failure to timely submit the issue and publication fees as required by the Notice of Allowance and Fee(s) Due is accepted as being unintentionally delayed.

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

This application is being referred to Technology Center AU 2617 for processing and appropriate action by the Examiner in the normal course of business of the Request for Continued Examination (RCE) filed December 10, 2010.

A. Kelley-Collier

Alicia Kelley-Collier
Petitions Examiner
Office of Petitions

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UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/086,664	03/23/2005	Theodore A. Paxton	081468-0314790	3141

909 7590 09/17/2010

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

EXAMINER	
RAYMOND, BRITTANY L	
ART UNIT	**PAPER NUMBER**
1795	
MAIL DATE	**DELIVERY MODE**
09/17/2010	PAPER

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

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

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SEP 17 2010 wk

Mailed :
In re Application of : DECISION ON
Paxton et al. : PETITION
Serial No. 11/086,664 :
Filed: March 23, 2005 :
For: Reduced Pitch Multiple Exposure Process

This is a decision on the PETITION FILED UNDER 37 CFR 1.144 filed on June 7, 2010.

Newly added claims 45-56, drawn to a computer readable medium, were withdrawn by the Examiner's Office Action of June 12, 2008 because the Applicant received an action on the merits for the originally presented invention and the invention was constructively elected by original presentation for prosecution on the merits. The Examiner set forth that the newly submitted claims were directed to an invention that was independent or distinct because the process as claimed can be practiced without the use of a program code to tell an apparatus to perform placement and removal of photoresist layers and to perform exposure processes. The apparatus can be manually told when to perform a task.

Under the statute, the claims of an application may properly be required to be restricted to one of two or more claimed inventions only if they are able to support separate patents and they are either independent (MPEP § 802.01, § 806.06, and § 808.01) or distinct (MPEP § 806.05 - § 806.05(j)).

If the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions.

There are two criteria for a proper requirement for restriction between patentably distinct inventions:

(A) The inventions must be independent (see MPEP § 802.01, § 806.06, § 808.01) or distinct as claimed (see MPEP § 806.05 - § 806.05(j)); and

(B) There would be a serious burden on the examiner if restriction is not required (see MPEP § 803.02, § 808, and § 808.02).

Examiners must provide reasons and/or examples to support conclusions, but need not cite documents to support the restriction requirement in most cases. Where plural inventions are capable of being viewed as related in two ways, both applicable criteria for distinctness must be demonstrated to support a restriction requirement.

For purposes of the initial requirement, a serious burden on the examiner may be *prima facie* shown by appropriate explanation of separate classification, or separate status in the art, or a different field of search as defined in MPEP § 808.02. That *prima facie* showing may be rebutted by appropriate showings or evidence by the applicant.

The Examiner did establish a prima facie showing that there would be a serious burden on the Examiner if restriction was not required. The Examiner stated that the field of search of the new claims is not co-extensive with the search for the previously elected claims and that; this would result in additional searching.

DECISION

The petition is **DENIED.**

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

Jean-Paul G. Hoffman
PILLSBURY WINTHROP SHAW PITTMAN, LLP
P.O. BOX 10500
MCLEAN VA 22102

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LEE & HAYES, PLLC
601 W RIVERSIDE, SUITE 1400
SPOKANE, WA 99201

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APR 29 2011

OFFICE OF PETITIONS

In re Application of :
Edward K.Y. JUNG, et *al.* :
Application No. 11/086,973 : DECISION ON PETITION TO
Filed: March 22, 2005 : WITHDRAW FROM RECORD
Attorney Docket No. **QQ1-0044US** :

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 25, 2011.

The request is **NOT APPROVED**.

The request to withdraw as attorney/agent of record and change of correspondence address is hereby not accepted. Petitioner has not complied with current USPTO requirements, set forth in 37 CFR 10.40 concerning Request for Withdrawal as Attorney and Change of Correspondence Address.

Petitioner has not properly submitted forwarding correspondence address information for the application.

The Office will only accept correspondence address changes to the most current address information provided for the assignee of the entire interest who properly became of record under 37 CFR 3.71, or if no assignee of the entire interest has properly been made of record, the most current address information provided for the first named inventor. 37 CFR 3.71 (c) states:

> ***An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73 (b) that is signed by a party who is authorized to act on behalf of the assignee.***

The Office will no longer change the correspondence address to that of a new practitioner unless the Request is accompanied by a power of attorney to a new practitioner (e.g., Form PTO/SB/82). All future communications from the Office will be directed to the above-listed address until otherwise properly notified by the applicant or a proper change of correspondence address has been submitted.

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

Inquires concerning either the examination or status of the application should be directed to the Technology Center at (571) 272-3600.

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

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

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MIPS Technologies, Inc.
955 East Arques Avenue
Sunnyvale CA 94085-4521

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MAR 3 0 2012
OFFICE OF PETITIONS

In re Patent No. 7,490,230 :
Jensen et al. :
Issue Date: February 10, 2009 :
Application No. 11/087,063 : ON PETITION
Filed: March 22, 2005 :
Atty Docket No. 1778.3480000 :
(0210.00US) :

This is a decision on the "Petition Pursuant to 37 C.F.R. § 1.182 to Replace Incorrect Terminal Disclaimer" filed March 24, 2009, to have the correct Terminal Disclaimer directed to target application 11/532,520 entered to replace the incorrect terminal disclaimer filed on August 12, 2008.

The petition is **DISMISSED** to the extent that the Terminal Disclaimer filed August 12, 2008 will not be removed from the record. In addition, the Terminal Disclaimer filed March 24, 2009 is not accepted. A corrected Terminal Disclaimer consistent with this decision including a statement retaining the earlier expiration date associated with the Terminal Disclaimer filed August 12, 2008 is required.

Any request for reconsideration must be filed within **TWO (2) MONTHS**. This 2-month period is governed by 37 CFR 1.181(f) and is not extendable under 37 CFR 1.136.

Patentees state that the terminal disclaimer filed on August 12, 2008 is incorrect due to the incorrect reference to U.S. Publication No. "2008/0066128." The terminal disclaimer was filed to overcome the provisional nonstatutory obviousness type double patenting rejection set forth in the Office action mailed May 12, 2008. This double patenting rejection was based on copending application No. 11/532,520 (which is also publication No. 2008/0069128). However, in error, applicants filed a

terminal disclaimer directed to publication No. 2008/0066128 (emphasis added). Given this clerical error, the Terminal Disclaimer of record is directed to the wrong application.

Application No. 11/087,063 was filed on March 22, 2005. Application No. 11/087,063 issued as U.S. Patent No. 7,490,230 on February 10, 2009.

MPEP 1490

> Where a terminal disclaimer was submitted to overcome a nonstatutory double patenting rejection (made during prosecution of an application which has now issued as a patent), and the numbers for the patent being disclaimed in the terminal disclaimer were inadvertently transposed (e.g., 6,444,316 written as 6,444,136), a petition under 37 CFR 1.182 may be filed to withdraw the terminal disclaimer with the incorrect (transposed) patent number (recorded in the issued patent), and replace it with a corrected terminal disclaimer having the correct patent number. In this instance, the inadvertency is clear from the record. If the transposing error resulted in an earlier patent term expiration date than provided by the corrected terminal disclaimer, a statement must be included in the corrected terminal disclaimer to retain that earlier expiration date. The absence of such a statement will result in the Office declining to exercise its discretion to grant relief.

In this instance, the transposing error resulted in an earlier patent term expiration date[1] than provided by the corrected terminal disclaimer.

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[1] 35 U.S.C. 154(a)(2) provides that: Subject to the payment of fees under this title, such grant shall be for a term beginning on the date on which the patent issues and ending 20 years from the date on which the application for the patent was filed in the United States or, if the application contains a specific reference to an earlier filed application or applications under §§ 120, 121 or 365(c) of this title, from the date on which the earliest such application was filed. 35 U.S.C. 154(a)(3) provides that: Priority under §§ 119, 365(a) or 365(b) of this title shall not be taken into account in determining the term of a patent.

The incorrect Terminal Disclaimer is directed to application No. 11/980,480[2] filed October 31, 2007 (issued September 8, 2009 as Patent No. 7,587,743), with an earlier effective filing date of January 12, 2001 (and zero days of patent term adjustment). The correct Terminal Disclaimer would be directed to application No. 11/532,520 filed September 16, 2006 (issued July 20, 2010 as Patent No. 7,760,748), with no earlier effective filing date (and 402 days of patent term adjustment).

Accordingly, a corrected Terminal Disclaimer consistent with this decision including a statement retaining the earlier expiration date associated with the Terminal Disclaimer filed August 12, 2008 is required.

Receipt of the petition fee of $400 is acknowledged.

Telephone inquiries concerning this decision may be directed to Senior Petitions Attorney, Nancy Johnson at 571-272-3219.

Anthony Knight
Director
Office of Petitions

[2] Publication No. 20080066128.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : September 17, 2010

TO SPE OF : ART UNIT; 1656

SUBJECT : Request for Certificate of Correction for Appl. No.: 11087085 Patent No.: 7256023

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

_____
Certificates of Correction Branch

703-756-1573

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: _____

_____

_____

_____

/Manjunath Rao/ 1656

SPE **Art Unit**

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9TH FLOOR
ARLINGTON, VA 22201-2525

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NOV 17 2011
OFFICE OF PETITIONS

In re Application of :
Brig Barnum Elliott :
Application No. 11/087,144 : DECISION ON PETITION
Filed: March 23, 2005 :
Attorney Docket No. 04-4013 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 1, 2011, to revive the above-identified application.

This application became abandoned for failure to timely pay the issue and publication fees on or before October 12, 2011, as required by the Notice of Allowance and Fee(s) Due, mailed July 12, 2011. Accordingly, the date of abandonment of this application is October 13, 2011. A Notice of Abandonment was mailed October 28, 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 $1740, (2) the petition fee of $1860; 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 this application should be directed to the Office of Data Management at their hotline 571-272-4200.

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

April M. Wise
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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LEGAL PATENT RECORDS CENTER
BARLEY MILL PLAZA 25/1122B
4417 LANCASTER PIKE
WILMINGTON DE 19805

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FEB 09 2011

OFFICE OF PETITIONS

In re Application of :
Anthony Joseph Martino et al. :
Application No. 11/087,149 : DECISION ON PETITION
Filed: March 22, 2005 :
Attorney Docket No. FA0996 US DIV :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 6, 2009, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Notice of File Corrected Application Papers, mailed August 20, 2009. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on October 21, 2009. A Notice of Abandonment was mailed on November 4, 2009.

The issue and publication fees were received on September 23, 2009, which was after the expiration o the statutory period for payment of the issue fee.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a replacement drawing, the issue fee payment of 1,510 and the publication fee of $300, (2) the petition fee of $1,620, (3) a proper statement of unintentional delay. Accordingly the issue fee, publication fee and replacement drawing are accepted as being unintentionally delayed.

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

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

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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LERNER, DAVID, LITTENBERG, KRUMHOLZ
& MENTLIK, LLP
600 SOUTH AVE WEST
WESTFIELD, NJ 07090

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JAN 19 2012

OFFICE OF PETITIONS

In re Application of	:	
Motoyuki Takai, et al.	:	
Application No. 11/087,166	:	DECISION GRANTING PETITION
Filed: March 23, 2005	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. SONYJP 3.0-1139	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed January 18, 2012, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on January 5, 2012 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries 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 2614 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

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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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PORTER WRIGHT MORRIS & ARTHUR, LLP
INTELLECTUAL PROPERTY GROUP
41 SOUTH HIGH STREET, 28TH FLOOR
COLUMBUS OH 43215

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OCT 05 2010

OFFICE OF PETITIONS

In re Application of
Steven K.Waisanen
Application No. 11/087,294
Filed: March 23, 2005
Attorney Docket No. 4005192-166351

DECISION ON REQUEST FOR REFUND

This is a decision on the Request For Refund filed August 4, 2010.

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 Belinda L. Reynolds. See 37 CFR 1.33(b), which states that:

> (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.

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

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

By hand:	Customer Service Window Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(571) 273-8300 ATTN: Office of Petitions
By internet:	EFS-Web www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197) .

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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

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AUG 02 2010

OFFICE OF PETITIONS

In re Application of :
Siavash M. ALAMOUTI :
Application No. 11/087,390 : DECISION ON PETITION
Filed: March 22, 2005 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. **113291 DIV2/037-0115-7** :

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed July 15, 2010, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the supplemental amendment filed July 15, 2010.

The petition is **DISMISSED**.

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

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

The petition does not satisfy item (1) above.

The amendment filed July 15, 2010 does not comply with the requirements set forth in 37 CFR 1.121.

If reconsideration of this decision is desired, a renewed petition under 37 CFR § 1.78(a)(3) and an Application Data Sheet or an amendment (complying with the provisions of 37 CFR 1.121 and 37 CFR 1.76(b)(5)) to correct the above matters are required.

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

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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 Monica A. Graves at (571) 272-7253.

Thurman K. Page
Petitions Examiner
Office of Petitions

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Room 2A-207
One AT&T Way
Bedminster NJ 07921

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In re Application of :
ALAMOUTI, Siavash M. :
Application No. 11/087,390 : DECISION ON PETITION
Filed: March 22, 2005 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 113291 DIV2/037-0115-7 :

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed August 18, 2010, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed with the petition.

The petition is **GRANTED**.

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

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

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

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

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

Any inquiries concerning this decision may be directed to Jose' G Dees at (571) 272-1569. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to Technology Center Art Unit 2112 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed applications.

Christopher Bottorff
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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P.O. Box 1450
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/087,390	03/22/2005	2112	1130	113291 DIV2/037-0115-7	5	3

CONFIRMATION NO. 5227

CORRECTED FILING RECEIPT

52218
AT&T Legal Department - ZO
Attn: Patent Docketing
Room 2A-207
One AT&T Way
Bedminster, NJ 07921

Date Mailed: 03/29/2011

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)

Siavash M. Alamouti, Vancouver, CANADA;

Power of Attorney: The patent practitioners associated with Customer Number 52218

Domestic Priority data as claimed by applicant

This application is a CON of 10/434,385 05/07/2003 PAT 6,889,356
which is a CON of 10/039,038 01/04/2002 PAT 6,578,173
which is a CON of 09/146,982 09/03/1998 ABN
which is a CON of 08/581,477 11/17/1995 PAT 5,907,565
which is a DIV of 08/344,111 11/23/1994 PAT 5,675,590

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 04/19/2005

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/087,390**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

CYCLIC TRELLIS CODED MODULATION

Preliminary Class

714

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

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PO BOX 1022
MINNEAPOLIS MN 55440-1022

MAILED
AUG 01 2011
OFFICE OF PETITIONS

In re Patent No. 7,937,396	: DECISION ON
Pasca, et al.	: REQUEST FOR RECONSIDERATION
Application No. 11/087,446	: of PATENT TERM ADJUSTMENT
Issue Date: May 3, 2011	:
Filed: March 23, 2005	:
Attorney Docket No. 16113-0357001	:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705(d)", filed July 1, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the patent is extended or adjusted from eight hundred seventy (870) days to one thousand five hundred thirty-two (1532) days.

The petition to correct the patent term adjustment is **DISMISSED**.

On May 3, 2011, the above application issued into US Patent No. 7,937,396 with a patent term adjustment of eight hundred seventy (870) days. The Office calculated a patent term adjustment of 870 days based upon 458 days of "A"' delay plus 461 days of "B" delay (997 days from the over 3 year date to the issue date, reduced by 536 days for when the application was under appeal), minus 49 days of Applicant delay.

Patentee argues that the 997 days of Office delay due to the Office's failure to issue the patent within three years should not have been reduced by 334 days for filing a Notice of Appeal on May 5, 2008, and 202 days for filing a Notice of Appeal on March 5, 2010. days. Patentee asserts that although he filed these Notice of Appeals, no decision was ever rendered by the Board, and therefore there was no time consumed by "appellate review". Patentee's argument has been considered, but is not persuasive.

The period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). An appeal to the Board of Patent Appeals and Interferences commences with 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 for the first notice of appeal is 334 days, beginning on May 5, 2008, the date of filing of the notice of appeal, and ending on April 3, 2009, the date the Office mailed an office action. The period consumed by appellate review for the second notice of appeal is 202 days, beginning on March 5, 2010, the date of filing of the notice of appeal, and ending on September 22, 2010, the date the Office mailed an office action. Thus, "B" delay is 461 (997 - 334 - 202) days.

In view thereof, the correct number of days of patent term adjustment is eight hundred seventy (870) days (919 days of PTO delay (458 days of "A" delay and 461 days of "B" delay), reduced by 49 (4+3+1+28+13) day of Applicant delay).

It is noted that the Office issued a Notice of proposed rulemaking entitled *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review and Information Disclosure Statements*, 76 FR 18990 (April 6, 2011). To the extent that the final rule on *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review* revises the interpretation of appellate review applied in this decision, Patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the date of the final rule to file a request for reconsideration. No extensions of time will be granted under § 1.136.

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

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

Cliff Congo
Petitions Attorney
Office of Petitions

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MINNEAPOLIS MN 55440-1022

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NOV 03 2011
OFFICE OF PETITIONS

In re Patent No. 7,937,396	: DECISION ON
Pasca, et al.	: REQUEST FOR RECONSIDERATION
Application No. 11/087,446	: of PATENT TERM ADJUSTMENT
Issue Date: May 3, 2011	:
Filed: March 23, 2005	:
Attorney Docket No. 16113-0357001	:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705(d)", filed September 1, 2011, 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 eight hundred seventy (870) days to one thousand five hundred thirty-two (1532) days.

The petition to correct the patent term adjustment is **DISMISSED as premature.**

In a Decision on petition mailed August 1, 2011, the Office 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 were 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.

The present renewed petition requests reconsideration of the Decision dismissing the petition based upon the Notice of Proposed rulemaking, published April 6, 2011. However, it is reiterated that to the extent that the final rule on *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review* revises the interpretation of appellate review applied in this decision, Patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the date of the final rule to file a request for reconsideration. No extensions of time will be granted under § 1.136.

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

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

Cliff Congo
Petitions Attorney
Office of Petitions

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MARK A> LITMAN AND ASSOCIATES, P.A.
YORK BUSINESS CENTER
3209 W. 76TH STREET
SUITE 205
EDINA MN 55435

MAILED

JUN 06 2011

OFFICE OF PETITIONS

In re Application of	:	
Lynn Hessing et al.	:	
Application No. 11/087,487	:	DECISION ON PETITION
Filed: March 23, 2005	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. **PA2585.AP.US**	:	

This is a decision on the petition, filed April 12, 2011, 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 March 19, 2008. 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 September 15, 2011 accompanies this decision on petition.

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

This application is being forwarded to Technology Center Art Unit 3716.

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/087,487	03/23/2005	Lynn Hessing	PA2585.AP.US

CONFIRMATION NO. 7914

75035
Mark A> Litman and Associates, P.A.
York Business Center
3209 w. 76th Street
Suite 205
Edina, MN 55435

NONPUBLICATION RESCISSION LETTER

Date Mailed: 06/03/2011

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 09/15/2011.

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".

/tdjackson/

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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INTEGRAL INTELLECTUAL PROPERTY INC./RIM
1370 DON MILLS ROAD, SUITE 300
TORONTO ON M3B 3N7 CA CANADA

MAILED

JUN 03 2011

OFFICE OF PETITIONS

In re Patent No. 7,912,465
Issued: March 22, 2011
Application No. 11/087,610
Filed: March 24, 2005
Attorney Docket No. RIM019-01US

: LETTER REGARDING
: PATENT TERM ADJUSTMENT

This is a decision on the "Application for Patent Term Adjustment under 37 C.F.R. § 1.705(d)" filed on May 20, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected from 1469 days to 1526 days.

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

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

The patent term adjustment indicated in the patent is properly reflected.

Patentee fails to account for the filing of a Notice of Appeal on July 24, 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). The 57 days of the over three year period consumed by appellate review, beginning on July 24, 2008 and ending on September 18, 2008 with the mailing of the non-Final Office Action are not included in the B delay. *See* 35 U.S.C. § 154(b)(1)(B)(ii). The Office has also determined that the period of overlap is 307 days. Thus, B delay is 1036 days, considering the 307 days of overlap. As such, the patent term adjustment is 1469 (457 + 177 + 130 "A delay" days + 1036 "B delay" days - 307 days of overlap - 24 Applicant delay days) days, not 1526 days.

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

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

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MARGARET ANDERSON
106 E. 6TH STREET, SUITE 900
AUSTIN TX 78701

MAILED

MAR 14 2011

OFFICE OF PETITIONS

In re Application of	:	
Jung et al.	:	DECISION ON PETITION
Application No. 11/087,727	:	TO WITHDRAW
Filed: March 22, 2005	:	FROM RECORD
Attorney Docket No. QQ1-0081US	:	

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 26, 2011.

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.

According to a review of current USPTO records petitioner has not requested the address be changed to a properly recorded assignee or the first listed inventor. The Customer Number 55922 is neither the first named inventor nor the assignee who properly became of record under 37 CFR 3.71 As such, all future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

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

Further, the instant application became abandoned on December 15, 2010 for failure to timely respond to the Office action mailed September 14, 2010. The Office will not decide requests to withdraw from representation as practitioner of record which are filed

after the expiration date of a time period for reply or the expiration date of a time period which can be obtained by a petition and fee for extension of time under 37 CFR 1.136(a). As such, any renewed Request to Withdraw as Attorney will not be treated on the merits, but will only be placed in the application.

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

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: LEE & HAYES, PLLC
601 W RIVERSIDE
SUITE 1400
SPOKANE, WA 99201

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)
7278900	2007-10-09	11087929	2005-03-23	24525

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	/Frank S. DiGiglio/	Date (YYYY-MM-DD)	2012-02-15
Name	Frank S. DiGiglio	Registration Number	31346

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. 7278900
Issue Date: October 9,2007
Application No. 11087929
Filed: March 23,2005
Attorney Docket No. 25-0082

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

This is a decision on the electronic petition, filed February 15,2012 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of February 15,2012 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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Paper No.

MAILED
DEC 02 2011
OFFICE OF PETITIONS

THE PROCTER & GAMBLE COMPANY
Global Legal Department - IP
Sycamore Building - 4th Floor
299 East Sixth Street
CINCINNATI OH 45202

In re Application of	:	
Autran et al.	:	DECISION ON
Application No. 11/087,933	:	PETITION
Filed: March 23, 2005	:	
Atty Docket No. 9593M2	:	

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) filed November 15, 2011.

The petition is **GRANTED**.

The above-identified application was abandoned for failure to timely file a proper reply to the non-final Office action mailed October 13, 2010. A notice of appeal was timely filed on January 13, 2011. However, no appeal brief or further reply filed and no extension of time obtained, the application became abandoned effective January 14, 2011. A courtesy Notice of Abandonment was mailed on September 15, 2011.

On petition, petitioner submitted a reply in the form of an appeal brief; paid the petition fee; and made the required statement of unintentional delay.

Technology Center AU 1798 has been advised of this decision. The application is, thereby, forwarded to the examiner for further action on the appeal brief filed November 15, 2011.

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

Nancy Johnson
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: 029267.55969US	Patent Number: 7,668,650
Filing Date (or 371(b) or (f) Date): March 24, 2005	Issue Date: February 23, 2010
First Named Inventor: Akio SUMIZAWA	
Title: On-Vehicle Information Terminal, Abridged Map Generating Apparatus, Abridged Map Display Method and Display Apparatus	

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

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

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

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

Signature	Date August 20, 2010
Name (Print/Typed) James F. McKeown	Registration Number 25,406

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

☒ *Total of -1- forms are submitted.

The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1 450.**

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

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CROWELL & MORING LLP
INTELLECTUAL PROPERTY GROUP
P.O. BOX 14300
WASHINGTON, DC 20044-4300

Mail Date: 08/26/2010

Applicant	: Akio Sumizawa	: DECISION ON REQUEST FOR
Patent Number	: 7668650	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/087,970	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 03/24/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **461** 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.

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

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

Attorney Docket Number: P20002	Patent Number: 7,668,139
Filing Date (or 371(b) or (f) Date): 03-23-2005	Issue Date: 02-23-2010
First Named Inventor: Henry Mitchel	
Title: MOBILE HANDOVER UTILIZING MULTICAST IN A MULTI-PROTOCOL LABEL SWITCHING (MPLS)-BASED NETWORK	

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

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

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

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

Signature /Stuart A. Whittington/	Date July 9, 2010
Name (Print/Typed) Stuart A. Whittington	Registration Number 45,215

***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.

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

(Not to be Submitted to the USPTO)

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

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

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

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

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

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

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

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

Privacy Act Statement

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

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

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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INTEL CORPORATION
c/o CPA Global
P.O. BOX 52050
MINNEAPOLIS, MN 55402

Mail Date: 08/26/2010

Applicant	: Henry Mitchel	: DECISION ON REQUEST FOR
Patent Number	: 7668139	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/088,142	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 03/23/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1115** 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.
11/088,421	03/24/2005	Shu Du	34389-0004	9887

69082 7590 11/02/2011

ULMER & BERNE, LLP
ATTN: DIANE BELL
600 VINE STREET
SUITE 2800
CINCINNATI, OH 45202-2409

EXAMINER	
TYSON, MELANIE RUANO	
ART UNIT	**PAPER NUMBER**
3773	

NOTIFICATION DATE	DELIVERY MODE
11/02/2011	ELECTRONIC

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

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

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

ipdocketing@ulmer.com

Notice of Abandonment	Application No.	Applicant(s)	
	11/088,421	DU ET AL.	
	Examiner	Art Unit	
	MELANIE TYSON	3773	

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

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on *27 August 2010*.
   (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
   (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
   (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
   (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
   (d) ☒ No reply has been received.

2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
   (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
   (b) ☐ The submitted fee of $_____ is insufficient. A balance of $_____ is due.
   The issue fee required by 37 CFR 1.18 is $_____. The publication fee, if required by 37 CFR 1.18(d), is $_____.
   (c) ☐ The issue fee and publication fee, if applicable, has not been received.

3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
   (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
   (b) ☐ No corrected drawings have been received.

4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.

5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.

6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.

7. ☐ The reason(s) below:

/Melanie Tyson/
Primary Examiner, Art Unit 3773

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 9/24/10 Paper No.: —

TO SPE OF : ART UNIT 2445

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/088622 Patent No.: 7739390B2

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Virginia Tolbert
Certificates of Correction Branch
571-272-0460

Thank You For Your Assistance

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

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

Comments:

Attached the certificate of correction dated 09/16/2010. Examiner denied the certificate of correction. According to the request to amend claim 6 at column 8, lines 2-3, please delete "comprises means for simultaneously assigning" and insert therefore is configured simultaneously assign". Claim 6 does not contain limitation "comprises means for simultaneously".

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KLEIN, O'NEILL & SINGH, LLP
18200 VON KARMAN AVENUE
SUITE 725
IRVINE CA 92612

MAILED

JUL 14 2011

OFFICE OF PETITIONS

In re Application of :
Dale G. Jones et al. :
Application No. 11/088,767 : DECISION ON PETITION
Filed: March 25, 2005 : TO WITHDRAW
Attorney Docket No. : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed June 29, 2011.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The request was signed by Tom H. Dao, on behalf of all attorneys/agents associated with customer number 22145. All attorneys/agents associated with customer number 22145 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: Dale G. Jones, Ph.D.
147 Searidge Court
Shell Beach, CA 93449

UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/088,767	03/25/2005	Dale G. Jones	

CONFIRMATION NO. 9107

22145
KLEIN, O'NEILL & SINGH, LLP
18200 VON KARMAN AVENUE
SUITE 725
IRVINE, CA 92612

POWER OF ATTORNEY NOTICE

OC000000048745185

Date Mailed: 07/13/2011

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 06/29/2011.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/kainabinet/

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

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SALIWANCHIK, LLOYD & EISENSCHENK
A PROFESSIONAL ASSOCIATION
PO BOX 142950
GAINESVILLE FL 32614

MAILED

SEP 06 2011

OFFICE OF PETITIONS

In re Patent No. 7,379,716 :
May 27, 2008 :
Application No. 11/088,933 :
Filed: March 24, 2005 :
Attorney Docket No. UF.799T :

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 on June 25, 2008.

The Office sincerely apologizes for the delay in replying to the above matter.

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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**

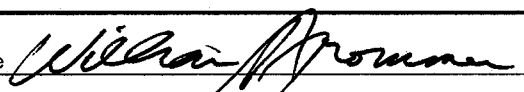
Attorney Docket Number: 450100-05481	
Application Number: 11/089,229	Filing Date (or 371(b) or (f) Date): March 24, 2005
Patent Number: 7,657,085	Issue Date: February 2, 2010
First Named Inventor: Kohtaro Sabe	
Title: INFORMATION PROCESSING APPARATUS AND METHOD, RECORDING MEDIUM, AND PROGRAM	

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

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

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

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

Signature 	Date August 2, 2010
Name (Print/Typed) William S. Frommer	Registration Number 25,506

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

☑ *Total of 1 forms are submitted.

The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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

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FROMMER LAWRENCE & HAUG LLP
745 FIFTH AVENUE
NEW YORK, NY 10151

Mail Date: 08/12/2010

Applicant	: Kohtaro Sabe	: DECISION ON REQUEST FOR
Patent Number	: 7657085	: RECALCULATION of PATENT
Issue Date	: 02/02/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/089,229	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 03/24/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1018** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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YOUNG & THOMPSON
209 Madison Street
Suite 500
Alexandria, VA 22314

Mail Date: 08/03/2010

Applicant	: Mitsuhiro Moriya	: DECISION ON REQUEST FOR
Patent Number	: 7646402	: RECALCULATION of PATENT
Issue Date	: 01/12/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/089,324	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 03/25/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1175** 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

DILLON & YUDELL LLP
8911 N. CAPITAL OF TEXAS HWY.,
SUITE 2110
AUSTIN TX 78759

In re Application of :
Steven Edward Atkin et al. :
Application No. 11/089,393 : DECISION ON PETITION
Filed: March 24, 2005 :
Attorney Docket No. **AUS920050098US1** :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 21, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in 37 CFR 41.37(a)(1). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed August 19, 2009, and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on January 20, 2010. *See* MPEP 1215.04.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Appeal Brief, (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 2158 for appropriate action by the Examiner in the normal course of business on the reply received

JoAnne Burke
Petitions Examiner
Office of Petitions

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

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In re Application of :
Gillies et al. :
Application No. 11/089,426 : ON APPLICATION FOR
Filed: March 24, 2005 : PATENT TERM ADJUSTMENT
Atty Docket No. LEX-007C1 :

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 35 U.S.C. § 154(b) AND 37 CFR § 1.705(b), filed on March 15, 2011. Applicants request that the determination of patent term adjustment be increased from 37 days to 1309 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 **DISMISSED**.

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). 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 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 **DISMISSED.**

On December 16, 2010, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. Applicants were advised that the patent term adjustment to date was 37 days (380 days of PTO delay and 343 days of applicant delay).

The instant application for patent term adjustment was timely filed.[2]

Applicants assert that a period of adjustment for Office delay of 125 days should be entered because the Office action mailed on November 27, 2009, was mailed four months and 125 days after the filing of a reply on March 25, 2009.

Petitioners' argument has been considered, but is not persuasive. The Office responded to the reply filed on March 25, 2009, by mailing a Notice of Non-Compliant Amendment (37 CFR 1.121) on July 6, 2009, within four months of the date the reply was filed. The mailing of the Notice of Non-Compliant Amendment 37 CFR 1.121) on July 6, 2009, constituted a response within the meaning of § 1.702(a)(2). On July 9, 2009, a reply to the Notice mailed on March 25, 2009, was filed. On November 27, 2009, four months and 18 days after the day after the date the reply filed on July 9, 2009, was filed, an Office action was mailed. Accordingly, the entry of a period of adjustment of 125 days for Office delay is not warranted.

Furthermore, applicants' argue that the 106 day period of reduction for applicant delay should be removed. Specifically, applicants aver that "the mere presence of an apparent clerical error does not interfere with compliance with 37 CFR 1.121(c)."

Applicants' argument has been considered, but is not persuasive. 37 CFR 1.704(c)(7) states that circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

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[2] PALM Records indicate that the issue fee was paid on March 15, 2011.

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.

37 CFR 1.704(c)(7) does not distinguish between types of omissions nor whether, or not, applicant believes the omission does not make the reply not non-compliant. The salient point is that the examiner determined, in the Notice of Non-Compliant Amendment (37 CFR 1.121) mailed on July 6, 2009, that the paper filed on March 25, 2009 contained an omission.

On March 25, 2009, a reply containing an omission was filed. On July 9, 2009, 106 days after the day after the date the reply containing the omission was filed, a reply correcting this omission was filed. Accordingly, the 106 day period of reduction for applicant delay is warranted and will not be removed.

In view thereof, no change will be made in the determination of patent term adjustment at the time of the mailing of the notice of allowance.

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

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

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

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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MINNEAPOLIS MN 55440-1022

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In re Patent of Deslauriers et al :
Patent No. 7,964,207 :
Issued: June 21, 2011 : DECISION ON PETITION
Application No. 11/089,489 : UNDER 37 CFR 1.705(d)
Filed: March 24, 2005 :
Attorney Docket No. 22469-006001

This is a decision on the petition filed on August 22, 2011, which is being treated as a petition under 37 C.F.R. § 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand one hundred seventy-eight (1178) days.

The petition is **dismissed.**

BACKGROUND

On June 21, 2011, the above-identified application matured into U.S. Patent No. 7,964,207, with a revised patent term adjustment of 1087 days. On Monday, August 22, 2011, patentees timely submitted this request for reconsideration of patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 1178. Patentees maintain that the Office incorrectly calculated Office delay pursuant to 37 CFR 1.702(b). Patentees contend that the Office erred in subtracting from the "B delay" a period of time that was not "consumed by continued examination of the application." Specifically, Patentees argue that (after the filing of the request for continued examination) the Office mailed a Notice of Allowance on March 23, 2011, thereby closing examination of the application on that date. Thus, Patentees argue no continued examination took place during the 91 day period from March 23, 2011 (the mailing date of the Notice of Allowance) until June 21, 2011 (the date the patent was issued). As such, Patentees maintain that the "B delay" should include the 91 days and be

increased from 657 to 748 days. Patentees conclude that the correct patent term adjustment is 1178 days (the sum of 680 days of "A delay" and 748 days of "B delay" minus 250 days of Applicant delay).

RELEVANT STATUTE AND REGULATIONS

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

> Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including –
>
> (i) any time consumed by continued examination of the application requested by the applicant under section 132(b);
>
> (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or
>
> (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

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

> Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:
>
> (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);
>
> (2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);
>
> (3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;
>
> (4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or

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

OPINION

Patentees' arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 657 days based on the application having been filed under 35 U.S.C. 111(a) on March 24, 2005 and the patent not having issued as of the day after the three year date, March 25, 2008, and a request for continued examination under 132(b) having been filed on January 11, 2010. In other words, the 91 day period beginning on the date of mailing of the notice of allowance to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay."

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1]. So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for

---

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

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

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

(2) Abandonment of the application; or

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

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

continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

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

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

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

that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

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

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

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

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

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

[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.

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 11, 2010, and the patent issued by virtue of that request on June 21, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on March 23, 2011 and ending on June 21, 2011 is not included in calculating Office delay.

CONCLUSION

In view thereof, it is concluded that the patent term adjustment of 1087 days indicated on the patent is correct.

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

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In re Patent of Deslauriers et al	:	FINAL AGENCY DECISION ON
Patent No. 7,964,207	:	REQUEST FOR RECONSIDERATION
Issued: June 21, 2011	:	OF DECISION ON APPLICATION
Application No. 11/089,489	:	FOR PATENT TERM ADJUSTMENT
Filed: March 24, 2005	:	
Attorney Docket No. 22469-006001	:	

This is a decision on the "RESPONSE TO DECISION ON APPLICATION FOR PATENT TERM ADJUSTMENT" filed November 7, 2011, requesting reconsideration of the decision of September 7, 2011, and requesting that the patent term adjustment determination under 35 U.S.C. § 154(b) in the decision of September 7, 2011, be changed from one thousand eighty-seven (1087) days to one thousand one hundred seventy-eight (1178) days.

Patentees request that the decision on this renewed request for reconsideration of patent term adjustment be deferred or delayed until a final decision has been rendered in Abbott Biotherapeutics Corp. v. Kappos. There is no specific regulatory provision for requesting that a petition under 37 CFR 1.705(d) be held in abeyance.

The request for reconsideration of the decision of September 7, 2011, is granted to the extent that the decision of September 7, 2011, has been reconsidered; however, the request for reconsideration is **DENIED** with respect to making any change in the patent adjustment determination under 35 U.S.C. § 154(b) of 1087 days indicated in the decision of September 7, 2011.

BACKGROUND

On June 21, 2011, the above-identified application matured into U.S. Patent No. 7,964,207, with a revised patent term adjustment

of 1087 days. On Monday, August 22, 2011, patentees timely submitted this request for reconsideration of patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 1178. Patentees maintain that the Office incorrectly calculated Office delay pursuant to 37 CFR 1.702(b). Patentees contend that the Office erred in subtracting from the "B delay" a period of time that was not "consumed by continued examination of the application." Specifically, Patentees argue that (after the filing of the request for continued examination) the Office mailed a Notice of Allowance on March 23, 2011, thereby closing examination of the application on that date. Thus, Patentees argue no continued examination took place during the 91 day period from March 23, 2011 (the mailing date of the Notice of Allowance) until June 21, 2011 (the date the patent was issued). As such, Patentees maintain that the "B delay" should include the 91 days and be increased from 657 to 748 days. Patentees conclude that the correct patent term adjustment is 1178 days (the sum of 680 days of "A delay" and 748 days of "B delay" minus 250 days of Applicant delay).

RELEVANT STATUTE AND REGULATIONS

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

> Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including –
>
> (i) any time consumed by continued examination of the application requested by the applicant under section 132(b);
>
> (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or
>
> (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

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

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

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

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

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

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

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

OPINION

Patentees' arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 657 days based on the application having been filed under 35 U.S.C. 111(a) on March 24, 2005 and the patent not having issued as of the day after the three year date, March 25, 2008, and a request for continued examination under 132(b) having been filed on January 11, 2010. In other words, the 91 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

[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;

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

Patentees' argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35

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(2) Abandonment of the application; or

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

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

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

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

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

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

likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

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

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)[2]. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. *Websters Collegiate Dictionary*, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing

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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.

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 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 11, 2010, and the patent issued by virtue of that request on June 21, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on March 23, 2011 and ending on June 21, 2011 is not included in calculating Office delay.

CONCLUSION

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

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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.

The patent term adjustment remains 1087 days, as indicated in the decision of September 7, 2011 and the issued patent.

Deposit account no. 06-1050 will be refunded the $200.00 petition fee submitted with the instant petition, as Patentees have previously paid the $200.00 petition fee on August 22, 2011.

Telephone inquiries specific to this matter should be directed to Shirene Willis Brantley, Senior Petitions Attorney, at (571) 272-3230.

Anthony Knight
Director, Office of Petitions

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OFFICE OF PETITIONS

In re Application of	:	
Jung et al.	:	DECISION ON PETITION
Application No. 11/089,530	:	TO WITHDRAW
Filed: March 23, 2005	:	FROM RECORD
Attorney Docket No. QQ1-0125US	:	

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 26, 2011.

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.

According to a review of current USPTO records petitioner has not requested the address be changed to a properly recorded assignee or the first listed inventor. The Customer Number 55922 is neither the first named inventor nor the assignee who properly became of record under 37 CFR 3.71 As such, all future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

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

Currently, there is an outstanding Office action mailed October 18, 2010 that requires a reply.

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

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: LEE & HAYES, PLLC
601 W RIVERSIDE
SUITE 1400
SPOKANE, WA 99201

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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CHERNOFF, VILHAUER, MCCLUNG & STENZEL, LLP
1600 ODS TOWER
601 SW SECOND AVENUE
PORTLAND OR 97204

MAILED
OCT 12 2010
OFFICE OF PETITIONS

In re Application of Park et al. :
Application No. 11/089,629 : Decision on Petition
Filing Date: March 23, 2005 :
Attorney Docket No. SLA1483 :

This is a decision on the petition filed May 12, 2010, under 37 CFR 1.181 to withdraw the holding of abandonment of the above-identified application.

The petition is **dismissed**.

Any request for reconsideration *under 37 CFR 1.181* must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are NOT permitted. Any reconsideration request under 37 CFR 1.181 should include a cover letter entitled "Renewed Petition under 37 CFR 1.181."

Facts

The Office mailed a non-final Office action on July 23, 2008.

A reply to the non-final Office action was filed October 23, 2008.

The Office mailed a new Office action on January 16, 2009.

The "Office Action Summary" sheet mailed with the January 16, 2009 Office action states, "This action is non-final."

The "Conclusion" section of the January 16, 2009 Office action states, with emphasis added in italics,

> **THIS ACTION IS MADE *FINAL*....**
>
> A shortened statutory period for reply to this *final* action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this *final* action and the *advisory action* is not

> mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the *advisory action* is mailed and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the *advisory action.*

Applicants' attorney noticed the language on the summary sheet indicating the Office action was a non-final Office action. However, the attorney failed to notice the language in the Office action indicating the action was a final Office action. As a result, the attorney believed the Office action was a non-final Office action.

An amendment and payment for a three-month extension of time were timely filed on June 18, 2009.

The Office mailed an Advisory action on November 2, 2009, stating the amendment would not be entered because the amendment raised new issues that would require additional consideration and/or search.

Since the June 18, 2009 reply was not a proper reply to the Office action, the application became abandoned on July 17, 2009.

The Office mailed a Notice of Abandonment on April 8, 2010.

The instant petition was filed May 12, 2010.

The petition requests the Office withdraw the holding of abandonment and states, if the attorney had known the January 16, 2009 Office action was a final Office action, the attorney would have filed a request for continued examination with the amendment on June 18, 2009.

Discussion

The January 16, 2009 Office action included language clearly stating the Office action was a final Office action and did not include any language indicating the Office action was a non-final Office action. Therefore, the statement in the Office Action Summary indicating the attached Office action was a non-final Office action was incorrect.

Although the Office acknowledges the Office Action Summary incorrectly stated the attached Office action was non-final, an error in a paper summarizing an Office action cannot transform an actual final Office action into a non-final Office action.

In view of the prior discussion, the Office action mailed January 16, 2009, was a final Office action.

The Advisory action mailed on November 2, 2009, stated the amendment would not be entered because the amendment raised new issues that would require additional consideration and/or search. Petitioner does not assert the Advisory action was incorrect or assert the reply filed June 18, 2009 was a proper reply to a final Office action.

The Office action mailed January 16, 2009 was a final Office action and the petition fails to prove the June 18, 2009 reply was a proper reply to the final Office action. Therefore, the Office will not withdraw the holding of abandonment.

Petitioner may wish to consider filing a petition to revive based on unintentional abandonment under 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply (such as a RCE), the required petition fee ($1,620 for a large entity), and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

A copy of a PDF "fillable" petition under 37 CFR 1.137(b) form can be found at: http://www.uspto.gov/web/forms/sb0064_fill.pdf.

Further correspondence with respect to this matter may be submitted as follows:

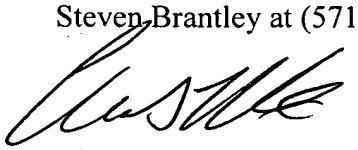
By Internet: A request for reconsideration may be filed electronically using EFS Web.[1] Document Code "PET.OP" should be used if the request is filed electronically.

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

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

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

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



Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

[1] General Information concerning EFS Web can be found at http://www.uspto.gov/patents/process/file/efs/index.jsp.

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OFFICE OF PETITIONS

In re Application of Park et al. :
Application No. 11/089,629 : Decision on Petition
Filing Date: March 23, 2005 :
Attorney Docket No. SLA1483 :

This is a decision on the petition under 37 CFR 1.137(b), filed December 13, 2010, to revive the above-identified application.

The petition is **granted**.

The above-identified application became abandoned for failure to timely file a proper reply to the final Office action mailed January 16, 2009, which set a shortened statutory period for reply of three (3) months. A three-month extension of time was obtained. Accordingly, the application became abandoned on July 17, 2009. A Notice of Abandonment was mailed on April 8, 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.

The petition satisfies the requirements of 37 CFR 1.137(b) in so far as petitioner has supplied a reply in the form of request for continued examination, the required petition fee of $810, and the required statement of unintentional delay. Therefore, the petition is granted and the application is revived.

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.

Technology Center Art Unit 2462 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

cc: Scott Krieger
PO Box 872438
Vancouver, WA 98687

UNITED STATES PATENT AND TRADEMARK OFFICE

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FEB 23 2011

OFFICE OF PETITIONS

In re Application of	:	
Subramanian et al.	:	DECISION ON PETITION
Application No. 11/089,665	:	TO WITHDRAW
Filed: March 24, 2005	:	FROM RECORD
Attorney Docket No. ORACP028	:	

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 17, 2011.

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.***

According to a review of current USPTO records petitioner has not requested the address be changed to a properly recorded assignee or the first listed inventor. The Customer Number 56135 is neither the first named inventor nor the assignee who properly became of record under 37 CFR 3.71 As such, all future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Currently, the above-identified application issued as Patent No. 7,895,592 on February 22, 2011.

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

Joan Olszewski
Petitions Examiner
Office of Petitions

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FISH & RICHARDSON P.C.
PO BOX 1022
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In re Patent No. 7,913,248
Issued: March 22, 2011
Application No. 11/089,699
Filed: March 25, 2005
Attorney Docket No. 07844-0755001 / M156

:DECISION ON APPLICATION
: FOR PATENT TERM ADJUSTMENT

This is a decision on the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d) filed on May 19, 2011, 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 from 1379 to 1519 days.

The request for review of the patent term adjustment is **GRANTED** to the extent indicated herein.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of ONE THOUSAND THREE HUNDRED THIRTY-TWO (1332) days.

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

On March 22, 2011, the above-identified application matured into U.S. Patent No. 7,913,248 with a patent term adjustment of 1379 days. On May 19, 2011, Patentees submitted the instant application. Patentees disclose that the patent term adjustment of 1379 days indicated on the front of the patent is incorrect becausePatentees filed a Petition to Withdraw on June 16, 2010, subsequent to payment of the issue fee. The PTO mailed a response to the Petition to Withdraw on June 17, 2010. Patentees were accorded 0 days delay for deferral of issuance. In good faith and candor, Patentees submit that the deferral of issuance should have been accorded a total Applicant Delay of 2 days for delay from June 16, 2010, to June 17, 2010. See 37 C.F.R. § 1.704(c)(2). 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 the request for continued examination) the Office mailed a Notice of Allowance on November 1, 2010, thereby closing examination of the application on that date. Thus, Patentee argues no

continued examination took place during the 142 day period from November 1, 2010 (the mailing date of the Notice of Allowance) until March 22, 2011 (the date the patent was issued). As such, Patentee maintains that the "B delay" should include the 142 days and be increased from 812 to 954 days. Patentee concludes that the correct patent term adjustment is 1519 days (the sum of 762 days of "A delay" and 954 days of "B delay" minus 92 days of overlap minus 105 days of Applicant delay).

RELEVANT STATUTE AND REGULATIONS

37 CFR 1.704(c)(2) 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:
>
> (2) Deferral of issuance of a patent under § 1.314, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date a request for deferral of issuance of a patent under § 1.314 was filed and ending on the date the patent was issued;

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

Applicant's arguments have been considered. While Applicant has cited 37 CFR 1.704(c)(2), a petition to withdraw from issue is covered 37 CFR 1.313, not 37 CFR 1.314. As stated in the final rule;

> Section 1.704(c)(2) establishes deferral of issuance of a patent under 1.314 as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. Obviously, if issuance of the patent is deferred under 1.314, the Office is precluded from issuing the application as a result of an action by the applicant. When a petition under 1.314 is granted, the petition decision generally states that the application will be held for a period of a month to await the filing of a paper.

As such, there is no reduction for the filing of a petition to withdraw from issue.

However, a review of the record confirms that a period of reduction should be entered for applicant's failure to engage pursuant to 37 CFR 1.704(c)(10). A Notice of Allowance was mailed on January 12, 2010. Patentees filed a Request for Continued Examination (RCE) and IDS on June 16, 2010. Prior to filing the RCE, applicant paid the Issue Fee on April 12, 2010. This set the calculation of the period of reduction pursuant to 37 CFR 1.704(b), if any, for applicant delay. The filing of the RCE and IDS on June 16, 2010, after the mailing of the Notice of Allowance and the filing of the RCE and IDS on October 15, 2010 after the mailing of the Notice of Allowance constituted a failure to engage pursuant to 37 CFR 1.704(c)(10). This period is 30 days, counting the number of days in the period beginning on June 16, 2010 and ending on July 16, 2010,

the date of mailing of the Notice of Allowance in response and a period of 17 days, counting the number of days in the period beginning on October 15, 2010 and ending on November 1, 2010, the date of mailing of the Notice of Allowance in response. Accordingly, a period of reduction of 47 days is being entered.

As it relates to the calculation of "B delay, 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 812 days based on the application having been filed under 35 U.S.C. 111(a) on March 25, 2005 and the patent not having issued as of the day after the three year date, March 25, 2008, and requests for continued examination under 132(b) having been filed on June 16, 2010 and October 15, 2010. In other words, the 142-day period beginning on the date of mailing of the notice of allowance to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay."

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1]. So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the

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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.

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

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

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

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

date before an adjustment will accrue for "B delay."

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

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F.Supp.2d 138, 88 U.S.P.Q.2d 1538 (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

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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.

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

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

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

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

insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

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

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[3] permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

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

[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.

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, requests for continued examination were filed on June 16, 2010 and October 15, 2010 and the patent issued by virtue of those requests on March 22, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on June 16, 2010 and ending on March 22, 2011 is not included in calculating Office delay.

CONCLUSION

In view of the above, the patent should have issued with a patent term adjustment of one thousand three hundred thirty-two (1332) days.

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

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, 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-two (1332)** days.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,913,248 B1

DATED : March 22, 2011

INVENTOR(S) : Kevin Lynch

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 (1379) days

Delete the phrase "by 1379 days" and insert – by 1332 days--

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 08/12/11

TO SPE OF : ART UNIT 2193

SUBJECT : Request for Certificate of Correction for Appl. No.: 11089699 Patent No.: 7913248

CofC mailroom date: 08/02/11

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

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.

LEWIS A. BULLOCK JR.
SUPERVISORY PATENT EXAMINER

UNITED STATES 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 P.C.
PO BOX 1022
MINNEAPOLIS MN 55440-1022

MAILED
AUG 25 2011
OFFICE OF PETITIONS

In re Patent No. 7,913,248
Issued: March 22, 2011
Application No. 11/089,699
Filed: March 25, 2005
Attorney Docket No. 07844-0755001 / M156

: DECISION ON REQUEST FOR
: RECONSIDERATION OF
: PATENT TERM ADJUSTMENT :

This is a decision on the request for reconsideration filed August 1, 2011, pursuant to 37 CFR §1.705(d), requesting that the patent term adjustment indicated on the above-identified patent be corrected from 1332 days to 1447 days.

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

Patentee maintains that the Office incorrectly calculated Office delay pursuant to 37 CFR 1.702(b). Patentee contends that the Office erred in subtracting from the "B delay" a period of time that was not "consumed by continued examination of the application." Specifically, Patentee argues that (after the filing of the request for continued examination) the Office mailed a Notice of Allowance on November 1, 2010, thereby closing examination of the application on that date. Thus, Patentee argues no continued examination took place during the 142 day period from November 1, 2010 (the mailing date of the Notice of Allowance) until March 22, 2011 (the date the patent was issued). As such, Patentee maintains that the "B delay" should include the 142 days and be increased from 1332 to 1447 days.

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

Applicant's arguments have been considered.

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 812 days based on the application having been filed under 35 U.S.C. 111(a) on March 25, 2005 and the patent not having issued as of the day after the three year date, March 25, 2008, and requests for continued examination under 132(b) having been filed on June 16, 2010 and October 15, 2010. In other words, the 142-day period beginning on the date of mailing of the notice of allowance to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay."

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However,

the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1]. So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

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

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

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

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

(2) Abandonment of the application; or

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

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

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

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

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

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

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F.Supp.2d 138, 88 U.S.P.Q.2d 1538 (D.D.C., September 30, 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a

patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

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

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

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the

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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.

"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, requests for continued examination were filed on June 16, 2010 and October 15, 2010 and the patent issued by virtue of those requests on March 22, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on June 16, 2010 and ending on March 22, 2011 is not included in calculating Office delay.

[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.

CONCLUSION

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

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

Anthony Knight
Director
Office of Petitions

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

Date : 11/16/2010
Patent No. : 7,725,430 B2
Serial No. : 11/090,274
Inventor(s) : Shoen
Issue Date : May 25, 2010
Title : **HIGH-SPEED INFORMATION PROCESSING BY COORDINATION OF INFORMATION PROCESSING RESOURCES APPARATUS, INCLUDING METHOD, AND COMPUTER-READABLE RECORDING MEDIUM THEREOF**
Doc./File No. : **1720.1016**

Re: Consideration for Certificate of Correction

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

Respecting the alleged error(s) in your request, in column 1, below the title, is/are printed in accordance with the record in the Patent and Trademark Office, as passed to issued by the examiner. There being no fault on the part of the Patent and Trademark Office, it has no authority to issue a certificate of correction under the provision of 1.322.

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

However, further consideration will be given this matter, upon receipt of a request for **Reconsideration** for a certificate of correction under the provisions of 1.323, accompanied by the appropriate fee which is presently $100.

Future correspondence concerning this matter should be filed and directed to Decisions & Certificates of Correction Branch.

Ernest C. White, *LIE* (571) 572-3385
Mary F. Diggs, *Supervisor* (703) 756-1580
Decisions & Certificates of Correction Branch
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ecw

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: 150036-US-NP	Patent Number: 7,668,914
Filing Date (or 371(b) or (f) Date): March 28, 2005	Issue Date: February 23, 2010
First Named Inventor: Alistair John Parker	
Title: Milestone synchronization in broadcast multimedia streams	

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 10, 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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Terry W. Kramer, Esq.
Kramer & Amado, P.C.
1725 Duke Street, Suite 240
Alexandria, VA 22314

Mail Date: 08/18/2010

Applicant	: Alistair John Parker	: DECISION ON REQUEST FOR
Patent Number	: 7668914	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/090,308	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 03/28/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1002** 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

BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO IL 60610

In re Application of :
Ernest R. Blatchley III et al. :
Application No. 11/090,312 :
Filed: March 26, 2005 :
Attorney Docket No. 12264-56 :

DECISION ON APPLICATION
FOR PATENT TERM ADJUSTMENT

This is in response to the "Request for Review of Patent Term Adjustment" filed May 19, 2010. Applicants request the Office review the calculation of patent term adjustment.

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

The Office has updated the PALM screen to reflect the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is 119 days. A copy of the updated PALM screen showing the correct determination is enclosed.

The Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) in the above-identified application on February 23, 2010. Applicants were advised of a patent term adjustment to date of 125 days. In response, applicants timely filed this application for patent term adjustment with payment of the issue fee on May 19, 2010.

The request states, with emphasis omitted,

> [T]he patent term adjustment pursuant to 35 U.S.C. 154(b) of 125 days ... may extend the term of the patent by too many days. Please review the calculation of the patent term adjustment and make corrections, if necessary.

A review of the record reveals the initial determination of patent term adjustment of 125 days is incorrect due to a failure by the Office to enter a reduction under 37 C.F.R. § 1.704(c)(8) as a result of Applicants filing an information disclosure statement ("IDS") on December 29, 2005.

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 December 23, 2009. A request for continued examination ("RCE") and an amendment were filed December 23, 2009. An IDS was subsequently filed 6 days later on December 29, 2009. The IDS did not include a statement under 37 C.F.R. § 1.704(d) and the record does not indicate the examiner expressly requested the IDS. Therefore, the Office should have entered a 6-day reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(8) as a result of Applicants filing an IDS on December 29, 2009.

In view of the prior discussion, the Office has entered a 6-day reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(8) as a result of Applicants filing an IDS on December 29, 2009.

The patent term adjustment at the time of mailing the notice of allowance is 119 days, which is the 125-day prior determination of patent term adjustment reduced by the previously discussed 6 days of delay under 37 C.F.R. § 1.704(c)(8).

The Office has charged the $200.00 fee set forth in 37 C.F.R. § 1.18(e) to Deposit Account No. 23-1925.

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

Enclosure: Copy of REVISED PALM screen

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

Application Number*: 11090312 Search Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application: 11090312

Application Filing Date	03/26/2005	Overlapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	497
A Delays	497	PTO Manual Adjustment	-6
B Delays	0	Applicant Delay (APPL)	372
C Delays	0	Total PTA (days)	119

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
97	10/25/2010		P026	Adjustment of PTA Calculation by PTO		6	0
81	02/23/2010		MN/=.	Mail Notice of Allowance			0
80	02/19/2010		IREV	Issue Revision Completed			0
79	02/19/2010		DVER	Document Verification			0
78	02/19/2010		N/=.	Notice of Allowance Data Verification Completed			0
77	02/19/2010		DOCK	Case Docketed to Examiner in GAU			0
76	02/16/2010		EX.A	Examiner's Amendment Communication			0
75	02/16/2010		CNTA	Notice of Allowability			0
68	01/06/2010		FWDX	Date Forwarded to Examiner			0
65	01/06/2010		ABN9	Disposal for a RCE / CPA / R129			0
74	12/29/2009		IDSC	Information Disclosure Statement considered			0
70	12/29/2009		M844	Information Disclosure Statement (IDS) Filed			0
69	12/29/2009		EIDS.	Electronic Information Disclosure Statement			0
63	12/29/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
67	12/23/2009		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
66	12/23/2009	09/25/2009	RCEX	Request for Continued Examination (RCE)		89	61
64	12/23/2009		XT/G	Request for Extension of Time - Granted			0
62	12/23/2009		BRCE	Workflow - Request for RCE - Begin			0
61	06/25/2009		MCTFR	Mail Final Rejection (PTOL - 326)			0
60	06/24/2009		CTFR	Final Rejection			0
56	04/25/2009		FWDX	Date Forwarded to Examiner			0
59	04/15/2009		IDSC	Information Disclosure Statement considered			0
57	04/15/2009	04/15/2009	M844	Information Disclosure Statement (IDS) Filed			55
55	04/15/2009	03/19/2009	A...	Response after Non-Final Action		27	52
54	04/15/2009		XT/G	Request for Extension of Time - Granted			0
53	04/15/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
52	12/19/2008		MCTNF	Mail Non-Final Rejection			0
51	12/18/2008		CTNF	Non-Final Rejection			0
47	10/17/2008		FWDX	Date Forwarded to Examiner			0
46	10/10/2008	07/16/2008	A...	Response after Non-Final Action		86	40
45	10/10/2008		XT/G	Request for Extension of Time - Granted			0
44	10/09/2008		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
43	10/06/2008		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
40	04/16/2008		MCTNF	Mail Non-Final Rejection			0
39	04/14/2008		CTNF	Non-Final Rejection			0
38	04/13/2008		FWDX	Date Forwarded to Examiner			0
37	04/08/2008	01/07/2008	SA..	Supplemental Response		92	27
28	02/06/2008		FWDX	Date Forwarded to Examiner			0
27	01/07/2008	01/05/2008	ELC	Response to Election / Restriction Filed		2	24
26	01/07/2008		XT/G	Request for Extension of Time - Granted			0
24	10/05/2007	05/26/2006	MCTRS	Mail Restriction Requirement	497		-1
23	10/01/2007		CTRS	Requirement for Restriction / Election			0
22	09/20/2007		DOCK	Case Docketed to Examiner in GAU			0
21	09/11/2007		TI1050	Transfer Inquiry to GAU			0
20	11/17/2006		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
17	10/21/2005		WROIPE	Application Return from OIPE			0
16	10/21/2005		COMP	Application Is Now Complete			0
15	10/21/2005		ROIPE	Application Return TO OIPE			0
14	10/20/2005		OIPE	Application Dispatched from OIPE			0
13	10/20/2005		COMP	Application Is Now Complete			0
19	10/12/2005		A.PE	Preliminary Amendment			0
12	10/12/2005	07/28/2005	FLFEE	Payment of additional filing fee/Preexam		76	7
11	10/12/2005		OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic			0
36	06/27/2005		IDSC	Information Disclosure Statement considered			0
10.7	06/27/2005		M844	Information Disclosure Statement (IDS) Filed			0
18	06/27/2005		WIDS	Information Disclosure Statement (IDS) Filed			0
7	04/28/2005		INCD	Notice Mailed--Application Incomplete--Filing Date Assigned			0
5	04/19/2005		L128	Cleared by L&R (LARS)			0
4	04/13/2005		L198	Referred to Level 2 (LARS) by OIPE CSR			0
3	04/13/2005		CLSS	CASE CLASSIFIED BY OIPE			0
2	04/09/2005		SCAN	IFW Scan & PACR Auto Security Review			0
8	03/26/2005		CLAIM	Claim Preliminary Amendment			0
1	03/26/2005		IEXX	Initial Exam Team nn			0

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SEP 13 2010

OFFICE OF PETITIONS

In re Application of	:	
Paseman et al.	:	DECISION ON PETITION
Application No. 11/090,348	:	TO WITHDRAW
Filed: March 24, 2005	:	FROM RECORD
Attorney Docket No. 24129-09012	:	

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 23, 2010.

The request is **NOT APPROVED**.

The Office strongly encourages practitioner(s) requesting withdrawal from representation as practitioner of record in an application to review the record to determine whether he or she is, in fact, of record and how he or she was made of record. For example, the practitioner(s) should determine whether he or she was appointed by naming each practitioner individually or through the use of a Customer Number. If the practitioner(s) was appointed by a specific designation, then the Request should ask that each specified practitioner be withdrawn and should list each practitioner(s) in the Request.

In the instant application, the practitioners were not appointed via Customer Number. Therefore, requesting to withdraw via Customer Number is not the appropriate course.

All future communications from the Office will be directed to above-listed address until otherwise properly notified by the applicant or a proper change of correspondence address have been submitted.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-3206. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

Liana Walsh
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

In re Application of	:	
Paseman et al.	:	DECISION ON PETITION
Application No. 11/090,348	:	TO WITHDRAW
Filed: March 24, 2005	:	FROM RECORD
Attorney Docket No. 24129-09012	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed October 4, 2010.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office will require the practitioner(s) to certify that he, she or they have: (1) given reasonable notice to the client, prior to the expiration of the reply period, which the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any replies that may be due and the time frame within which the client must respond, pursuant to 37 CFR 10.40 (c).

The request was signed by Jennifer R. Bush on behalf of all attorneys/agents of record. All attorneys/agents have been withdrawn. Applicants are reminded that there is no attorney of record at this time.

All future correspondence will be directed to the first-named inventor, William Gerhard Paseman, at the address indicated below.

There is an outstanding Office action, mailed October 1, 2010, which requires a reply from the applicants. Failure to timely and properly do so will result in abandonment of the instant application.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-3206. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

Liana Walsh
Petitions Examiner
Office of Petitions

cc: WILLIAM GERHARD PASEMAN
21363 SARATOGA HILLS ROAD
SARATOGA CA 95070

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HAMRE SCHUMANN MUELLER & LARSON P.C.
P.O. BOX 2902
MINNEAPOLIS, MN 55402-0902

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OCT 22 2010

OFFICE OF PETITIONS

In re Application of :
Yasuhiro Sugaya et al :
Application No. 11/090,401 : ON PETITION
Filed: March 25, 2005 :
Attorney Docket No. 10873.0649USD1

This is a decision on the petition, filed October 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 September 28, 2010 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 2892 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

/Irvin Dingle/
Irvin Dingle
Petitions Examiner
Office of Petitions

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

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P.O. BOX 2902
MINNEAPOLIS MN 55402-0902

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In re Patent No. 7,888,789 :
Issue Date: February 15, 2011 :
Application No. 11/090,401 : ON PETITION
Filed: March 23, 2005 :
Attorney Docket No. 10873.0649USD1 :

This is a decision on the petition under 37 CFR 1.182, filed June 22, 2011, requesting issuance of a duplicate Letters Patent for the above-identified patent.

The petition is **GRANTED**.

The Office of Data Management is directed to issue a duplicate Letters Patent.

Telephone inquiries concerning this decision may be directed to Kimberly Inabinet at (571) 272-4618. Inquiries regarding the issuance of a duplicate Letters Patent may be directed to the Office of Data Management at (571) 272-4200.

A copy of this decision is being forwarded to the Publishing Division for issuance of duplicate Letters Patent.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

cc: Ollie Person (Fax - 571-270-9764)
Kimberly Terrell (Fax - 571-270-9958)

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SUITE 3400
CHICAGO IL 60661

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OFFICE OF PETITIONS

In re Application :
Behara, et al. :
Application No. 11/090,478 : PATENT TERM ADJUSTMENT
Filing or 371(c) Date: March 25, 2005 :
Dkt. No.: 20179US01 :

This is in response to the application for patent term adjustment under 37 CFR 1.705(b), filed November 23, 2010.

Applicant submits that the correct patent term adjustment to be indicated on the patent is 1,361 days, not 632 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction on the basis that the Office will take in excess of three years to issue this patent.

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

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

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

Applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time

of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

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

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

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

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

/ALESIA M. BROWN/

Alesia M. Brown
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.

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RATNERPRESTIA
P.O. BOX 980
VALLEY FORGE PA 19482

In re Patent No. 7,617,242 :
Issue Date: November 10, 2009 :
Application No. 11/090,544 : DECISION ON PETITION
Filed: March 25, 2005 :
Attorney Docket No. MTS-3523US :

This is a decision on the Request For Certificate Of Correction Of Patent For PTO Mistake (37 C.F.R. §1.322(a)), filed May 12, 2010, which is being treated as a Petition Under 37 CFR 3.81(b) to replace "Panasonic Corporation" with --Microsoft Corporation-- as the assignee on the Title Page of the Patent via a Certification of Correction.

The petition is **DISMISSED**.

Petitioner, in effect, requests issuance of a Certificate of Correction that changes the identification of "Panasonic Corporation" as the assignee on the Title Page of the patent to – Microsoft Corporation--. The title of the Petition appears to urges that the Certification of Correction is needed to correct USPTO error.

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

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 **before issuance of the patent**, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter [emphasis added]. *See also* MPEP 1481.01.

Section 1481.01, Correction of Assignees' Names, of the Manual of Patent Examining Procedures (MPEP) states, in part:

> "The Transmittal Form portion (PTOL-85B) of the Notice of Allowance Provides a space (item 3) for assignment data which should be completed in order to comply with 37 CFR 3.81. Unless an assignee's name and address are identified in the appropriate space for specifying the assignee,

(i.e., item 3 of the Transmittal Form PTOL-85B), the patent will issue to the applicant. Assignment data printed on the patent will be based solely on the information so supplied.

Any request for the 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:

(A) state that the assignment was submitted for recordation as set forth in 37 CFR 3.11 before issuance of patent;
(B) include a request for certificate of correction under 37 CFR 1.323 along with the fee set forth in 37 CFR 1.20(a); and
(C) include the processing fee set forth in 37 CFR 1.17(i).

See 37 CFR 3.81(b)."

A review of United States Patent and Trademark Office (USPTO) records reveals that the assignment documents were recorded at Reel: 016728, Frame: 0223 on July 1, 2005. A recordation cover sheet (Reel: 016728/Frame: 0223) identifies two(2) Assignees, i.e., Matcushita Electric Industrial Co., Ltd. and Microsoft Corporation. However, the present request only requests identification of Microsoft Corporation only and not all of the assignees. A review of the Issue Fee Transmittal Form (PTO 85B) reveals that the name of the assignee to be printed on the patent was only "Panasonic Corporation", and the alleged error was ***not*** a Patent Office mistake. Accordingly, the instant petition cannot be granted.

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

Cheryl Gibson-Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

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 2011
OFFICE OF PETITIONS

RATNERPRESTIA
P.O. BOX 980
VALLEY FORGE PA 19482

In re Patent No. 7,617,242 :
Issue Date: November 10, 2009 :
Application No. 11/090,544 : DECISION ON PETITION
Filed: March 25, 2005 :
Attorney Docket No. MTS-3523US :

This is a decision on the Request For Certificate Of Correction Of Patent For Applicant's Mistake (37 C.F.R. §1.323), filed June 23, 2011, to accept the omission of the second assignee's name. A completed Certificate of Correction Form (PTO/SB/44) was submitted with Petition.

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

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

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

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

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

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

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

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. 7,617,242.

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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SCOTT C. KRIEGER
KRIEGER INTELLECTUAL PROPERTY, INC
PO BOX 872438
VANCOUVER, WA 98687-2438

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NOV 04 2011

OFFICE OF PETITIONS

In re Application of :
Daniel J. PARK, et al. :
Application No. 11/090,549 :
Filed: March 23, 2005 :
Attorney Docket No. SLA1480 :

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed October 24, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed March 31, 2011, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on July 1, 2011.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment; (2) the petition fee of $1860; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the non-final Office action of March 31, 2011 is accepted as having been unintentionally delayed.

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

The application file is being referred to Technology Center AU 2474 for appropriate action on the concurrently filed amendment.

David Bucci
Petitions Examiner
Office of Petitions

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INNOVATION DIVISION
CANTOR FITZGERALD, L.P.
110 EAST 59TH STREET (6TH FLOOR)
NEW YORK NY 10022

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OFFICE OF PETITIONS

In re Application of :
Howard W. Lutnick et al :
Application No. 11/090,558 : DECISION ON PETITION
Filed: March 23, 2005 :
Attorney Docket No. 04-1095 :

This is a decision on the petition, filed September 11, 2009, supplemented on October 6, 2009 and supplemented a second time on October 6, 2009. The petition is being treated as a petition under 37 CFR 1.181 (no fee) and in the alternative under 37 CFR 1.137(b).

The petition under 37 CFR 1.181 is dismissed as premature.
The petition under 37 CFR 1.137(b) cannot be considered.

The above identified application was abandoned as of October 16, 2008 for failure to properly respond to the Notice of Non-Responsive Amendment, mailed September 15, 2008 which set a response period of one (1) month or 30 Days from the mailing of this Notice.

As to the petition under 37 CFR 1.181:

It is noted the two petitions filed October 6, 2009 are stated as replacements for the petition filed September 11, 2009 and are considered as such.

The petition is a request for reconsideration of the examiner's restriction requirement mailed February 20, 2008. However, since the application is currently in abandoned status, no discussion of the appropriateness of the examiner's restriction requirement can be considered until such time as the application has been revived and returned to pending status. For this reason the petition is dismissed as premature.

As to the petition under 37 CFR 1.137(b):

This petition was filed in the alternative and the petition states on page 2 "In the alternative and only if all grounds for vacating the examiner's papers are specifically ruled on and denied, Petitioner requests revival for unintentional abandonment." It is unclear at this time specifically what "all the grounds" constitutes. Since the petition under 37 CFR 1.181 is dismissed as

premature, there is no denial or any other consideration on the merits of any of petitioner's legal grounds. Clarification of petitioner's conditions for consideration of the petition under 37 CFR 1.137(b) is required. Since petitioner's conditions for consideration of the petition under 37 CFR 1.137(a), as understood, are not currently met, this petition cannot be considered at this time.

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

Carl Friedman
Petitions Examiner
Office of Petitions

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NEW YORK NY 10022

MAILED
JUN 29 2011
OFFICE OF PETITIONS

In re Application of :
Howard W. Lutnick et al :
Application No. 11/090,558 : DECISION ON PETITION
Filed: March 23, 2005 :
Attorney Docket No. 04-1095 :

This is a decision on the renewed petition, filed January 18, 2011. The petition is being treated as a petition under 37 CFR 1.181 (no fee) or in the alternative under 37 CFR 1.137(b).

The renewed petition under 37 CFR 1.181 is **dismissed**.

The renewed petition under 37 CFR 1.137(b) is not considered.

The above identified application was abandoned as of October 16, 2008 for failure to properly respond to the Notice of Non-Responsive Amendment (Notice), mailed September 15, 2008 which set a response period of one (1) month or 30 Days from the mailing of this Notice.

As to the petition under 37 CFR 1.181:

As noted above, the application was abandoned for failure to properly respond to the Notice mailed September 15, 2008. Petitioner notes that MPEP 711.03(c) provides for petitioning to withdraw the holding of abandonment where the applicant contends that the application is not in fact abandoned. However, petitioner's arguments are based on whether or not the restriction requirement itself was proper. MPEP 711.03(c)(I) clearly states in relevant part:

> A petition to revive an abandoned application should not be confused with a petition from an examiner's holding of abandonment. Where an applicant contends that the application is not in fact abandoned (e.g., there is disagreement as to the sufficiency of the reply, or as to controlling dates), a petition under 37 CFR 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action, and such petition does not require a fee. (underlining added)

As in the previous petition, petitioner attempts to argue whether the examiner had the legal authority to make the restriction. This is addressed in the form of a traverse of the restriction. However, since the application is currently abandoned, the issue is not whether the restriction was properly made but rather whether applicants' response to the restriction was a sufficient reply. Clearly as set forth in the Notice, the reply was not sufficient. Petitioner has presented no arguments to the contrary in regard to sufficiency. Therefore the petition under 37 CFR 1.181 in regard to the issue of withdrawal of the holding of abandonment is dismissed.

Any petition issues in regard to the appropriateness of the restriction requirement can only be addressed by the Office after the application has been revived to pending status. Petitioner has not yet successfully revived the instant patent application.

As to the petition under 37 CFR 1.137(b):

In this renewed petition, petitioner requests in the alternative that the application be revived under 37 CFR 1.137(b) as unintentionally abandoned. In the petition filed September 11, 2009, petitioner likewise filed a conditional petition under 37 CFR 1.137(b) however the petition decision mailed November 15, 2010 indicated the conditions for considering this petition were unclear and clarification was requested. In the renewed petition, petitioner clearly indicates a petition under 37 CFR 1.137(b) is to be considered in the alternative only "if all grounds listed in the bullet list at page 24 of the October 2009 petition are denied." Since none of the grounds set forth in the bullet list were treated on the merits, they were not denied and thus petitioners' conditions for alternatively treating this as a petition under 37 CFR 1.137(b) have not been met. Accordingly, the petition under 37 CFR 1.137(b) will not be considered.

Petitioner requests a telephone hearing to familiarize the Petitions Office on the laws regarding the Administrative Procedure Act, the Paper Reduction Act, and the directives from the Executive Office of the President. Petitioners' offer must be declined at this time as such a discussion is not on point with revival of the instant application. However, telephone inquiries concerning **this decision** may be directed to Carl Friedman at (571) 272-6842.

Carl Friedman
Petitions Examiner
Office of Petitions

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110 EAST 59TH STREET (6TH FLOOR)
NEW YORK NY 10022

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OCT 26 2011
OFFICE OF PETITIONS

In re Application of :
Howard W. Lutnick et al :
Application No. 11/090,558 : DECISION ON PETITION
Filed: March 23, 2005 :
Attorney Docket No. 04-1095 :

This is a decision on the Petition for Supervisory Review, And to Vacate Examiner's Papers of March 2008, September 2008, And November 2008, And to Vacate Holding of Abandonment, which is being treated as a petition under 37 CFR 1.181 for supervisory review.

The petition for supervisory review under 37 CFR 1.181 is granted in that the petition decision has been reviewed, but **DENIED** with respect to all grounds except that the restriction has been reviewed.

The renewed petition under 37 CFR 1.137(b) is not considered as requested by petitioner.

BACKGROUND

The above identified application was abandoned as of October 16, 2008 for failure to properly respond to the Notice of Non-Responsive Amendment (Notice), mailed September 15, 2008 which set a response period of one (1) month or 30 Days from the mailing of this Notice.

A review of the record shows the following:

The examiner mailed a restriction requirement on February 20, 2008. The restriction specified four separate inventions and indicated that a complete response to the restriction requirement must include an election of one of the inventions even though the requirement is traversed.

Applicant responded to the restriction requirement on May 20, 2008.

A Notice of Non-Responsive Amendment was mailed September 15, 2008, indicating the response to the restriction requirement was not fully responsive as applicant did not elect an invention to be examined.

A Notice of Abandonment was mailed October 28, 2008, indicating that applicant had not responded to the Notice of Non-Responsive Amendment.

Almost one year later, applicant filed petitions on September 11, 2009 and October 6, 2009. These petitions were treated as filed under 37 CFR 1.181 for reconsideration of the restriction requirement and in the alternative under 37 CFR 1.137(b). A petition decision was mailed November 15, 2010 which dismissed the 1.181 petition and did not consider the 1.137(b) petition.

A renewed petition was filed January 18, 2011. This petition was again considered as filed under 37 CFR 1.181 and in the alternative 1.137(b). In a petition decision mailed June 29, 2011, the 1.181 petition was again dismissed and the 1.137(b) was again not considered.

The instant petition was filed August 29, 2011.

STATUTE AND REGULATIONS

37 CFR 1.143 states:

> If the applicant disagrees with the requirement for restriction, he may request reconsideration and withdrawal or modification of the requirement, giving the reasons therefor. (See § 1.111). In requesting reconsideration the applicant must indicate a provisional election of one invention for prosecution, which invention shall be the one elected in the event the requirement becomes final. The requirement for restriction will be reconsidered on such a request. If the requirement is repeated and made final, the examiner will at the same time act on the claims to the invention elected.

37 CFR 1.181 states in part:

(a) Petition may be taken to the Director:

(1) From any action or requirement of any examiner in the ex parte prosecution of an application, or in ex parte or inter partes prosecution of a reexamination proceeding which is not subject to appeal to the Board of Patent Appeals and Interferences or to the court;

OPINION

Petitioners indicate that the petition decision mailed June 29, 2011 referenced "withdrawal" of the restriction and abandonment whereas petitioner requested the restriction requirement mailed February 20, 2008 and the notice of abandonment mailed October 28, 2008 be "vacated". As review of the petition decision shows that the restriction and abandonment were proper, this argument is not persuasive and neither the restriction requirement nor notice of abandonment will be withdrawn or vacated.

Petitioners' request to vacate the restriction requirement will not be honored. The restriction requirement was a validly issued Office action that fully complied with the requirements of the statute under 35 USC 132, and as such, petitioner is required to comply with that Office action. Reference should be made to In re Jung, 98 USPQ2d 1147, 1177(Fed. Cir. 2011).

> In other words, the PTO carries it's procedural burden of establishing a prima facie case when its rejection satisfies 35 U.S.C. § 132, in "notify[ing] the applicant...[by] stating the reasons for [its] 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 [the] application," 35 USC § 132. That section "is violated when a rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection." Chester v. Miller, 906 F.2d 1574, 1578, 15 USPQ 2d 1333 (Fed. Cir. 1990). (Underlining added.)

In this instance, the examiner issued the restriction requirement and applicants responded by amending the claims on May 20, 2008 and stating on page 14, "Because of the amendments to the claims, it is believed that the requirement for restriction presented in the Office paper of February 2008 is now moot, and no election is required." (Underlining added) In order to make the assertion that the restriction requirement was "moot", applicants must have understood the restriction requirement, later protest to the contrary notwithstanding. Furthermore, applicants were able to propose a course of action for this application. Whether the amendment obviated the restriction requirement or not is a question for the examiner. Notwithstanding any amendments that were made to the claims, applicants are still required to elect an invention for prosecution in accordance with 35 USC 121. The decision to restrict an application is the province of the examiner and as such it is the examiner who must determine whether or not to withdraw the restriction requirement. An election is needed even if an amendment or traversal is made, since the examiner may disagree. Doing otherwise would unnecessarily delay prosecution.

Petitioners argue that the examiner acted outside of the scope of his authority and as such the restriction requirement should be vacated and the holding of abandonment withdrawn. As set forth above, the restriction requirement was valid. Thus there is no debate, the examiner had the authority to issue the restriction requirement. Petitioners' view that a procedural challenge is in order before a response to the restriction requirement on the merits is not well taken. Reference should be made to In re Jung again.

> Jung contends that establishing a prima facie case requires more than just notice under § 132, and that whatever else may be required is part of the examiner's burden in rejecting any claim. According to Jung, until that burden is met by the examiner, the rejection need not be challenged on the merits by applicant. This court disagrees and sees no reason to impose a heightened burden on examiners beyond notice requirement of § 132. Jung, without any basis, would have this court impose additional prima facie procedural requirements and give applicants the right first to procedurally challenge and appeal the prima facie procedural showing before having to substantively respond to the merits of the rejection. Such a process is both manifestly inefficient and entirely unnecessary.

> Indeed, Jung's arguments as to why the examiner failed to make out a prima facie rejection are the same arguments that would be made on the merits. Id, at 1178.

Thus the additional procedural steps requested by petitioners are not adopted.

Petitioners' argument with respect to an oral conversation with the examiner is noted. The rule at 37 CFR 1.2 state that "All business with the Patent and Trademark Office should be transacted in writing...No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt". The assertion that the examiner misrepresented himself is irrelevant in light of 37 CFR 1.2, see Fornum v Manbeck, 21 USPQ2d 1691,1696 (D.D.C. 1991).

Petitioners' argument that the issuance of a restriction requirement changes the rules of procedure with respect thereto is noted. However, no rule making occurs by the issuance of an Office action. Furthermore, as set forth above, a procedural challenge to this restriction requirement is not appropriate.

Petitioners' complaint that the examiner improperly set a non-extendible period for response is also noted. Whether the period for reply was improperly set is irrelevant in this instance since petitioner did not respond in any fashion until almost one year later. The maximum statutory period (35 USC 133) is six months. Accordingly, this application is properly abandoned.

Petitioners make several generalizations about the USPTO, the Manual of Patent Examining Procedure, Petitions Examiners, and the Petitions Office. These arguments are noted and require nothing more. Petitioners' suggestions to the Director for Examiner training have also been noted.

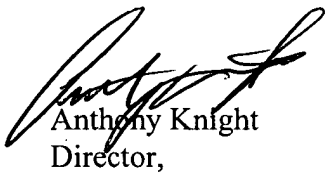
Finally, petitioners' request to vacate an Office action is predicated upon supervisory review under 37 CFR 1.181 and as such the petition must be filed within two months of the action complained of, in this instance, the original restriction requirement was mailed more than two months before the 1.181 petition was filed. Even if viewed as being the mailing of the Notice of Abandonment as the action for which supervisory review was sought, the delay in filing is more than two month. In either instance petitioner has not timely filed the request and as such the petition is denied on this ground as well.

In this renewed petition, petitioner again requests in the alternative that the application be revived under 37 CFR 1.137(b) as unintentionally abandoned. As in the previous petitions, petitioner indicates the petition under 37 CFR 1.137(b) is to be considered only if all grounds listed in the bullet list on page 24 of the October 2009 petition are denied. Since no such denial has been made, the petition under 37 CFR 1.137(b) will not be considered as per petitioner's directions.

Petitions for revival based upon the unintentional delay standard must be promptly filed once applicant is aware of the abandoned status of the application. See 62 Fed. Reg. 53132, 53158-59 (1997):

> Where the applicant deliberately permits an application to become abandoned (e.g., due to a conclusion that the claims are unpatentable, that a rejection in an Office action cannot be overcome, or that the invention lacks sufficient commercial value to justify continued prosecution), the abandonment of such application is considered to be a deliberately chosen course of action, and the resulting delay cannot be considered as ''unintentional'' within the meaning of § 1.137(b). See Application of G, 11 USPQ2d at 1380. Likewise, where the applicant deliberately chooses not to seek or persist in seeking the revival of an abandoned application, or where the applicant deliberately chooses to delay seeking the revival of an abandoned application, the resulting delay in seeking revival of the abandoned application cannot be considered as ''unintentional'' within the meaning of § 1.137(b).

Petitioner is strongly encouraged to file a petition under 37 CFR 1.137(b), including the required reply, in response to this decision.



Anthony Knight
Director,
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20111222

DATE : December 22, 2011

TO SPE OF : ART UNIT 3662

SUBJECT : Request for Certificate of Correction on Patent No.: 7720554

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

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - PK 3-910
Palm location **7590** - Tel. No. 305-8201

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

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

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

☒ **Approved** **All** changes apply.

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

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

Comments:

SPE: /Thomas H. Tarcza/ **Art Unit** 3662

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Brinks Hofer Gilson & Lione
CAPITAL CENTER, SUITE 1100
201 NORTH ILLINOIS STREET
Indianapolis IN 46204-4220

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MAR 23 2012

OFFICE OF PETITIONS

In re Application of	:	ON REQUEST FOR
Kreifeldt et al.	:	RECONSIDERATION OF
Patent Number: 8,078,298	:	PATENT TERM ADJUSTMENT
Issue Date: 12/13/2011	:	and
Application No. 11/090665	:	NOTICE OF INTENT TO ISSUE
Filing or 371(c) Date: 03/25/2005	:	CERTIFICATE OF CORRECTION
Attorney Docket Number:	:	
11336/906 (P04092USU)	:	

This is a decision on the petition filed February 10, 2012, which is being treated as a petition under 37 CFR 1.705(d), requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand seven hundred fourteen (1714) 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 fourteen (1714) days is **GRANTED to the extent indicated herein.**

Patentees provide that this Office errantly calculated a reduction of 111 days in connection with the filing of an Information Disclosure Statement ("IDS"). Applicants note that an IDS was filed on August 25, 2011, and the reduction should have been calculated beginning on August 25, 2011, and ending on September 13, 2011, the date the IDS was responded to by the Examiner in a Corrected Notice of Allowability, and is 92 days.

A review of office records confirms that applicants filed an IDS on August 25, 2011, and the IDS was responded to by the Examiner in a Corrected Notice of Allowability, and the reduction pursuant to 37 CFR 1.704(c)(10) is properly calculated at 35 days, beginning on the date the IDS was filed, and ending on the mailing date of the Office action or notice in response to the IDS. However, pursuant to 37 CHR 1.704(c)(10). The reduction began on the date the IDS was filed, and ending on the mailing date of the notice in response to the IDS, and is 20 days.

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

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

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

The application is being forwarded to the Certificate of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one thousand eight hundred five (1805) days (adjustments of 2028 days less reductions of 223 days).

Telephone inquiries specific to this matter should be directed to Attorney Derek Woods, at (571) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 8,078,298 B2

DATED : **December 13, 2011**

INVENTOR(S) : Kreifeldt 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 1714 days.

Delete the phrase "by 1714 days" and insert – by 1805 days--

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WOLF GREENFIELD (Microsoft Corporation)
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600 ATLANTIC AVENUE
BOSTON, MA 02210-2206

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FEB 09 2012

OFFICE OF PETITIONS

In re Application of :
Amit Dilip Ghosh, et al. :
Application No.: 11/090,692 : ON PETITION
Filed: March 25, 2005 :
Attorney Docket No.: M1103.70040US00 :

This is a decision on the petition, filed February 6, 2012, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on January 18, 2012, cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 3624 for further processing of the request for continued examination and for consideration of the concurrently filed Information Disclosure Statement (IDS).

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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

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MAYER & WILLIAMS PC
251 NORTH AVENUE WEST
Suite 201
WESTFIELD NJ 07090

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OCT 31 2011

OFFICE OF PETITIONS

In re Application of :
Benson WANG et al. : ON PETITION
Application No. 11/090,708 :
Filed: March 25, 2005 :
Atty. Docket No.: GS 205

This is a decision on the petition under 37 CFR 1.181, filed October 17, 2011, to revive the above-identified application.

The petition is **GRANTED.**

The application was held abandoned for petitioner's failure to timely file a request for rehearing within the time period in 37 CFR 41.52(a)(1). A Board decision was rendered August 15, 2011. A Notice of Abandonment was mailed September 7, 2011.

Petitioner requests that the Notice of Abandonment mailed September 7, 2011 be withdrawn as a timely response to the Board decision was filed within two (2) months from the mailing date, on October 17, 2011.

Petitioner timely filed a Request for Continued Examination (RCE) and RCE fee, and submission under 37 CFR 1.114 on October 17, 2011. As October 15, 2011 fell on a Saturday, the reply filed October 17, 2011 was timely. Accordingly, the Notice of Abandonment mailed September 7, 2011 is withdrawn as premature.

Telephone inquiries relating to this decision should be directed to Robert DeWitty, Petitions Attorney, Office of Petitions (571-272-8427).

The application will be referred to Technology Center Art Unit 2814 for consideration of the submission filed October 17, 2011.

for Anthony Knight
Director
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED

OCT 15 2010

OFFICE OF PETITIONS

ONDAX, INC.
850 EAST DUARTE ROAD
MONROVIA CA 91016

In re Application of :
Hymel et al. :
Application No. 11/090,720 : DECISION ON PETITION
Filed: March 25, 2005 :
Attorney Docket No. OND-010 :

This is a decision on the petition under 37 CFR 1.181, filed March 20, 2008, requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to reply in a timely manner to the Restriction Requirement mailed August 20, 2007. A Notice of Abandonment was mailed March 17, 2008.

Petitioner states that the reply was timely and has submitted a copy of the response filed September 11, 2007. Petitioner has submitted a copy of the postcard receipt showing a USPTO stamped date of September 11, 2007, as well as a copy of the Express Mail label EQ 731206975 US and USPO sales receipt both dated September 11, 2007, which would have rendered the reply timely if received. Additionally, petitioner filed the September 11, 2007 amendment for the above-identified application in the wrong application. Petitioner filed the amendment in Application No. 11/092,720.

Therefore, the file record does not include the originally submitted papers. Failure to receive correspondence which includes a certificate of mailing or certificate of facsimile transmission is addressed in 37 CFR 1.8(b), reproduced below:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn and the application restored to pending status.

The original reply that was matched up with the incorrect application will be transferred to the instant application.

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

This matter is being referred to Technology Center 2872 for consideration of the Amendment filed with the instant petition.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Alexandria, VA 22313-1450
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ONDAX, INC.
850 EAST DUARTE ROAD
MONROVIA CA 91016

MAILED

AUG 25 2011

OFFICE OF PETITIONS

In re Application of
HYMEL et al.
Application No. 11/090,720
Filed: 03/25/2005
Attorney Docket No. OND-010

DECISION ON PETITION

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

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed November 9, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on February 10, 2011. A Notice of Abandonment was mailed on July 6, 2011.

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

It appears that petitioner supplied an incorrect application number on the petition causing the petition fee to be placed in that incorrect application. The Office has moved the $810.00 petition fee from the incorrect application to the present application.

This application is being referred to Technology Center AU 2872 for appropriate action by the Examiner on the reply received on August 10, 2011.

[1] The Office notes that the petition was signed by the assignee as provided for under 37 CFR 3.71(b). See 37 CFR 1.33(b)(3).

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED
MAR 10 2011
OFFICE OF PETITIONS

In re Application of :
Tracy Stampfli, et al. :
Application No. 11/090,741 : DECISION ON PETITION
Filed: March 25, 2005 :
Attorney Docket No. 07844-0756001 :

This is a decision on the petition under 37 CFR 1.182, filed, January 20, 2011, to change the name of inventor "Rebekah Hash" to – Rebekah Cunningham --.

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

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

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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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
11/090,741	03/25/2005	2192	1806	07844-0756001	19	3

CONFIRMATION NO. 7579

CORRECTED FILING RECEIPT

21876
FISH & RICHARDSON P.C.
P.O. Box 1022
MINNEAPOLIS, MN 55440-1022

Date Mailed: 02/28/2011

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)

Tracy Stampfli, San Francisco, CA;
Rebekah Cunningham, San Francisco, CA;

Power of Attorney: The patent practitioners associated with Customer Number 021876

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/556,721 03/26/2004
and claims benefit of 60/556,595 03/26/2004
and claims benefit of 60/556,966 03/26/2004

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 04/22/2005

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/090,741**

Projected Publication Date: Request for Non-Publication Acknowledged

Non-Publication Request: Yes

Early Publication Request: No

Title

SYSTEM AND METHOD FOR UPDATING ONE OR MORE PROGRAMS AND THEIR ENVIRONMENT

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.

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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JUN 14 2011

OFFICE OF PETITIONS

FISH & RICHARDSON P.C. (TC)
PO BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 7,934,210
Issued: April 26, 2011
Application No. 11/090,741
Filed: March 25, 2005
Atty. Dkt. No.: 07844-0756001

: DECISION ON PATENT TERM and
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the application for patent term adjustment filed June 2, 2011 requesting that the patent term adjustment be increased from 828 days to 982 days.

The request for reconsideration of the patent term adjustment (PTA) pursuant to 37 CFR 1.705(d) is **GRANTED TO THE EXTENT INDICATED HEREIN**.

The above-identified application matured into U.S. Pat. No. 7,934,210 on April 26, 2011. The patent issued with a patent term adjustment of 828 days. The instant application for patent term adjustment was timely filed in accordance with 37 CFR 1.705(d). Patentee contests the period of adjustment of 421 days accorded pursuant to 37 CFR 1.702(b) and assert that the correct period of adjustment under 37 CFR 1.702(b) is 566 days. Patentee further asserts that the period of applicant delay is 254 days rather than 263 days.

Review of the record reveals that the correct period of applicant delay pursuant to 37 FR 1.704 is 254 days, as argued.

With respect to patentee's argument that the period of adjustment pursuant to 37 CFR 1.702(b) totals 566 days, patentee'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 421 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.

Herein, a request for continued examination was filed May 21, 2010. Thus, excluding the period of time consumed by continued examination, the period of adjustment pursuant to 37 CFR 1.703(b) is 421 days.

In view thereof, at the time of issuance, the patent was entitled to an overall patent term adjustment of 837 days (826 days pursuant to 37 CFR 1.702(a) + 421 days pursuant to 37 CFR 1.702(b) – 254 days pursuant to 37 CFR 1.704 – 156 overlapping days).

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

The required $200.00 fee set forth in 37 CFR 1.18(e) has been charged to the authorized deposit account. No additional fees are required.

The application is being forwarded to the Certificates of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by 837 days.

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

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

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,934,210

DATED : April 26, 2011 **DRAFT**

INVENTOR(S) : Stampfli, 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 828 days

Delete the phrase "by 828 days" and insert -- by 837 days --

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STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

MAILED
DEC 01 2010
OFFICE OF PETITIONS

In re Application of:
Saul S. Kato
Application No. 11/091,003
Filed: March 25, 2005
Attorney Docket No. 2222.006REI2

PETITION DECISION

This is a decision on the petitions under 37 CFR 1.183 and 37 CFR 1.47(b), filed August 18, 2010, which is being treated as a petition under 37 CFR 1.183 to waive the requirements of 37 CFR 1.64.

The petitions are **Granted**.

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

MPEP 603 states in part:

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

The petition is convincing that Kato refuses to execute the required supplemental declaration. For this reason, the petition is granted.

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

David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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MCDERMOTT WILL & EMERY LLP
600 13TH STREET, N.W.
WASHINGTON DC 20005-3096

MAILED

JAN 10 2011

OFFICE OF PETITIONS

In re Patent No. RE41148
Issue Date: February 23, 2010
Application No. 11/091,010
Filed: March 24, 2005
Attorney Docket No. 085199-0032

DECISION ON PETITION

This is a decision on the Request For Certificate Of Correction, filed June 7, 2010, requesting correction on the Title Page of the subject patent to identify the correct assignee's name and residence. The Request is being treated as a Petition Under 37 CFR §3.81(b). A completed Certificate of Correction Form was submitted with Petition.

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

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

"Shire Laboratories, Inc. Rockville, MD (US)"

to:

--Shire LLC, Florence,KY (US)--

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

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

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

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

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. RE41148.

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/24/11

TO SPE OF : ART UNIT 1615

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/091,011 Patent No. RE42,096

CofC mailroom date 3/17/11

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

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: _____

Robert A. Wax
Supervisory Patent Examiner
Technology Center 1600

SPE

1615
Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110808

DATE : August 11, 2011

TO SPE OF : ART UNIT 1615

SUBJECT : Request for Certificate of Correction on Patent No.: RE42096

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

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

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

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

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

Note your decision on the appropriated box.

☒ **Approved** All changes apply.

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

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

Comments:

/ROBERT A WAX/
Supervisory Patent Examiner.Art Unit 1615

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Michael S. Greenfield
McDonnell Boehnen Hulbert & Berghoff
32nd Floor
300 S. Wacker Drive
Chicago IL 60606

MAILED

MAR 21 2011

OFFICE OF PETITIONS

In re Patent No. 7,868,204 :
Issued: January 11, 2011 : DECISION ON PATENT TERM
Application No. 11/091,025 :
Filed: March 25, 2005 :
Atty. Dkt. No.: 02-423-D1 :

This is a decision is in response to the application for patent term adjustment under 37 CFR 1.705(d), filed February 16, 2011, requesting that the patent term adjustment be corrected from 709 days to 702 days.

The request for reconsideration of the patent term adjustment (PTA) pursuant to 37 CFR 1.705(d) is **DISMISSED**.

The above-identified application matured into U.S. Pat. No. 7,868,204 on January 11, 2011. The patent issued with a patent term adjustment of 709 days. The instant application for patent term adjustment is timely filed in accordance with 37 CFR 1.705(d). Patentees assert that the period of applicant delay is subject to further reduction of seven days pursuant to 37 CFR 1.704(c)(10) in connection with the request for continued examination (RCE) filed July 16, 2010.

Petitioner's arguments have been carefully considered, but are not persuasive. Submission of the RCE on July 16, 2010 is not considered a failure to engage in reasonable efforts to conclude prosecution or processing within the meaning of to 37 CFR 1.704(c)(10) because the RCE was submitted prior to the submission of the issue fee.

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.

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

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

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RATNERPRESTIA
P.O. BOX 980
VALLEY FORGE PA 19482

MAILED

SEP 2 0 2010

OFFICE OF PETITIONS

In re Patent No. 7,755,275
Issue Date: July 13, 2010
Application No. 11/091,088
Filed: March 28, 2005
Attorney Docket No. AOYB-413US

DECISION ON PETITION

This is a decision on the Request For Certificate Of Correction Of Patent For Applicant's Mistake (37 C.F.R. §1.323), filed on July 28, 2010, which is being treated as a Petition Under 37 CFR 3.81(b) to correct the second assignee's name. A completed Certificate of Correction Form (PTO/SB/44) was submitted with the petition.

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

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

"Cornell University"

to:

--Cornell Research Foundation, Inc.--

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

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

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

Inquiries related this communication should be directed to the undersigned at (571)272-3213.

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. 7,755,275.

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

INNOVATION DIVISION
CANTOR FITZGERALD LP
110 EAST 59TH STREET (6TH FLOOR)
NEW YORK NY 10022

MAILED

DEC 15 2011

OFFICE OF PETITIONS

In re Application of :
Michael Sweeting :
Application No. 11/091,137 : ON PETITION
Filed: March 28, 2005 :
Attorney Docket No. 05-6225 :

This is in response to petition to revive under 37 CFR 1.137(b), filed December 2, 2011.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The above-identified application became abandoned for failure to file a proper response to the final Office action, mailed February 17, 2010, which set a shortened statutory period for reply of three months. No reply having been received, the application became abandoned on May 18, 2011. The Office mailed a Notice of Abandonment on November 16, 2011.

With the instant petition, petitioner paid the petition fee, made the proper statement of unintentional delay, and submitted the required reply in the form of an RCE.

The application is being forwarded to Group Art Unit 3695 for consideration of the RCE, filed December 2, 2011.

Telephone inquiries concerning this decision may be directed to the undersigned at 571-272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Browdy and Neimark PLLC
1625 K street NW
Suite 1100
Washington DC 20006

MAILED

FEB 02 2011

OFFICE OF PETITIONS

In re Patent No. 7,521,943 :
Binder et al. : DECISION UPON REMAND AND
Issue Date: April 21,2009 : RECONSIDERATION OF
Application No. 11/091,371 : PATENT TERM ADJUSTMENT
Filed: September 29, 2005 : AND NOTICE OF INTENT
Attorney Docket No. Binder25 : TO ISSUE CERTIFICATE OF
Title: Device, Method and : CORRECTION
System for Estimating The :
Termination To A Wired
Transmission-Line Based on
Determination of
Characteristics Impedance

This is a decision following remand from the District Court for the District of Columbia regarding the patent term adjustment indicated on the above-identified patent. The Court remanded this matter to the U.S. Patent and Trademark Office for recalculation of the patent term adjustment in accordance with the decision in Wyeth & Elan Pharma Int'l Ltd. v. Kappos, 591 F.3d 1364 (Fed. Cir. 2010).

The patent term adjustment indicated on the above-identified patent has been recalculated as directed by the Court. The term of the above-identified patent is extended or adjusted by one thousand and fifty-eight (1058) days.

The application is being forwarded to the Certificates Branch for issuance of a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one thousand and fifty-eight (1058) 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 : 7,521,943

DATED : **April 21, 2009** **DRAFT**

INVENTOR(S) : Binder 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 751 days

Delete the phrase "by 751 days" and insert – by 1058 days--

Day : Tuesday
Date: 1/25/2011

PALM INTRANET

Time: 12:47:55

PTA Calculations for Application: 11/091371			
Application Filing Date:	03/29/2005	PTO Delay (PTO):	751
Issue Date of Patent:	04/21/2009	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	0
Post-Issue Petitions:	0	Total PTA (days):	1058
PTO Delay Adjustment:	307		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
64	01/25/2011	ADJUSTMENT OF PTA CALCULATION BY PTO	307		
55.5	04/01/2009	PTA 36 MONTHS			
55	04/21/2009	PATENT ISSUE DATE USED IN PTA CALCULATION			
54	03/18/2009	EXPORT TO FINAL DATA CAPTURE			
53	03/17/2009	DISPATCH TO FDC			
52	03/17/2009	DISPATCH TO FDC			
51	03/16/2009	APPLICATION IS CONSIDERED READY FOR ISSUE			
50	03/12/2009	ISSUE FEE PAYMENT VERIFIED			
49	03/12/2009	STATEMENT FILED INDICATING A LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS			
48	03/12/2009	ISSUE FEE PAYMENT RECEIVED			
47	02/26/2009	FINISHED INITIAL DATA CAPTURE			
46	01/16/2009	EXPORT TO INITIAL DATA CAPTURE			
44	01/12/2009	MAIL NOTICE OF ALLOWANCE			
43	01/09/2009	DOCUMENT VERIFICATION			
42	01/09/2009	ISSUE REVISION COMPLETED			
41	01/09/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
40	01/08/2009	EXAMINER'S AMENDMENT COMMUNICATION			
39	01/08/2009	NOTICE OF ALLOWABILITY			
38	09/16/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
37	09/16/2008	REFERENCE CAPTURE ON IDS			
36	09/16/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
35	10/28/2008	DATE FORWARDED TO EXAMINER			

34	09/17/2008	RESPONSE AFTER NON-FINAL ACTION			
33	09/16/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
32	06/18/2008	MAIL NON-FINAL REJECTION	751		-1
31	06/16/2008	NON-FINAL REJECTION			
30	06/24/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
29	05/09/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
24	03/19/2008	CASE DOCKETED TO EXAMINER IN GAU			
23	03/18/2008	CASE DOCKETED TO EXAMINER IN GAU			
22	02/15/2008	PRELIMINARY AMENDMENT			
21	02/27/2008	CASE DOCKETED TO EXAMINER IN GAU			
20	03/30/2007	TRANSFER INQUIRY TO GAU			
19	01/03/2007	TRANSFER INQUIRY TO GAU			
18	11/15/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
17	03/29/2005	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)			
16	06/05/2006	TRANSFER INQUIRY TO GAU			
15	05/09/2006	REFERENCE CAPTURE ON IDS			
14.7	05/09/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
14	05/09/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
13	05/10/2006	TRANSFER INQUIRY TO GAU			
12	05/10/2006	TRANSFER INQUIRY TO GAU			
11	06/24/2005	REFERENCE CAPTURE ON IDS			
10.7	06/24/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
10	06/24/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
9	04/25/2005	APPLICATION RETURN FROM OIPE			
8	04/25/2005	APPLICATION IS NOW COMPLETE			
7	04/25/2005	APPLICATION RETURN TO OIPE			
6	04/25/2005	APPLICATION DISPATCHED FROM OIPE			
5	04/25/2005	APPLICATION IS NOW COMPLETE			
4	04/17/2005	CLEARED BY L&R (LARS)			
3	04/14/2005	REFERRED TO LEVEL 2 (LARS) BY OIPE CSR			
2	04/09/2005	IFW SCAN & PACR AUTO SECURITY REVIEW			

1	03/29/2005	INITIAL EXAM TEAM NN			

Search Another: Application# [ ] Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

To go back, right click here and select Back. To go forward, right click here and select Forward. To refresh, right click here and select Refresh.

Back to OASIS | Home page

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 9-27-11 Paper No.: _____

TO SPE OF : ART UNIT 3633

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/091,861 Patent No.: 7770339

CofC mailroom date: 9-7-11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES: Should Cofc be approved

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

E Ward

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: _____

_____

_____

_____

_____

Brian M

SPE

3633

Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 7-7-10

TO SPE OF : ART UNIT 3635

SUBJECT : Request for Certificate of Correction for Appl. No.: 11091813 Patent No.: 7658038

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: _____

_____

_____

_____

_____

Richard E. Chilcot, Jr. Digitally signed by Richard E. Chilcot, Jr. DN: cn=Richard E. Chilcot, Jr., o=USPTO, ou=Art Unit 3635, email=richard.chilcot@uspto.gov Date: 2010.11.17 13:56:44 -05'00'

_____ _____

SPE **Art Unit**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 1/18/11

TO SPE OF : ART UNIT 3635 **CofC mailroom date:** 1/6/11

SUBJECT : Request for Certificate of Correction for Appl. No.: 11091837 Patent No.: 7770337

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Virginia Tolbert
Certificates of Correction Branch
571-272-0460

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

X Approved	**All** changes apply.
❑ **Approved in Part**	Specify below which changes **do not** apply.
❑ **Denied**	State the reasons for denial below.

Comments: _____

/Eileen Lillis/ 3635
SPE **Art Unit**

UNITED STATES DEPARTMENT OF COMMERCE
COMMISSIONER FOR PATENTS
P. O. BOX 1450
ALEXANDRIA, VA 22313-1450

Date : 10/24/2011
Patent No. : 7,997,885 B2
Serial No. : 11/091,848
Inventor(s) : Mower et al.
Issue Date : September 21, 2010
Title : **MODULAR ENCLOSURE**
Doc./File No. : **15499.583.2**

Re: Consideration for Certificate of Correction

Consideration has been given your request for a certificate of correction, for the above-identified patent under the provisions of Rule 1.322.

Respecting the alleged error(s) in your request, your request did not include a cover letter, along with the required fee of $100.00, as some of the errors are contributed on behalf of the applicant/attorney. Therefore, no correction is in order here.

In view of the foregoing, your request in this matter is denied.

Further consideration will be given concerning this matter upon receipt of a request for **Reconsideration** (reconsideration should be accompanied by supporting document(s) such as, amendment, postcard receipt, 1449/892, etc.) and should be filed and directed to Decisions & Certificates of Correction Branch.

Ernest C. White, *LIE* (571) 572-3385
Mary F. Diggs, *Supervisor* (703) 756-1580
Decisions & Certificates of Correction Branch
ernest.white@uspto.gov

Workman Nydegger
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City UT 84111

ECW

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11/21/11

TO SPE OF : ART UNIT: 3635

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/0191,848 Patent No. 7,797,885

CofC mailroom date 8/29/11

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: _____

_____

_____

_____

_____ 3633
SPE **Art Unit**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 09/07/11

TO SPE OF : ART UNIT 3635

SUBJECT : Request for Certificate of Correction for Appl. No.: 11091,849 Patent No.: 7779579

CofC mailroom date: 08/23/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

RoChaun Hardwick
Certificates of Correction Branch
703-756-1580

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

X **Aproved**	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: _____

_____

_____

_____

_____

/Eileen Lillis/ **3635**
SPE **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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CARR & FERRELL LLP
120 CONSTITUTION DRIVE
MENLO PARK CA 94025

MAILED
AUG 09 2011
OFFICE OF PETITIONS

In re Application of :
Christophe Moser et al :
Application No. 11/092,149 : ON PETITION
Filed: March 28, 2005 :
Attorney Docket No. PA5306US :

This is a decision on the petition under 37 CFR 1.137(b), filed April 8, 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** final agency action within the meaning of 5 U.S.C. § 704.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lack(s) item(s) (1).

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed May 24, 2010, which set a shortened statutory period for reply of three (3) months. A reply under 37 CFR 1.113 is limited to an amendment that *prima facie* places the application in condition for allowance or a Notice of Appeal (and appeal fee required by 37 CFR 1.17(b)). No amendment *prima facie* placing the application in condition for allowance or Notice of Appeal (and appeal fee) was timely filed. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on August 25, 2010.

Further correspondence with respect to this matter should be delivered through one of the following mediums:

By mail:	Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450
By hand:	Customer Service Window Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(571) 273-8300 ATTN: Office of Petitions
By internet:	EFS-Web www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

Attachment: Advisory Action

Advisory Action Before the Filing of an Appeal Brief	Application No. 11/092,149	Applicant(s) MOSER ET AL.	
	Examiner ALESSANDRO AMARI	Art Unit 2872	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 April 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: *See Continuation Sheet*. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *12,18-20,27 and 28*.
   Claim(s) withdrawn from consideration: *1-11 and 13*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Alessandro Amari/
Primary Examiner, Art Unit 2872

Continuation of 3. NOTE: The new issues are directed to the proposed change in scope in claim 12 and the addition of claims 29-34.

Continuation of 11. does NOT place the application in condition for allowance because: The claims as finally rejected do not distinguish the claimed method of fabricating a refractive element from the prior art cited.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

CARR & FERRELL LLP
120 CONSTITUTION DRIVE
MENLO PARK CA 94025

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SEP 07 2011

OFFICE OF PETITIONS

In re Application of :
MOSER :
Application No. 11/092,149 : DECISION ON PETITION
Filed: March 28, 2005 :
Attorney Docket No. PA5306US :

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed August 23, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an RCE and an amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final Office action mailed May 24, 2010 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

This application is being referred to Technology Center AU 2872 for appropriate action by the Examiner in the normal course of business.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED

SEP 27 2010

OFFICE OF PETITIONS

In re Application :
Karaoguz, et al. :
Application No. 11/092,211 : PATENT TERM ADJUSTMENT
Filing or 371(c) Date: March 29, 2005 :
Dkt. No.: 16052US02 :

This is in response to the application for patent term adjustment under 37 CFR 1.705(b), filed September 10, 2010.

Applicant submits that the correct patent term adjustment to be indicated on the patent is 818 days, not 368 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction on the basis that the Office will take in excess of three years to issue this patent.

Insofar as the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is DISMISSED as PREMATURE.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See, § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time

of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

Receipt is hereby acknowledged of the required patent term adjustment application fee under 37 CFR 1.705(b) of $200.00. See, 37 CFR 1.18(e).

However, any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and **must** include payment of the required fee under 37 CFR 1.18(e).

The application file is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
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.

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JUN 13 2011

OFFICE OF PETITIONS

In re Patent No. 7,826,875 :
Issued: November 2, 2010 : DECISION ON PATENT TERM
Application No. 11/092,211 :
Filed: March 29, 2005 :
Atty. Dkt. No.: 16052US02 :

This is a decision on the application for patent term adjustment filed January 3, 2011 requesting that the patent term adjustment be increased from 817 days to 818 days.

The request for reconsideration of the patent term adjustment (PTA) pursuant to 37 CFR 1.705(d) is **DISMISSED**.

The above-identified application matured into U.S. Pat. No. 7,826,875 on November 2, 2010. The patent issued with a patent term adjustment of 817 days. The instant application for patent term adjustment was timely filed in accordance with 37 CFR 1.705(d). Patentee contests the period of adjustment of 449 days accorded pursuant to 37 CFR 1.702(b) and assert that based on petitioners interpretation of law and rules, the correct period of adjustment is 450 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 449 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.

However, in accordance with 35 USC 154(b)(1)(B)(i), 37 CFR 1.702(b)(1), and 37 CFR 1.703(b)(1), the period of adjustment pursuant to § 1.702(b) does not any time consumed by continued examination.

Herein, a request for continued examination was filed June 22, 2009. Thus, excluding the period of time consumed by continued examination, the period of adjustment pursuant to 37 CFR 1.703(b) is 449 days.

In view thereof, no adjustment to the patent term will be made.

The required $200.00 fee set forth in 37 CFR 1.18(e) has been charged to the authorized deposit account. No additional fees are required.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/092,338	03/29/2005	Jeffrey A. Graham	I-4, Use Immotile	7058

87602 7590 09/15/2010

Inguran LLC
22575 State Highway 6 South
Navasota, TX 77868

EXAMINER
GOUGH, TIFFANY MAUREEN

ART UNIT	PAPER NUMBER
1657	

NOTIFICATION DATE	DELIVERY MODE
09/15/2010	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):

cewell@sexingtechnologies.com
patents@sexingtechnologies.com

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

SEP 1 5 2010

Inguran LLC
22575 State Highway 6 South
Navasota TX 77868

In re Application of :
Graham et al. : PETITION DECISION
Serial No.: 11/092,338
Filed: March 29, 2005
Attorney Docket No.: **I-4, Use Immotile**

This is in response to the petition under 37 CFR § 1.59(b), filed August 30, 2010, to expunge information from the above identified application.

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. Specifically, Petitioner indicates that on August 23, 2010, applicant mistakenly and unintentionally submitted an electronic filing including an IDS, document and fee authorization, and, therefore, desires that these document be expunged.

The reasons set forth in this petition establishes to the satisfaction of the Director that expungement of the references is now appropriate. The documents have been closed and as such the documents are no longer publicly available, which is the IFW equivalent to removal of a paper document from a paper file wrapper.

The petition is **GRANTED**.

Should there be any questions about this decision please contact Marianne C. Seidel by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 571-273-8300.

Marianne C. Seidel
Quality Assurance Specialist
Technology Center 1600

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MAILED
MAY 23 2011
OFFICE OF PETITIONS

Joseph A. Fuchs
Rockey, Depke & Lyons, LLC
233 S. Wacker Drive
Suite 5450, Sears Tower
Chicago IL 60606-6306

In re Application of :
Brent Anderson :
Application No. 11/092,384 : DECISION ON PETITION
Filed: March 29, 2005 :
Attorney Docket No. 113937.00024 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 6, 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 March 21, 2011, as required by the Notice of Allowance and Fee(s) Due, mailed December 20, 2010. Accordingly, the date of abandonment of this application is March 22, 2011. The Notice of Abandonment was mailed April 4, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,510 and the publication fee of $300, (2) the petition fee of $1,620; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to of Data of Management for processing into a patent.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

Doc Code: PET.PTA.RCAL
Document Description: Request for Recalculation in view of Wyeth

PTO/SB/131 (01-10)
Approved for use through 02/28/2011. OMB 0651-0020
U.S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

Attorney Docket Number: 8008-1069	Patent Number: 7,664,307
Filing Date (or 371(b) or (f) Date): 30-Mar-2005	Issue Date: 16-Feb-2010
First Named Inventor: SAITO, Yasuko	
Title: PHOTOMASK MANUFACTURING SUPPORT 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 /Benoit Castel/	Date August 10, 2010
Name (Print/Typed) Benoit Castel	Registration Number 35041

Note: *Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below**.

☑ *Total of 1 forms are submitted.

The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PTO/SB/131 (01-10)
Approved for use through 02/28/2011. OMB 0651-0020
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Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

Instruction Sheet for:
REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

(Not to be Submitted to the USPTO)

This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A).

This form must be filed within 180 days of the day the patent was granted, with the following exception:

> Patentees who received a decision from the USPTO under the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A) may file a request for reconsideration of that decision if such a request for reconsideration is filed within **two months** of the date of the decision (37 CFR 1.181(f)). If the patentee's sole basis for requesting reconsideration of the decision is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A), the request for reconsideration need only state that reconsideration is being requested in view of Wyeth (this form may be used for this purpose if it is filed within **two months** of the date of the decision from the USPTO).

Do not use this form if the application has been allowed, but not yet issued as a patent.

1. **For patents issued before March 2, 2010:** A request for reconsideration under 37 CFR 1.705(d) and the fee set forth in 37 CFR 1.18(e) are not required, provided that the patentee's sole basis for requesting recalculation of the PTA in the patent is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A) and this form is filed within 180 days of the day the patent was granted.

2. **For patents issued on or after March 2, 2010 (do not use this form):** Patentees seeking a revised PTA in a patent issued on or after March 2, 2010, must file a request for reconsideration under 37 CFR 1.705(d) that complies with the requirements of 37 CFR 1.705(b)(1) and (b)(2) within two months of the day the patent issued.

For more information, see "Notice Concerning Calculation of the Patent Term Adjustment With Respect to the Overlapping Delay Provision of 35 U.S.C. 154(b)(2)(A)" available on the USPTO Web site at http://www.uspto.gov/patents/law/notices/2010.jsp.

**Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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YOUNG & THOMPSON
209 Madison Street
Suite 500
Alexandria, VA 22314

Mail Date: 08/18/2010

Applicant	: Yasuko Saito	: DECISION ON REQUEST FOR
Patent Number	: 7664307	: RECALCULATION of PATENT
Issue Date	: 02/16/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/092,708	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 03/30/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **944** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 07/27/11

TO SPE OF : ART UNIT 3733

SUBJECT : Request for Certificate of Correction for Appl. No.: 11092862 Patent No.: 7621939

CofC mailroom date: 07/18/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580
You can fax the Director's 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.

xApproved	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: _____

/Eduardo C. Robert/ **3733**
SPE **Art Unit**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 2-2-11

TO SPE OF : ART UNIT 2814

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/642,940 Patent No.: 7574275

CofC mailroom date: 1-21-11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES: Should cofc be approved

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

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Randolph Square – 9D10-A
Palm Location 7580

Ennis 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: _____

_____

_____

_____

_____

_____ _____
SPE **Art Unit**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/093,042	03/30/2005	Daisuke Hori	1381.1016	6701

21171 7590 01/13/2012

STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

EXAMINER	
GAMI, TEJAL	
ART UNIT	PAPER NUMBER
2122	
MAIL DATE	DELIVERY MODE
01/13/2012	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

In re Application of:
HORI, Daisuke
Application No. 11/093,042
Filed: March 30, 2005
For: **FAULT TOLERANT TRANSPORT MECHANISM IN STORAGE AND METHOD OF CONTROLLING THE SAME**

DECISION ON PETITION UNDER 37 C.F.R. § 1.48 TO CORRECT INVENTORSHIP

This is a decision on the petition under 37 C.F.R. § 1.48(a), filed on December 15, 2011, to correct the inventorship of the above identified application by deleting the name of Koujiro Hashimoto as a co-inventor.

The petition is **GRANTED**.

A grantable petition under 37 C.F.R. § 1.48(a) must be accompanied by: (1) A request to correct the inventorship that sets forth the desired inventorship change; (2) A statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part; (3) An oath or declaration by the actual inventor or inventors as required by § **1.63** or as permitted by §§ **1.42**, **1.43** or § **1.47**; (4) The processing fee set forth in § **1.17(i)**; and (5) If an assignment has been executed by any of the original named inventors, the written consent of the assignee.

In view of the papers filed December 15, 2011, it has been found that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and accordingly, this application has been corrected in compliance with **37 CFR 1.48** (a). The inventorship of this application has been changed by deleting **KOUJIRO HASHIMOTO.**

Accordingly, the petition is **GRANTED.**

Any inquiry regarding this decision should be directed to Eddie C. Lee at (571) 272-1732.

/Eddie C. Lee/

Eddie C. Lee
Quality Assurance Specialist, TC 2100

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SEP 27 2010

OFFICE OF PETITIONS

Gunnar G. Leinberg, Esq.
Nixon Peabody LLP
Clinton Square
P.O. Box 31051
Rochester NY 14603-1051

In re Application of :
Ryne P. Raffaelle, et al. :
Application No. 11/093,134 : NOTICE
Filed: March 29, 2005 :
Attorney Docket No. 1819/100661 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3213.

Cheryl Gibson-Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

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AUG 03 2010

SCENERA RESEARCH, LLC
JENKINS, WILSON, TAYLOR & HUNT, P.A.
111 Corning Road
Suite 220
Cary, NC 27518

In re application of : **DECISION ON PETITION**
Morris et al. : **FOR SECOND SUSPENSION**
Application No. 11/093,140 : **OF ACTION UNDER**
Filed: March 29, 2005 : **37 CFR 1.103 (a)**
For: METHODS, SYSTEMS, AND COMPUTER PROGRAM PRODUCTS FOR SAVING SUBMISSIONS :

This letter is responsive to the petition for a second suspension of action under 37 CFR 1.103(a) received on July 16, 2010.

The petition for suspension of action under 37 CFR 1.103(a) is **GRANTED**.

A grantable petition for suspension of action under 37 CFR 1.103(a) requires:

1) A showing of good and sufficient cause for suspension of action, and
2) The fee set forth in 37 CFR 1.17(g), unless such cause is the fault of the Office.

Petitioner filed a first request on January 12, 2010 to suspend action by the examiner "as the Petitioner's ownership of this application...has been challenged. As a result, the Petitioner has filed legal action in federal court seeking declaratory judgment to quiet title in this application by confirming the Petitioner's ownership." Petitioner further asserts that "until the courts confirm the Petitioner's ownership, or the matter is otherwise resolved, ... it would be prejudiced as a result of expending resources, such as costs and time, prosecuting this application for the benefit of another party if the Petitioner's ownership is this application was not confirmed." A decision granting a six (6) month suspension was mailed on February 19, 2010.

In the latest petition filed July 16, 2010 applicant requests and additional six (6) months suspension for the same reasons conveyed in the January 12, 2010 petition.

As there is an on going question of ownership in the instant application, it is deemed that this constitute a good and sufficient reason why a second suspension should be

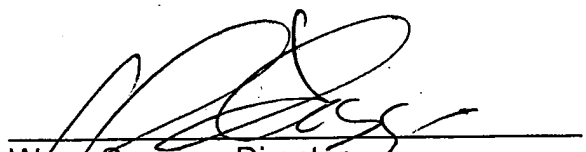
granted, and thus applicant's request for an additional period of suspension of six (6) months is reasonable and will be **GRANTED**. However, it should be noted that the expenditure of resources, such as costs and time, is not deemed to be a good and sufficient cause for suspension of action as all patent applications involve the expenditure of resources of cost and time.

At the conclusion of this latest period of suspension, applicant will have had 12 months to clear up the ownership issue in the instant application. Suspension of action can not go on indefinitely. As a result, applicant should not expect to receive another suspension at the conclusion of this latest 6 month suspension period. Any such future request will need to go into specific detail as to whom has challenged the ownership of the instant application, what relationship challenger has to the inventors of this application, why ownership can not be resolved via an interference, the current status of the Federal Court proceedings, etc. Furthermore, while the latest suspension request has been granted, reasons, absent from those already addressed, as to why further suspensions are warranted and should be granted should be addressed in future requests.

Action by the Office on this application is suspended under 37 CFR 1.103(a) for a period of six (6) months from the date of this letter. At the end of this period applicant is required to notify the examiner and request commencement of prosecution or a further suspension. See MPEP 709. If applicant wishes to commence prosecution earlier than the expiration of the 6 month period, the examiner should be so notified.

The period for suspension will be six (6) months from the date of this letter.

Any questions surrounding this decision should be directed to Quality Assurance Specialist Teri P. Luu at (571) 272-7045.



Wynn Coggins, Director
Technology Center 3600
(571) 272-5350

WC/tpl: 07/27/10

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APR 1 1 2011

Scenera Research, LLC
Jenkins, Wilson, Taylor & Hunt, P.A.
5400 Trinty Road
Suite 303
Raleigh, NC 27607

In re application of : **DECISION ON PETITION**
Robert P. Morris et al. : **FOR SECOND SUSPENSION**
Application No. 11/093,140 : **OF ACTION UNDER**
Filed: March 29, 2005 : **37 CFR 1.103 (a)**
For: METHODS, SYSTEMS, AND COMPUTER PROGRAM PRODUCTS FOR SAVING SUBMISSIONS

This letter is responsive to the petition for a third suspension of action under 37 CFR 1.103(a) received on January 25, 2011.

The petition for suspension of action under 37 CFR 1.103(a) is **GRANTED**.

A grantable petition for suspension of action under 37 CFR 1.103(a) requires:

1) A showing of good and sufficient cause for suspension of action, and
2) The fee set forth in 37 CFR 1.17(g), unless such cause is the fault of the Office.

Applicant filed a petition on July 16, 2010, to suspend action by the examiner until a challenge to the petitioner's ownership of the subject matter of this application could be decided. A decision granting a 6 month suspension was mailed August 3, 2010. In the latest petition filed January 25, 2010, the applicant requests an additional 6 month suspension "to allow time for the court to consider the Petitioner's declaratory judgment claim".

There being ongoing litigation to decide the petitioner's ownership of the subject matter of this application, it is deemed that this constitutes a good and sufficient reason why a second suspension should be granted, and thus applicants' request for an additional period of suspension is reasonable and will be **GRANTED**. However, in order to correspond with other requests for suspension filed in other applications by this applicant on similar grounds, the request is granted for a period of three (3) months.

Action by the Office on this application is suspended under 37 CFR 1.103(a) for a period of three (3) months from the date of this letter. At the end of this period applicant is required to notify the examiner and request commencement of prosecution or a further suspension. See MPEP 709. If applicant wishes to commence prosecution earlier than the expiration of the 3 month period, the examiner should be so notified.

Suspension of action under 37 CFR § 1.103(a)-(d) at the applicant's request will cause a reduction in patent term adjustment accumulated (if any) under 37 CFR § 1.703. The reduction is equal to the number of days beginning on the date a request for suspension of action was filed and ending on the date of the termination of the suspension. See 37 CFR § 1.704(c)(1).

The period for suspension will be three (3) months from the date of this letter.

Any questions surrounding this decision should be directed to Quality Assurance Specialist Steven Meyers at (571) 272-6611.

Wynn Coggins, Director
Technology Center 3600
(571) 272-5350

snm: 4/7/11

SM

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/093,140	03/29/2005	Robert P. Morris	1304/US	7510

52354 7590 08/01/2011

SCENERA RESEARCH, LLC
JENKINS, WILSON, TAYLOR & HUNT, P.A.
5400 Trinity Road
Suite 303
Raleigh, NC 27607

EXAMINER	
VIG, NARESH	

ART UNIT	PAPER NUMBER
3688	

MAIL DATE	DELIVERY MODE
08/01/2011	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 - 1 2011

Scenera Research, LLC
Jenkins, Wilson, Taylor & Hunt, P.A.
5400 Trinity Road
Suite 303
Raleigh, NC 27607

In re application of Robert P. Morris et al. Application No. 11/093140 Filed: March 29, 2005 For: METHODS, SYSTEMS, AND COMPUTER PROGRAM PRODUCTS FOR SAVING SUBMISSIONS	: : : : :	**DECISION ON PETITION FOR FOURTH SUSPENSION OF ACTION UNDER 37 CFR 1.103 (a)**

This letter is responsive to the petition for a fourth suspension of action under 37 CFR 1.103(a) received on July 28, 2011.

The petition for suspension of action under 37 CFR 1.103(a) is **GRANTED**.

A grantable petition for suspension of action under 37 CFR 1.103(a) requires:

1) A showing of good and sufficient cause for suspension of action, and
2) The fee set forth in 37 CFR 1.17(g), unless such cause is the fault of the Office.

Applicant filed a petition on January 12, 2010, to suspend action by the examiner until a challenge to the petitioner's ownership of the subject matter of this application could be decided. A decision granting a 6 month suspension was mailed February 19, 2010. A second petition for suspension of action was filed July 16, 2010. A decision granting an additional 6 month suspension was mailed August 3, 2010. A third petition for suspension of action was filed on January 25, 2010. Applicant requested an additional 6 month suspension "to allow time for the court to consider the Petitioner's declaratory judgment claim". However, in order to correspond with other requests for suspension filed in other applications by this applicant on similar grounds, the request was granted for a period of **three (3) months**.

In the latest petition on filed July 28, 2011, the applicant requests an additional 6 month suspension "to allow time for issues regarding ownership of this application to be adjudicated in court." There being ongoing litigation to decide the petitioner's ownership of the subject matter of this application, it is deemed that this constitutes a good and

sufficient reason why a fourth suspension should be granted, However, in order to correspond with other requests for suspension filed in other applications by this applicant on similar grounds, the request is granted for a period of **three (3) months**.

Action by the Office on this application is suspended under 37 CFR 1.103(a) for a period of **three (3) months** from the date of this letter. At the end of this period applicant is required to notify the examiner and request commencement of prosecution or a further suspension. See MPEP 709. If applicant wishes to commence prosecution earlier than the expiration of the 3 month period, the examiner should be so notified.

Suspension of action under 37 CFR § 1.103(a)-(d) at the applicant's request will cause a reduction in patent term adjustment accumulated (if any) under 37 CFR § 1.703. The reduction is equal to the number of days beginning on the date a request for suspension of action was filed and ending on the date of the termination of the suspension. See 37 CFR § 1.704(c)(1).

The period for suspension will be three (3) months from the date of this letter.

Any questions surrounding this decision should be directed to Quality Assurance Specialist Teri P. Luu at (571) 272-7045.

Wynn Coggins, Director
Technology Center 3600
(571) 272-5350

tl: 7/29/11

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/093,140	03/29/2005	Robert P. Morris	I304/US	7510

52354 7590 11/09/2011

SCENERA RESEARCH, LLC
JENKINS, WILSON, TAYLOR & HUNT, P.A.
5400 Trinity Road
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Raleigh, NC 27607

EXAMINER	
VIG, NARESH	

ART UNIT	PAPER NUMBER
3688	

MAIL DATE	DELIVERY MODE
11/09/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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NOV 0 9 2011

Scenera Research, LLC
Jenkins, Wilson, Taylor & Hunt, P.A.
5400 Trinity Road
Suite 303
Raleigh, NC 27607

In re application of : **DECISION ON PETITION**
Robert P. Morris et al. : **FOR FIFTH SUSPENSION**
Application No. 11/093,140 : **OF ACTION UNDER**
Filed: March 29, 2005 : **37 CFR 1.103 (a)**
For: METHODS, SYSTEMS, AND
COMPUTER PROGRAM PRODUCTS
FOR SAVING SUBMISSIONS

This letter is responsive to the petition for a fourth suspension of action under 37 CFR 1.103(a) received on November 1, 2011.

The petition for suspension of action under 37 CFR 1.103(a) is **GRANTED**.

A grantable petition for suspension of action under 37 CFR 1.103(a) requires:

1) A showing of good and sufficient cause for suspension of action, and
2) The fee set forth in 37 CFR 1.17(g), unless such cause is the fault of the Office.

Applicant filed a petition on January 12, 2010, to suspend action by the examiner until a challenge to the petitioner's ownership of the subject matter of this application could be decided. A decision granting a 6 month suspension was mailed February 19, 2010. A second petition for suspension of action was filed July 16, 2010. A decision granting an additional 6 month suspension was mailed August 3, 2010. A third petition for suspension of action was filed on January 25, 2011. Applicant requested an additional 6 month suspension "to allow time for the court to consider the Petitioner's declaratory judgment claim". However, in order to correspond with other requests for suspension filed in other applications by this applicant on similar grounds, the request was granted on April 11, 2011 for a period of **three (3) months**. A fourth petition for suspension of action was filed on July 28, 2011 requesting an additional 6 months suspension. However, the request was granted on August 1, 2011 for a period of three months, for the same reasons.

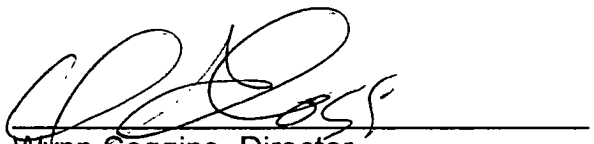
In the latest petition on filed on November 1, 2011, the applicant requests an additional 6 month suspension "to allow time for the court to address the issues raised regarding ownership." There being ongoing litigation to decide the petitioner's ownership of the subject matter of this application, it is deemed that this constitutes a good and sufficient reason why a fifth suspension should be granted, However, in order to correspond with other requests for suspension filed in other applications by this applicant on similar grounds, the request is granted for a period of **three (3) months**.

Action by the Office on this application is suspended under 37 CFR 1.103(a) for a period of **three (3) months** from the date of this letter. At the end of this period applicant is required to notify the examiner and request commencement of prosecution or a further suspension. See MPEP 709. If applicant wishes to commence prosecution earlier than the expiration of the 3 month period, the examiner should be so notified.

Suspension of action under 37 CFR § 1.103(a)-(d) at the applicant's request will cause a reduction in patent term adjustment accumulated (if any) under 37 CFR § 1.703. The reduction is equal to the number of days beginning on the date a request for suspension of action was filed and ending on the date of the termination of the suspension. See 37 CFR § 1.704(c)(1).

The period for suspension will be three (3) months from the date of this letter.

Any questions surrounding this decision should be directed to Quality Assurance Specialist Teri P. Luu at (571) 272-7045.



Wynn Coggins, Director
Technology Center 3600
(571) 272-5350

WC/tl: 11/02/11

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/093,140	03/29/2005	Robert P. Morris	I304/US	7510

52354 7590 02/24/2012

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EXAMINER	
VIG, NARESH	

ART UNIT	PAPER NUMBER
3688	

MAIL DATE	DELIVERY MODE
02/24/2012	PAPER

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FEB 24 2012

Scenera Research, LLC
Jenkins, Wilson, Taylor & Hunt, P.A.
5400 Trinity Road
Suite 303
Raleigh, NC 27607

In re application of : **DECISION ON PETITION**
Robert P. Morris et al. : **FOR SIXTH SUSPENSION**
Application No. 11/093,140 : **OF ACTION UNDER**
Filed: March 29, 2005 : **37 CFR 1.103 (a)**
For: METHODS, SYSTEMS, AND
COMPUTER PROGRAM PRODUCTS
FOR SAVING SUBMISSIONS

This letter is responsive to the petition for a sixth suspension of action under 37 CFR 1.103(a) received on February 17, 2012.

The petition for suspension of action under 37 CFR 1.103(a) is **GRANTED**.

A grantable petition for suspension of action under 37 CFR 1.103(a) requires:

1) A showing of good and sufficient cause for suspension of action, and
2) The fee set forth in 37 CFR 1.17(g), unless such cause is the fault of the Office.

Applicant filed a petition on January 12, 2010, to suspend action by the examiner until a challenge to the petitioner's ownership of the subject matter of this application could be decided. A decision granting a 6 month suspension was mailed February 19, 2010. A second petition for suspension of action was filed July 16, 2010. A decision granting an additional 6 month suspension was mailed August 3, 2010. A third petition for suspension of action was filed on January 25, 2011. Applicant requested an additional 6 month suspension "to allow time for the court to consider the Petitioner's declaratory judgment claim". However, in order to correspond with other requests for suspension filed in other applications by this applicant on similar grounds, the request was granted on April 11, 2011 for a period of **three (3) months**. Fourth and fifth petitions for suspension of action were filed on July 28, 2011 and November 1, 2011, respectively, each requesting an additional 6 months suspension. However, the requests were granted for a period of three months each, for the same reasons.

In the instant petition, the applicant requests an additional 6 month suspension. Petitioner asserts that "the trial court has ruled that Petitioner is the rightful owner of this application. The challenger, however, still has a right to appeal such ruling." Accordingly, petitioner requests suspension "until the challenger's legal remedies are exhausted such that the Petitioner's ownership of this application is no longer challenged." There being ongoing litigation to decide the petitioner's ownership of the subject matter of this application, it is deemed that this constitutes a good and sufficient reason why a sixth suspension should be granted, However, in order to correspond with other requests for suspension filed in other applications by this applicant on similar grounds, the request is granted for a period of **three (3) months**.

Action by the Office on this application is suspended under 37 CFR 1.103(a) for a period of **three (3) months** from the date of this letter. At the end of this period applicant is required to notify the examiner and request commencement of prosecution or a further suspension. See MPEP 709. If applicant wishes to commence prosecution earlier than the expiration of the 3 month period, the examiner should be so notified.

Suspension of action under 37 CFR § 1.103(a)-(d) at the applicant's request will cause a reduction in patent term adjustment accumulated (if any) under 37 CFR § 1.703. The reduction is equal to the number of days beginning on the date a request for suspension of action was filed and ending on the date of the termination of the suspension. See 37 CFR § 1.704(c)(1).

The period for suspension will be three (3) months from the date of this letter.

Any questions surrounding this decision should be directed to Quality Assurance Specialist Teri P. Luu at (571) 272-7045.

Greg Vidovich, Director
Technology Center 3600
(571) 272-5350

GV/tl: 02/17/12

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MICHAEL W. LANDRY
5098 SEACHASE STREET
SAN DIEGO CA 92130

MAILED
DEC 15 2010
OFFICE OF PETITIONS

In re Application of :
Timothy E. BROWN. :
Application No. 11/093,395 : ON PETITION
Filed: March 30, 2005 :
Attorney Docket No. 06-BRO-101 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 3, 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 10, 2008. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is June 11, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $405, and the submission required by 37 CFR 1.114; (2) the petition fee of $810; and (3) a proper statement of unintentional delay.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178

(October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney document must be submitted. While a courtesy copy of this decision is being mailed to the person signing the petition, all future correspondence will be directed to the address currently of record until appropriate instructions are received.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

This application is being referred to Technology Center AU 3765 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

Cc: DONALD L. WENSKAY
LAW OFFICE OF DONALD L. WENSKAY
PO BOX 7206
RANCHO SANTA FE, CA 92067

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PERMAN & GREEN, LLP
99 HAWLEY LANE
STRATFORD, CT 06614

MAILED
FEB 03 2011
OFFICE OF PETITIONS

In re Application of :
Richard J. Pickreign, et al. :
Application No. 11/093,481 : ON PETITION
Filed: March 30, 2005 :
Attorney Docket No.: 390-011803-US(PAR) :

This is a decision on the petition, filed November 12, 2010, to change the order of the names of the inventors under the provisions of 37 CFR 1.182.

The petition is **GRANTED**.

Office records have been corrected to reflect the change in the order of the named inventors. A corrected Filing Receipt, which sets forth the desired order of the named inventors, accompanies this decision on petition.

As authorized, the $400 fee for the petition under 37 CFR 1.182 has been assessed to petitioner's deposit account.

This application is being referred to Technology Center AU 3652.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

Attachment

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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
11/093,481	03/30/2005	3652	1332	390-011803-US(PAR)	23	3

CONFIRMATION NO. 9657

CORRECTED FILING RECEIPT

2512
Perman & Green, LLP
99 Hawley Lane
Stratford, CT 06614

Date Mailed: 01/14/2011

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

Richard J. Pickreign, Harvard, MA;
Michael A. Duhamel, Acton, MA;

Power of Attorney: The patent practitioners associated with Customer Number 2512

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: 04/25/2005

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/093,481**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Substrate transport apparatus with active edge gripper

Preliminary Class

414

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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Alexandria, VA 22313-1450
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Perman & Green, LLP
99 Hawley Lane
Stratford CT 06614

MAILED

NOV 09 2011

OFFICE OF PETITIONS

In re Application of	:	
Pickreign et al.	:	
Application No.: 11/093481	:	DECISION ON
Filing or 371(c) Date: 03/30/2005	:	PETITION
Attorney Docket Number:	:	
390-011803-US(PAR)	:	

This is a decision in response to the Petition to Withdraw Holding of Abandonment Under 37 C.F.R. § 1.181 and M.P.E.P. 711.03(c), filed October 20, 2011.

This Petition is hereby **dismissed**.

Any further petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under [insert the applicable code section]." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Background

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowability, mailed May 17, 2011. The Notice required Corrected Drawings, and set a non-extendable three (3) month period for reply. Extensions of time were available under 37 CFR 1.136(a).

No complete and proper reply to the Notice having been filed, the application became abandoned on August 18, 2011. A Notice of Abandonment was mailed on August 31, 2011.

The present petition

Applicant files the present petition and provides that the Notice of Allowability was issued in error and that Corrected Drawing(s) were not required. Applicant notes that the issue fee and publication fee were timely filed; however, no reply to the Notice of Allowability was filed. In support of this assertion, Applicant refers to an Office communication from the Examiner mailed September 14, 2011, wherein the Examiner acknowledged an error regarding drawing corrections, and noted that despite the error, once the time for answering noted objections has passed, the application goes abandoned.

Applicable Law, Rules and MPEP

35 U.S.C. § 133, Time for prosecuting application, states

> Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Director in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Director that such delay was unavoidable.

This section of the statute is further clarified in Office rule, 37 CFR § 1.135, Abandonment for failure to reply within time period, which states

> (a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.
> (b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.
> (c) When reply by the applicant is a bona fide attempt to advance the application to final action, and is substantially a complete reply to the non-final Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, applicant may be given a new time period for reply under § 1.134 to supply the omission.

This section explains that the reply must be both complete and proper as the condition of the application may require.

Analysis

Applicant is advised an application becomes abandoned according to statute and Office rules. In this instance, Applicant was required to file a reply to the Notice of Allowability mailed on May 17, 2011. Applicant did not file a reply. Having failed to file a reply to the Notice, the application became abandoned.

Applicant is advised that, as provided in the Manual of Patent Examining Procedure,

> [w]here an applicant contends that the application is not in fact abandoned (e.g., there is disagreement as to **the sufficiency of the reply**, or as to controlling dates), a petition under 37 CFR 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action, and such petition does not require a fee. **Where there is no dispute as to whether an application is abandoned (e.g., the applicant's contentions merely involve the cause of abandonment), a petition under 37 CFR 1.137 (accompanied by the appropriate petition fee) is necessary to revive the abandoned application**.

MPEP 711.03(c).

Here, applicant does not contend that a reply to the Notice was filed, or that the date controlling the abandonment is in dispute. Applicant's contentions merely involve the cause of abandonment. A petition to revive the application is required.

Conclusion

In view of the foregoing, the application is, by statute, abandoned. A petition to revive the application is required.

Alternate Venue

Applicant is strongly urged to file 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 was "unavoidable." An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required 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 can not make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revive under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail:	Director for Patents PO Box 1450 Alexandria, VA 22313-1450
By FAX:	(571) 273-8300 Attn: Office of Petitions
By hand:	Customer Service Window Randolph Building 401 Dulany Street Alexandria, VA 22314

Telephone inquiries concerning this 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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Stratford CT 06614

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JAN 11 2012

OFFICE OF PETITIONS

In re Application of	:	
Pickreign et al.	:	
Application No.: 11/093481	:	DECISION ON
Filing or 371(c) Date: 03/30/2005	:	PETITION
Attorney Docket Number:	:	
390-011803-US(PAR)	:	

This is a decision in response to the Renewed Petition to Withdraw Holding of Abandonment Under 37 C.F.R. § 1.181 and M.P.E.P. 711.03(c), filed January 9, 2012.

This Petition is hereby **dismissed**.

Any further petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under [insert the applicable code section]." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

After a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner. Therefore, it is extremely important that petitioner supply any and all relevant information and documentation with his request for reconsideration. The Director's decision will be based solely on the administrative record in existence.

Background

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowability, mailed May 17, 2011. The Notice required Corrected Drawings, and set a non-extendable three (3) month period for reply. Extensions of time were available under 37 CFR 1.136(a).

No complete and proper reply to the Notice having been filed, the application became abandoned on August 18, 2011. A Notice of Abandonment was mailed on August 31, 2011.

The October 20, 2011 petition

Applicant file a petition on October 20, 2011, wherein applicant provided that the Notice of Allowability was issued in error and that Corrected Drawing(s) were not required. Applicant noted that the issue fee and publication fee were timely filed; however, no reply to the Notice of

Allowability was filed. In support of this assertion, Applicant referred to an Office communication from the Examiner mailed September 14, 2011, wherein the Examiner acknowledged an error regarding drawing corrections, and noted that despite the error, once the time for answering noted objections has passed, the application goes abandoned.

The November 9, 2011 Decision dismissing the petition

A decision dismissing the petition was mailed on November 9, 2011. The decision dismissing the petition noted that in this instance, applicant is not contending that a reply to the Notice was filed, or that the date controlling the abandonment is in dispute. Applicant's contentions merely involve the cause of abandonment. The decision noted the MPEP 711.03(c), wherein it is stated that "[w]here there is no dispute as to whether an application is abandoned (e.g., the applicant's contentions merely involve the cause of abandonment), a petition under 37 CFR 1.137 (accompanied by the appropriate petition fee) is necessary to revive the abandoned application.

The present renewed petition

Applicant files the present renewed petition and avers that the filing of the issue and publication fees in reply to the Notice of Allowance and Issue Fee Due should constitute a sufficient response because of the clearly erroneous nature of the Examiner's assertions in the Notice of Allowability. As such, Figure 2 was not amended because the Figure was properly labeled. Further to this, Applicant asserts that Applicant made a non-written verbal response via telephone with the Examiner which should be sufficient to constitute a valid response to the Notice of Allowance. Moreover, the Examiner mailed a letter acknowledging the Examiner's error regarding the drawing corrections and advised Applicants to petition to withdraw the holding of abandonment.

Applicable Law, Rules and MPEP

35 U.S.C. § 133, Time for prosecuting application, states

> Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Director in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Director that such delay was unavoidable.

This section of the statute is further clarified in Office rule, 37 CFR § 1.135, Abandonment for failure to reply within time period, which states

> (a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.
> (b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.

> (c) When reply by the applicant is a bona fide attempt to advance the application to final action, and is substantially a complete reply to the non-final Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, applicant may be given a new time period for reply under § 1.134 to supply the omission.

This section explains that the reply must be both complete and proper as the condition of the application may require.

Analysis

Applicant is advised an application becomes abandoned according to statute and Office rules. In this instance, Applicant was required to file a reply to the Notice of Allowability mailed on May 17, 2011. The Notice of Allowability required correction of Figure 2. The Notice of Allowability and Issue Fee Due required the issue and publication fees. Here, Applicant filed the issue and publication fees only. Applicant did not amend Figure 2, or otherwise reply to the requirement in the Notice of Allowability to amend Figure 2. Applicant did not file a reply to the Notice of Allowability. Having failed to file a reply to the Notice of Allowability, the application became abandoned.

Applicant initially avers that the issue and publication fees alone should constitute a sufficient reply; however, the Notice of Allowability required Applicant to reply to the requirement therein. Applicant also avers that the non-written verbal response between the Applicant and the Examiner should be sufficient to constitute a valid response to the Notice. However, Applicant's attention is directed tp 37 CFR 1.2, Business to be transacted in writing, which states:

> 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. (Emphasis added).

Here, Applicant failed to file a reply to the Notice of Allowability, and the application is properly held abandoned. (Emphasis added).

It is reiterated, as provided in the Manual of Patent Examining Procedure,

> [w]here an applicant contends that the application is not in fact abandoned (e.g., there is disagreement as to the sufficiency of the reply, or as to controlling dates), a petition under 37 CFR 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action, and such petition does not require a fee. Where there is no dispute as to whether an application is abandoned (e.g., the applicant's contentions merely involve the cause of abandonment), a petition under 37 CFR 1.137 (accompanied by the appropriate petition fee) is necessary to revive the abandoned application.

MPEP 711.03(c).

Conclusion

In view of the foregoing, the application is, by statute, abandoned. A petition to revive the application is required.

Alternate Venue

Applicant is strongly urged to file 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 was "unavoidable." An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required 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 can not make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revive under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail:	Director for Patents PO Box 1450 Alexandria, VA 22313-1450
By FAX:	(571) 273-8300 Attn: Office of Petitions
By hand:	Customer Service Window Randolph Building 401 Dulany Street Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

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Perman & Green, LLP
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Stratford CT 06614

MAILED
MAR 23 2012
OFFICE OF PETITIONS

In re Application of	:	
Pickreign et al.	:	
Application No.: 11/093481	:	DECISION ON
Filing or 371(c) Date: 03/30/2005	:	PETITION
Attorney Docket Number:	:	
390-011803-US(PAR)	:	

This is a decision on the "Petition for Revival of an Applicant for Patent Abandoned Unintentionally Under 37 CFR 1.137(b)." filed March 12, 2012.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowability, mailed May 17, 2011. The Notice required Corrected Drawings, and set a non-extendable three (3) month period for reply. Extensions of time were available under 37 CFR 1.136(a). No complete and proper reply to the Notice having been filed, the application became abandoned on August 18, 2011. A Notice of Abandonment was mailed on August 31, 2011.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that the petition includes (1) the reply[1]; (2) the petition fee; and (3) the required statement of unintentional delay. Accordingly, the reply is accepted as having been unintentionally delayed.

This application is being referred to the Office of Data Management for processing into a patent.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

[1] The Examiner has approved the Reply filed with the present petition.

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ALEXANDRIA, VA 22313-1450
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Henry Hadad
Bristol_Myers Squibb Co.
PO Box 4000
Princeton NJ 08543-4000

MAILED
AUG 26 2011
OFFICE OF PETITIONS

In re Patent No. 7,482,372 :
Sheppeck et al. : DECISION UPON REMAND AND
Issue Date: January 27, 2009 : RECONSIDERATION OF
Application No. 11/093,670 : PATENT TERM ADJUSTMENT
Filed: May 30, 2005 : AND NOTICE OF INTENT
Attorney Docket No.PH7350 DIV2 : TO ISSUE CERTIFICATE OF
Title:. Hydantoins and Related : CORRECTION
Heterocycles as Inhibitors of :
Matric metalloproteinases
and/or TNF-Alpha Converting
Enzyme (TACE)
Title: Cripto Blocking
Antibodies and Uses thereof

This is a decision following remand from the District Court for the District of Columbia regarding the patent term adjustment indicated on the above-identified patent. The Court remanded this matter to the U.S. Patent and Trademark Office for recalculation of the patent term adjustment in accordance with the decision in Wyeth & Elan Pharma Int'l Ltd. v. Kappos, 591 F.3d 1364 (Fed. Cir. 2010).

The patent term adjustment indicated on the above-identified patent has been recalculated as directed by the Court. The term of the above-identified patent is extended or adjusted by five hundred and thirty-one (893) 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 and thirty-one (893) days.

Telephone inquiries specific to this matter should be directed to Senior Legal Advisor, Kery A. Fries at (571) 272-7757.

/Kery A. Fries/

Kery A. Fries
Senior Legal Advisor Attorney
Office of Patent Legal Administration
Office of Associate Commissioner
For Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,482,372

DATED : January 27, 2009 **DRAFT**

INVENTOR(S) : Sheppeck 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 590days

Delete the phrase "by 590 days" and insert – by 893 days--

PTA/PTE Information | Patent Term Adjustment | Patent Term Extension

Application Number*: 11093670 Search Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application: 11093670

Application Filing Date	03/30/2005	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent	01/27/2009	Non-Overlapping USPTO Delays:	590
A Delays	590	PTO Manual Adjustment	303
B Delays	0	Applicant Delay (APPL)	0
C Delays	0	Total PTA (days)	893

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
70	08/17/2011		P028	Adjustment of PTA Calculation by PTO	303		0
59	01/27/2009		PTAC	Patent Issue Date Used in PTA Calculation			0
59.5	01/07/2009	03/30/2008	PTA36M	PTA 36 Months	0		0
58	12/24/2008		EFDC	Export to Final Data Capture			0
56	12/22/2008		D1935	Dispatch to FDC			0
57	12/19/2008		FIDC	Finished Initial Data Capture			0
55	10/27/2008		PILS	Application Is Considered Ready for Issue			0
54	10/24/2008		N084	Issue Fee Payment Verified			0
53	10/24/2008		IFEE	Issue Fee Payment Received			0
52	08/12/2008		EIDC	Export to Initial Data Capture			0
51	08/11/2008		ELC_RVW	Electronic Review			0
49	08/08/2008		MN/=.	Mail Notice of Allowance			0
48	08/04/2008		IREV	Issue Revision Completed			0
47	08/04/2008		DVER	Document Verification			0
46	08/04/2008		N/=.	Notice of Allowance Data Verification Completed			0
45	07/21/2008		IREV	Issue Revision Completed			0
44	07/21/2008		DVER	Document Verification			0
42	07/17/2008		CNTA	Allowability Notice			0
34	05/08/2008		FWDX	Date Forwarded to Examiner			0
38	04/24/2008		IDSC	Information Disclosure Statement considered			0
37	04/24/2008	04/24/2008	M844	Information Disclosure Statement (IDS) Filed			33
36	04/24/2008		RCAP	Reference capture on IDS			0
35	04/24/2008		M844	Information Disclosure Statement (IDS) Filed			0
33	04/24/2008		ELC.	Response to Election / Restriction Filed			0
32	04/24/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
31	04/18/2008		ELC_RVW	Electronic Review			0
30	04/17/2008		EML_NTF	Email Notification			0
29	04/17/2008		MCTRS	Mail Restriction Requirement			0
28	04/14/2008		CTRS	Restriction/Election Requirement			0
27	02/08/2008		FWDX	Date Forwarded to Examiner			0
26	01/17/2008		ELC.	Response to Election / Restriction Filed			0
25	01/11/2008		ELC_RVW	Electronic Review			0
24	01/10/2008		EML_NTF	Email Notification			0
23	01/10/2008	05/30/2006	MCTRS	Mail Restriction Requirement	590		-1
22	01/07/2008		CTRS	Restriction/Election Requirement			0
20	07/19/2007		DOCK	Case Docketed to Examiner in GAU			0
19	07/18/2007		DOCK	Case Docketed to Examiner in GAU			0
18	02/07/2006		DOCK	Case Docketed to Examiner in GAU			0
14	07/29/2005		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
13	07/29/2005		DOCK	Case Docketed to Examiner in GAU			0
12	06/10/2005		PA..	Change in Power of Attorney (May Include Associate POA)			0
10	04/27/2005		COMP	Application Is Now Complete			0
7	04/27/2005		COMP	Application Is Now Complete			0
4	04/27/2005		COMP	Application Is Now Complete			0
11	04/26/2005		WROIPE	Application Return from OIPE			0
9	04/26/2005		ROIPE	Application Return TO OIPE			0
8	04/26/2005		WROIPE	Application Return from OIPE			0
6	04/26/2005		ROIPE	Application Return TO OIPE			0
5	04/26/2005		OIPE	Application Dispatched from OIPE			0
3	04/16/2005		L194	Cleared by OIPE CSR			0
2	04/11/2005		SCAN	IFW Scan & PACR Auto Security Review			0
21	03/30/2005		IDSC	Information Disclosure Statement considered			0
17	03/30/2005		RCAP	Reference capture on IDS			0
16.7	03/30/2005		M844	Information Disclosure Statement (IDS) Filed			0
16	03/30/2005		WIDS	Information Disclosure Statement (IDS) Filed			0
15	03/30/2005		A.PE	Preliminary Amendment			0

1	03/30/2005	IEXX	Initial Exam Team nn	0

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P.O. Box 1450
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THE LAW OFFICES OF
ANDREW D. FORTNEY, PH.D., P.C.
215 W FALLBROOK AVE SUITE 203
FRESNO CA 93711

MAILED

AUG 17 2010

OFFICE OF PETITIONS

In re Application of :
Burstein, et al. :
Application No. 11/093,713 :
Filed: 25 March, 2005 :
Attorney Docket No. GGT-007 :

DECISION

This is a decision on the petition filed on 17 June, 2010, to revive an application pursuant to 37 C.F.R. §1.137(b) as having been 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.

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the final Office action mailed on 29 November, 2007, with reply due absent extension of time on or before 29 February, 2008.

The application went abandoned by operation of law after midnight 29 February, 2008.

It appears that the Examiner mailed Interview Summaries on 4 February and on 12 June, 2008.

The Office mailed the Notice of Abandonment on 12 June, 2008.

On 17 June, 2010, Petitioner filed, *inter alia*, a petition with fee pursuant to 37 C.F.R. §1.137(b), a reply in the form of a request (and fee) for continued examination (RCE) and a submission

pursuant to 37 C.F.R. §1.114 in the form of an amendment, and made the statement of unintentional delay.

The record (including the petition filed on 17 June, 2010) does not necessitate a finding that the delay between midnight 29 February, 2008 (the date of abandonment), and 17 June, 2010 (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 Petitioners Bustein and Ginzburg and their Counsel Andrew D. Fortney (Reg. No. 34,600) when accepting Petitioners' representation that the delay in filing the response was unintentional.[1]

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 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]))

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[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).

[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] 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.

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 Technology Center 2825 for further processing in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the instant decision to ensure that the revival has been acknowledged by the TC/AU in response to this decision. It is noted that all inquiries with regard to status need be directed to the TC/AU where that change of status must be effected—that does not occur in the Office of Petitions.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[5]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

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[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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OFFICE OF PETITIONS

HEWLETT-PACKARD COMPANY
INTELLECTUAL PROPERTY ADMINISTRATION
3404 E. HARMONY ROAD
MAIL STOP 35
FORT COLLINS CO 80528

In re Application of :
Philippe BOUCKAERT, et al :
Application No. 11/093,714 : ON PETITION
Filed: March 30, 2005 :
Attorney Docket No. 200405469-1 :

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed August 17, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of August 4, 2009. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is November 5, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810, and the submission required by 37 CFR 1.114; (2) the petition fee of $810; and (3) the required statement of unintentional delay have been received.

The RCE fee was not previously charged, as authorized, this fee will be charged to petitioner's Deposit Account No. 08-2025.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at

issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney document must be submitted. While a courtesy copy of this decision is being mailed to the person signing the petition, all future correspondence will be directed to the address currently of record until appropriate instructions are received.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

This application is being referred to Technology Center AU 2466 for processing of the RCE and for appropriate action by the Examiner in the normal course of business.

/dcg/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

cc: ASHOK K. MANNAVA
11240 WAPLES MILL ROAD
SUITE 300
FAIRFAX, VA 22030

UNITED STATES PATENT AND TRADEMARK OFFICE

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FULBRIGHT & JAWORSKI L.L.P.
600 CONGRESS AVENUE
SUITE 2400
AUSTIN TX 78701

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SEP 17 2010

OFFICE OF PETITIONS

In re Application of	:	DECISION ON
Seegert et al.	:	REQUEST FOR
Patent Number: 7,666,192	:	RECONSIDERATION OF
Issue Date: 02/23/2010	:	PATENT TERM ADJUSTMENT
Application No. 11/093740	:	and
Filing or 371(c) Date: 03/30/2005	:	NOTICE OF INTENT TO ISSUE
Attorney Docket Number: NAN.105.US	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on May 18, 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 eight (1108) 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 one thousand one hundred eight (1108) days is **GRANTED to the extent indicated herein**.

As to the "B" delay, the period is 506 days, not 695 days. This period begins on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a), and ends on the issue date of the patent, or 695 days, 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 date of mailing of the final Office action, or 189 days. See, 35 U.S.C. 154(b)(1)(C)(iii). Thus, the "B" delay period is 506 (695 days – 189 days), not 695 days.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **NINE HUNDRED NINETEEN (919) 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 : 7,666,192 B2

DATED : **February 23, 2010**

INVENTOR(S) : Seegert 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 920 days.

Delete the phrase "by 920 days" and insert – by 919 days--

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Johnathan P. O'Brien, Ph.D
Honigman Miller Schwartz and Cohn LLP
350 East Michigan Avenue
Suit 300
Kalamazoo, MI 49007

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JUN 17 2011
OFFICE OF PETITIONS

In re Patent No. 7,507,826	:	
Salituro et al.	:	DECISION UPON REMAND AND
Issue Date: March 24, 2009	:	RECONSIDERATION OF
Application No. 11/093,821	:	PATENT TERM ADJUSTMENT
Filed: March 30, 2005	:	AND NOTICE OF INTENT
Attorney Docket No. 2233306/04-105 US/127157	:	TO ISSUE CERTIFICATE OF CORRECTION
Title: Azaindoles Useful as Inhibitors of Jak and Other Protein Kinase	:	

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 THREE HUNDRED AND SIXTEEN (316) 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 THREE HUNDRED AND SIXTEEN (316) days.

Telephone inquiries specific to this matter should be directed to Senior Legal Advisor, Kery A. Fries at (571) 272-7757.

/Kery A. Fries/

Kery A. Fries
Senior Legal Advisor Attorney
Office of Patent Legal Administration
Office of Associate Commissioner
For Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction
Copy of adjusted PTA calculation

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,507,826

DATED : **March 24, 2009** **DRAFT**

INVENTOR(S) : Salituro 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 243 days

Delete the phrase "by 243 days" and insert – by 316 days--

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Knobbe Martens Olson & Bear LLP
2040 Main Street
Fourteenth Floor
Irvine CA 92614

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OFFICE OF PETITIONS

In re Patent No. 7,491,794	:
Blatt et al.	: DECISION UPON REMAND AND
Issue Date: February 17, 2009	: RECONSIDERATION OF
Application No. 11/093,884	: PATENT TERM ADJUSTMENT
Filed: March 29, 2005	: AND NOTICE OF INTENT
Attorney Docket No.	: TO ISSUE CERTIFICATE OF
INTUMU.007CP1	: CORRECTION
Title: Marcocyclic Compounds as Inhibitors of Viral Replication	:

This is a decision following remand from the District Court for the District of Columbia regarding the patent term adjustment indicated on the above-identified patent. The Court remanded this matter to the U.S. Patent and Trademark Office for recalculation of the patent term adjustment in accordance with the decision in Wyeth & Elan Pharma Int'l Ltd. v. Kappos, 591 F.3d 1364 (Fed. Cir. 2010).

The patent term adjustment indicated on the above-identified patent has been recalculated as directed by the Court. The term of the above-identified patent is extended or adjusted by seven hundred and twenty-four(724) days.

The application is being forwarded to the Certificates Branch for issuance of a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by seven hundred and twenty-four (724) 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 : 7,491,794

DATED : **February 17, 2009** **DRAFT**

INVENTOR(S) : Blatt 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 399 days

Delete the phrase "by 399" and insert – by 724 days--

Day : Friday
Date: 10/1/2010

PALM INTRANET

Time: 11:23:28

PTA Calculations for Application: 11/093884			
Application Filing Date:	03/29/2005	PTO Delay (PTO):	399
Issue Date of Patent:	02/17/2009	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	0
Post-Issue Petitions:	0	Total PTA (days):	724
PTO Delay Adjustment:	325		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
100	10/01/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	325		
92.5	01/28/2009	PTA 36 MONTHS			
92	02/17/2009	PATENT ISSUE DATE USED IN PTA CALCULATION			
91	01/06/2009	EXPORT TO FINAL DATA CAPTURE			
90	01/05/2009	FINISHED INITIAL DATA CAPTURE			
89	01/05/2009	DISPATCH TO FDC			
88	12/12/2008	APPLICATION IS CONSIDERED READY FOR ISSUE			
86	08/25/2008	EXPORT TO INITIAL DATA CAPTURE			
85	08/25/2008	ELECTRONIC REVIEW			
84	08/24/2008	EMAIL NOTIFICATION			
82	08/22/2008	MAIL NOTICE OF ALLOWANCE			
81	08/19/2008	ISSUE REVISION COMPLETED			
80	08/19/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
79	08/19/2008	CASE DOCKETED TO EXAMINER IN GAU			
78	08/19/2008	DOCUMENT VERIFICATION			
77	08/18/2008	NOTICE OF ALLOWABILITY			
73	08/05/2008	DATE FORWARDED TO EXAMINER			
72	07/21/2008	AMENDMENT AFTER FINAL REJECTION			
71	07/01/2008	EMAIL NOTIFICATION			
70	07/01/2008	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
69	06/16/2008	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
67	04/22/2008	ELECTRONIC REVIEW			

66	04/21/2008	EMAIL NOTIFICATION			
65	04/21/2008	MAIL FINAL REJECTION (PTOL - 326)			
64	04/14/2008	FINAL REJECTION			
63	01/17/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
60	03/04/2008	DATE FORWARDED TO EXAMINER			
59	01/17/2008	RESPONSE AFTER NON-FINAL ACTION			
58	01/17/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
57	10/20/2007	ELECTRONIC REVIEW			
56	10/19/2007	EMAIL NOTIFICATION			
55	10/18/2007	MAIL NON-FINAL REJECTION			
54	10/13/2007	NON-FINAL REJECTION			
53	11/30/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
52	10/31/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
51	09/08/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
50	07/25/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
49	09/20/2007	SUBSTITUTE SPECIFICATION FILED			
48	09/20/2007	PRELIMINARY AMENDMENT			
47	08/03/2007	DATE FORWARDED TO EXAMINER			
46	08/01/2007	RESPONSE TO ELECTION / RESTRICTION FILED			
45	07/04/2007	ELECTRONIC REVIEW			
44	07/03/2007	EMAIL NOTIFICATION			
43	07/02/2007	MAIL RESTRICTION REQUIREMENT	399		-1
42	06/25/2007	REQUIREMENT FOR RESTRICTION / ELECTION			
41	02/16/2007	PRELIMINARY AMENDMENT			
40	11/30/2006	REFERENCE CAPTURE ON IDS			
39.7	11/30/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
39	11/30/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
38.7	10/31/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
38	10/31/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
37	09/08/2006	REFERENCE CAPTURE ON IDS			

36.7	09/08/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
36	09/08/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
35.7	07/25/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
35	07/25/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
34	02/02/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
33	12/12/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
32	11/16/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
31	08/30/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
30	09/12/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
29	05/15/2006	PRELIMINARY AMENDMENT			
28.7	02/02/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
28	02/02/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
27.7	12/12/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
27	12/12/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
26.7	11/16/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
26	11/16/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
25	11/16/2005	PRELIMINARY AMENDMENT			
24	08/30/2005	REFERENCE CAPTURE ON IDS			
23	09/23/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
22.7	08/30/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
22	08/30/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
21.7	09/12/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
21	09/12/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

20	03/29/2005	PRELIMINARY AMENDMENT			
19	08/23/2005	CASE DOCKETED TO EXAMINER IN GAU			
18	08/08/2005	APPLICATION RETURN FROM OIPE			
17	08/08/2005	APPLICATION IS NOW COMPLETE			
16	08/08/2005	APPLICATION RETURN TO OIPE			
15	08/05/2005	APPLICATION RETURN FROM OIPE			
14	08/08/2005	APPLICATION IS NOW COMPLETE			
13	08/05/2005	APPLICATION RETURN TO OIPE			
12	08/05/2005	APPLICATION DISPATCHED FROM OIPE			
11	08/05/2005	APPLICATION IS NOW COMPLETE			
10	07/27/2005	ADDITIONAL APPLICATION FILING FEES			
9	07/27/2005	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
3	04/15/2005	CLEARED BY OIPE CSR			
2	04/11/2005	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	03/29/2005	INITIAL EXAM TEAM NN			

Search Another: Application# [ ] Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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Scott A. McCollister, Esq.
Fay, Sharpe, Fagan, Minnich & McKee, LLP
1100 Superior Avenue, Seventh Floor
Cleveland OH 44114-2518

In re Patent No. 7,119,488 :
Issue Date: October 10, 2006 : ON PETITION
Application No. 11/094010 :
Filed: March 30, 2005 :
Atty. Docket No.: RD-30705/126660 GCRZ 2000

This is a decision on the petition under 37 CFR 1.378(c), filed February 22, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED.**

This patent expired October 11, 2010 for failure to pay the 3 ½ year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period 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 instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. If the person signing the instant petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed to the address currently of record until such time as appropriate instructions are received to the contrary.

Telephone inquiries relating to this decision should be directed to Robert DeWitty, Petitions Examiner, Office of Petitions **(571-272-8427).**

David Bucci
Petitions Examiner
Office of Petitions

cc: Timothy Gurin
GE Lighting
1975 Noble Road
Nela Park #310B
Cleveland, Ohio 44112

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20 NORTH WACKER DRIVE
36TH FLOOR
CHICAGO IL 60606

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OFFICE OF PETITIONS

In re Application of :
Koehler et al. :
Application No. 11/094,250 : DECISION ON PETITION
Filed: March 31, 2005 :
Attorney Docket No. STI-2 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 30, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a proper and timely manner to the non-final Office action mailed, December 13, 2005, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on March 14, 2006. A Notice of Abandonment was mailed October 5, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Amendment, (2) the petition fee of $750.00, and (3) a proper statement of unintentional delay.

Further, it is not apparent whether the statement of unintentional delay was signed by a person who would have been in a position of knowing that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Nevertheless, in accordance with 37 CFR 10.18, the statement is accepted as constituting a certification of unintentional delay. However, in the event that petitioner has no knowledge that the delay was unintentional, petitioner must make such an inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay was intentional, petitioner must notify the Office. Additionally, it is not apparent whether the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute this patent application. In accordance with 37 CFR 1.34(a), the signature appearing on the petition

shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts.

Further, the Power of Attorney and Change of Correspondence Address submitted with the instant petition is hereby not accepted.

ESTABLISHING OWNERSHIP

When an assignee first seeks to take action in a matter before the Office with respect to a patent application, patent, or reexamination proceeding, the assignee must establish its ownership of the property to the satisfaction of the Director. **37 CFR 3.73(b)**. The assignee's ownership may be established under **37 CFR 3.73(b)** by submitting to the Office, in the Office file related to the matter in which action is sought to be taken:
(A) documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment submitted for recording) and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was, or concurrently is, submitted for recordation pursuant to 37 CFR **3.11**; or
(B) a statement specifying, by reel and frame number, where such evidence is recorded in the Office.

Currently, petitioner has submitted an improper Statement under 37 CFR 3.73(b) since the Statement submitted with the instant petition does not include the complete chain of title from the original owner to the assignee. Therefore, the request for Power of Attorney and Change of Correspondence Address cannot be accepted at this time.

Further, a courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This application is being referred to Technology Center AU 2614 for appropriate action by the Examiner in the normal course of business on the reply received.

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: Kory D. Christensen
Stoel Rives, LLP
201 S. Main Street
Suite 1100
Salt Lake City, Utah 84111

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No.

BANNER & WITCOFF, LTD.
1100 13th STREET, N.W.
SUITE 1200
WASHINGTON DC 20005-4051

MAILED

AUG 12 2010

OFFICE OF PETITIONS

In re Application of :
Woodhead et al. : DECISION ON APPLICATION
Application No. 11/094,303 : FOR
Filed: March 31, 2005 : PATENT TERM ADJUSTMENT
Atty Docket No. 000417.00025 :

This is a decision on the "PETITION UNDER 37 C.F.R. § 1.705 FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT," filed March 30, 2009. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from three hundred fifty-one (351) days to four hundred (400) days.

The application for patent term adjustment is **DISMISSED**.

On December 31, 2008, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 351 days. On March 30, 2009, applicants timely submitted the instant application for patent term adjustment[1]. Applicants dispute the reduction of 79 days associated with the filing of an amendment on December 4, 2008. Applicants request that 49 days of this reduction be restored as the response to the June 16, 2008 Office action was originally filed on October 16, 2008. Applicants acknowledge that they erred in e-filing the paper on October 16, 2008, but state that on October 20, 2008 they filed a petition to expunge the paper. This petition was not acted on so on December 4, 2008, applicants e-filed the amendment in this application. Alternatively, applicants state that the Office should have

[1] PALM records indicate that the Issue Payment was also filed on March 30, 2009.

automatically transferred the paper pursuant to MPEP § 724.05(III).

The record supports a conclusion that the application is not subject to a terminal disclaimer.

Applicant's argument has been considered, but not found persuasive. The record supports a conclusion that due to applicant error in filing the response in the wrong application the response to the Office action was not filed in this application until December 4, 2008. The Office did not review and automatically move the paper. A petition was filed on October 20, 2008; however, such a petition is not effective to correct applicant error until acted on. Moreover, the provisions cited by applicant may be applicable to consideration of whether the application should be considered abandoned. However, the question of applicant delay pursuant to 37 CFR 1.704(b) is a distinct one. 37 CFR 1.704(b) provides that:

> With respect to the grounds for adjustment set forth in §§ 1.702(a) through (e), and in particular the ground of adjustment set forth in § 1.702(b), an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

In this instance, the period of delay is properly measured from the day after the date that is three months after the Office action was mailed, September 17, 2008, to the date the reply was filed, December 4, 2008. The reply was first filed December 4, 2008. The reply was made timely by an accompanying petition for

extension of time within the third month. The reply submitted October 16, 2008 was not transferred to this application until after December 4, 2008. Further, the examiner took action in response to the reply filed December 4, 2008 (See Notice of Allowance mailed December 31, 2008). Under the circumstances, it is concluded that entry of a period of reduction for applicant delay of 79 days for the period of delay in prosecution of this application until entry of the response in this application on December 4, 2008 is warranted.

In view thereof, the determination of patent term adjustment at the time of the mailing of the notice of allowance of 351 days is correct.

Receipt of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The application is being forwarded to the Office of Data Management for issuance of 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) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

WHITHAM, CURTIS & CHRISTOFFERSON & COOK, P.C.
11491 SUNSET HILLS ROAD
SUITE 340
RESTON VA 20190

In re Patent No. 7,254,047 :
Issued: 08/07/2007 :
Application No. 11/094,434 : NOTICE
Filed: 03/31/2005 :
Attorney Docket No. 01640483PA :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed October 15, 2010.

The Office no longer investigates or rejects original or reissue patent under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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NOV 22 2010

OFFICE OF PETITIONS

WHITHAM, CURTIS & CHRISTOFFERSON & COOK, P.C.
11491 SUNSET HILLS ROAD
SUITE 340
RESTON VA 20190

In re Patent No. 7,265,525	:	
Issue Date: September 4, 2007	:	
Application No. 11/094,438	:	NOTICE
Filed: March 31, 2005	:	
Attorney Docket No. 01640506AA	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed October 15, 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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Alexandria, VA 22313-1450
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Paper No.

FOLEY AND LARDNER LLP
SUITE 500
3000 K STREET NW
WASHINGTON DC 20007

MAILED

AUG 04 2010

OFFICE OF PETITIONS

In re Application of :
Kubo et al. :
Application No. 11/094,484 : ON APPLICATION FOR
Filed: March 31, 2005 : PATENT TERM ADJUSTMENT
Atty Docket No. 074257-0108 :

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b) filed May 10, 2010. Applicant submits that the correct patent term adjustment to be indicated on the patent is five hundred twenty (520) days, not four hundred fourteen (414) 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.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office cannot make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

---

[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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AUG 02 2010

OFFICE OF PETITIONS

WELLS ST. JOHN P.S.
601 W. FIRST AVENUE, SUITE 1300
SPOKANE WA 99201

In re Patent No. 7,622,772	:	DECISION ON REQUEST
Leonard Forbes	:	FOR
Issue Date: November 24, 2009	:	RECONSIDERATION OF
Application No. 11/094,614	:	PATENT TERM ADJUSTMENT
Filed: March 29, 2005	:	and
Atty. Docket No. MI22-2758	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on May 21, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one hundred and seventy-one (171) 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 forty-nine (49) days[1] is **GRANTED to the extent indicated herein.**

[1] The period of overlap between the "A" delay and the "B" delay is 0 days, not 8 days as patentee states. It is noted that, in this case where a Request for Continued Examination was filed, the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A) begins on the day after the date that is three years from the date the application was filed under 35 U.S.C. 111(a), and ends on the day before the Request for Continued Examination was filed. It is further noted that "A" delays and "B" delays overlap only if such delays occur on the same calendar day. A review of the record reveals that the relevant period of "A" delay began March 14, 2007, and ended March 21, 2007. The relevant period of "B" delay began August 6, 2008, and ended October 1, 2008, the day before the date the RCE was filed. There are no days in the period of "A" delay and "B" delay that occur on the same calendar day. Thus, the period of overlap between the "A" delay and the "B" delay is 0 days.

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on March 30, 2008, and ends on October 1, 2008, the day before the RCE was filed.

It is noted that patentees failed to account for the filing of the notice of appeal on November 13, 2006. 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 57 days, beginning on the date on which the notice of appeal to the Board of Patent Appeals and Interferences was filed, November 13, 2006, and ending on the date the Office action under 35 U.S.C. 132 was filed, March 21, 2007. Thus, the B delay is 57 days (186 - 129). Accordingly, the patent term adjustment is 49 days (55 days of A delay + 57 days of B delay - 0 days of overlap - 63 days of applicant delay).

It is further noted that patentee states that the patent term adjustment was improperly reduced by one (1) day for the filing of the Request for Continued Examination on October 2, 2008, three months and one day after a final rejection was mailed July 1, 2008. In summary, patentee argues that the Request for Continued Examination was transmitted on October 1, 2009, as evidenced by the certificate of transmission under 37 CFR 1.8 dated October 1, 2009. No consideration will be given to patentee's assertion. Further to this point, PALM records indicate that the issue fee payment was received in the Office on October 15, 2009. No application for patent term adjustment preceded the payment of the issue fee. Thus, patentee failed to raise the issue of 1 day of adjustment. The period for filing an application for patent term adjustment requesting reconsideration of the initial determination of patent term adjustment at the time of mailing of the notice of allowance ended October 15, 2009. Accordingly, relative to the 1 day of reduction to the patent term adjustment entered prior to the issuance of the patent, it is appropriate to dismiss the argument as untimely filed under § 1.705(b).

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 forty-nine **(49)** days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,622,772 B2

DATED : Nov. 24, 2009

INVENTOR(S) : Forbes

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 (171) days

Delete the phrase "by 171 days" and insert – by 49 days--

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HARNESS DICKEY & PIERCE PLC
PO BOX 8910
RESTON VA 20195

MAILED
JAN 03 2011
OFFICE OF PETITIONS

In re Application of
Stig Andersson
Application No. 11/094,702
Filed: March 30, 2005
Attorney Docket No. 15258-000037/US

DECISION ON PETITION
UNDER 37 CFR 1.78(a)(3)

This is a decision on the petition under 37 CFR 1.78(a)(3), filed December 2, 2010, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to prior-filed nonprovisional application No. 09/623,546, set forth in the amendment filed with the petition.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition does not satisfy item (1) above.

The reference to add the above-noted, prior-filed application in the first sentence of the specification on page one following the title is not acceptable as drafted since it improperly incorporates by reference the prior-filed application. An incorporation by reference statement added after an application's filing date is not effective

because no new matter can be added to an application after its filing date (see 35 U.S.C. § 132(a)). If an incorporation by reference statement is included in an amendment to the specification to add a benefit claim under 35 U.S.C. § 120 after the filing date of the application, the amendment would not be proper. When a benefit claim under 35 U.S.C. § 120 is submitted after the filing of an application, the reference to the prior application cannot include an incorporation by reference statement of the prior application. See Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980). Note MPEP §§ 201.06(c) and 608.04(b).

If reconsideration of this decision is desired, a renewed petition under 37 CFR § 1.78(a)(3) and an Application Data Sheet or an amendment (complying with the provisions of 37 CFR 1.121 and 37 CFR 1.76(b)(5)) to correct the above matters are required.

Further correspondence with respect to this matter should be addressed as follows:

By mail:
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Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand:
Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax:
(571) 273-8300
ATTN: Office of Petitions

Any questions concerning this matter may be directed to Petitions Attorney Cliff Congo at (571) 272-3207.

Chris Bottorff
Supervisory Petitions Examiner
Office of Petitions

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MAR 30 2011

OFFICE OF PETITIONS

In re
Stig Andersson
Application No. 11/094,702
Filed: March 30, 2005
Patent No. 7,887,745
Issued: February 15, 2011
Attorney Docket No. 15258-000037/US

DECISION ON PETITION
UNDER 37 CFR 1.78(a)(3)

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed January 14, 2011, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to prior-filed nonprovisional application No. 09/623,546, set forth in the amendment filed with the petition.

The petition is **DISMISSED**.

A petition under 37 CFR 1.78 is no longer appropriate, as the application has issued into a patent. Patentee can correct the priority claim by way of a petition under 37 CFR 1.182 and a Certificate of Correction. *See* MPEP 1481.03(II)(B).

Further correspondence with respect to this matter should be addressed as follows:

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By fax: (571) 273-8300
ATTN: Office of Petitions

Any questions concerning this matter may be directed to Petitions Attorney Cliff Congo at (571) 272-3207.

Chris Bottorff
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 01/31/12

TO SPE OF : ART UNIT 1745

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/094,702 Patent No.: 7887745

CofC mailroom date: 08/15/11

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

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: _____

_____

_____

Christina Johnson AU
1742
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

THE ECLIPSE GROUP LLP
10605 BALBOA BLVD., SUITE 300
GRANADA HILLS CA 91344

In re Application of
NELL, KURT
Application No.: 11/094,825
Filing or 371(c) Date: March 30, 2005
Attorney Docket Number: P04097US HI 09083USU

: OCT 13 2010
: DECISION ON
: PETITION
:

This is a decision on the Petition to Withdraw Holding of Abandonment received in the United States Patent and Trademark Office (USPTO) on September 29, 2010.

This petition is **GRANTED**.

The application was held abandoned for failure to timely submit the Issue Fee and Publication fee as required by the Notice of Allowance, mailed June 1, 2010 which set forth a three (3) month statutory period of reply. The Notice of Abandonment was mailed on September 15, 2010.

Petitioner states that the issue fee transmittal and payment were timely filed via the USPTO on September 1, 2010. Petitioner submitted a copy of the original submission which included a properly completed Certificate of Mailing/Transmission. As authorized, the issue fee in the amount of $1,510 was charged to PTO Form 2038 or Deposit Account.

(1) the United States Patent and Trademark Office was promptly informed of the previous timely mailing,

(2) a copy of the previously mailed correspondence with certificate of mailing thereon has been submitted.

In view of the foregoing, the holding of abandonment for failure to timely pay the issue fee is hereby withdrawn and the application restored to pending status.

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 756-1547.

Kay D. Pinkney
Application Assistance Unit
Office of Data Management

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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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APNEOS CORPORATION
2033 RALSTON AVENUE #41
BELMONT CA 94002

MAILED

DEC 06 2010

OFFICE OF PETITIONS

In re Application of :
Sotos et al :
Application No. 11/094,911 : DECISION ON PETITION
Filed: March 30, 2005 :
Title: System And Method For Assessing :
Breathing :

This is a decision on the petition, filed October 12, 2010, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **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."

The petition has **not** been reviewed on the merits because the petition has not been properly signed.

In this regard, petitioner's attention is directed to 37 CFR 1.33(b), which states.

> (b) Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:
>
> (1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
>
> (2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;
>
> (3) An assignee as provided for under §3.71(b) of this chapter; or
>
> (4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

An unsigned amendment (or other paper) or one not properly signed by a person having authority to prosecute the application is not entered. In this instance the petition filed on October 12, 2010 has not been properly signed. This applies, for instance, where the amendment (or other paper) is

signed by only one of two applicants and the one signing has not been given a power of attorney by the other applicant.

Therefore, as the petition is not signed by all the inventors and the record herein fails to disclose that petitioner herein (Sotos) was ever given a power of attorney to act on behalf of inventors J. Branscum and P. Branscum, or that he is an assignee of the entire interest and has complied with the provisions of 37 CFR 3.73(b).

The address provided on the petition differs from the correspondence address of record. A courtesy copy of this decision is being mailed to the address given on the petition. However, the Office will mail all future correspondence solely to the address of record.

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: John Sotos
1788 Oak Creek Dr. Ste 415
Palo Alto, CA 94304

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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APNEOS CORPORATION
2033 RALSTON AVENUE #41
BELMONT CA 94002

MAILED

MAR 08 2011

OFFICE OF PETITIONS

In re Application of :
Sotos et al :
Application No. 11/094,911 : DECISION ON PETITION
Filed: March 30, 2005 :
Title: System And Method For Assessing :
Breathing :

This is a decision on the petition, filed December 20, 2010, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

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."

The submission of the petition to withdraw the holding of abandonment is untimely. 37 CFR 1.181(f) provides that, inter alia, except as otherwise provided, any petition not filed within 2 months of the mail date of a notice of abandonment (the action complained of) may be dismissed as untimely. The Notice of Abandonment was mailed on February 13, 2007. A petition was not filed in this application until October 12, 2010 almost four year later. Thus, the petition is untimely.

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 $810 petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37

CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

It is noted the address presented on the petition differs from the correspondence address of record. While a courtesy copy of this decision is being mailed to the person signing the present petition, all future correspondence will be directed to the address currently of record until such time as appropriate instructions are received to the contrary. The Office will not engage in dual correspondence. To the extent petitioner is no longer represented by attorneys of record, revocation of power of attorney and a change of address should be submitted.

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: John Sotos
1788 Oak Creek Dr. Ste 415
Palo Alto, CA 94304

UNITED STATES PATENT AND TRADEMARK OFFICE

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APNEOS CORPORATION
2033 RALSTON AVENUE #41
BELMONT CA 94002

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JUN 02 2011

OFFICE OF PETITIONS

In re Application of :
Sotos et al :
Application No. 11/094,911 : DECISION ON PETITION
Filed: March 30, 2005 :
Title: System And Method For Assessing Breathing :

This is a decision on the petition filed under 37 CFR 1.137(b) in the above-identified application filed on May 12, 2011.

The petition is **GRANTED.**

This above-identified application became abandoned for failure to timely file a proper response to a non-final Office Action, which was mailed on July 10, 2006. The non-final Office Action set a three (3) month shortened statutory period for reply. A three month extension of time was obtained pursuant to 37 CFR 1.136. Accordingly, this application became abandoned on January 11, 2007. A Notice of Abandonment was mailed on February 13, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment and drawings (2) the petition fee of $810.00, and (3) a statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3215.

This application is being referred to Technology Center AU 3735 for appropriate action by the Examiner in the normal course of business on the reply received.

Charlema Grant
Petitions Attorney
Office of Petitions

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United States Patent and Trademark Office
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1000 EAGLE GATE TOWER
60 EAST SOUTH TEMPLE
SALT LAKE CITY UT 84111

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JAN 13 2011

OFFICE OF PETITIONS

In re Application of	:	
Tongxian CHEN, et al	:	
Application No. 11/094,914	:	DECISION ON PETITION
Filed: March 30, 2005	:	
Attorney Docket No. 13768.783.35	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 29, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to submit the issue and publication fees in a timely manner in reply to the Notice of Allowability, mailed June 16, 2008, which set a period for reply of three (3) months. Accordingly, this application became abandoned on September 17, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the Issue Fee of $1440 and Publication Fee of $300; (2) the petition fee of $1620; and (3) the required statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

All other inquiries should be directed to the Office of Data Management at (571) 272-4000.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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FISH & RICHARDSON P.C.
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

Mail Date: 08/03/2010

Applicant	: Toshihide Kadota	: DECISION ON REQUEST FOR
Patent Number	: 7643545	: RECALCULATION of PATENT
Issue Date	: 01/05/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/094,934	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 03/31/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1195** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

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OCT 21 2010

OFFICE OF PETITIONS

FISH & RICHARDSON P.C.
P.O. BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 7,643,545	:	DECISION ON REQUEST
Kadota	:	FOR
Issue Date: January 5, 2010	:	RECONSIDERATION OF
Application No. 11/094,934	:	PATENT TERM ADJUSTMENT
Filed: March 31, 2005	:	and
Atty Docket No.18523-005001/	:	NOTICE OF INTENT TO ISSUE
1893-US	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on September 3, 2010, 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 and two (1,302) 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 ninety-four (1,194)** days is **GRANTED to the extent indicated herein**[1].

Pursuant to 35 U.S.C. § 154(B)(ii), the Office is required to reduce the three-year application pendency guarantee by "any time consumed by appellate review by the Board of Patent Appeals and Interferences." As such, the Office is required to reduce any accorded "B" delay by the entire 108 days which were consumed by Appellate review.

---

[1] The appeal period excluded from the "B" delay period is 108 days, not 107 days as indicated previously. "When a period is indicated (in 37 CFR 1.703 or 1.704) as 'beginning' on a particular day, that day is included in the period, in that such day is 'day one' of the period and not 'day zero.'" MPEP 2731. "For example, a period beginning on April 1 and ending on April 10 is ten (and not nine) days in length." Id. Thus, in this instance, the period of appeal excluded from the "B" delay period is 108 days with said period beginning May 4, 2009, and ending August 19, 2009.

Pursuant to 35 U.S.C. § 154(B)(ii), the Office is required to reduce the three-year application pendency guarantee by "any time consumed by appellate review by the Board of Patent Appeals and Interferences." As such, the Office is required to reduce any accorded "B" delay by the entire 108 days which were consumed by Appellate review.

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 **one thousand, one hundred and ninety-four (1,194)** days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,643,545 B2

DATED : Jan. 5, 2010

INVENTOR(S) : Kadota

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (751) days

Delete the phrase "by 751 days" and insert – by 1,194 days--

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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LEXMARK INTERNATIONAL, INC.
INTELLECTUAL PROPERTY LAW DEPARTMENT
740 WEST NEW CIRCLE ROAD
BLDG. 082-1
LEXINGTON KY 40550-0999

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DEC 14 2010
OFFICE OF PETITIONS

In re Application of :
David Emerson Greer et al. :
Application No. 11/094,957 : ON PETITION
Filed: March 31, 2005 :
Attorney Docket No. 2004-0755.02 :

This is a decision on the petition under 37 CFR 1.137(b)[1], filed November 30, 2010, to revive the above-identified application.

The petition under 37 CFR 1.137(b) is **GRANTED**.

A Final Office Action was mailed July 16, 2009 setting a three month period for reply. In response thereof, on September 22, 2009, petitioners filed an Amendment which, did not place the application in condition for allowance and by way of an Advisory Action mailed November 3, 2009, petitioners were so advised. In response thereof, a one month extension of time and a Request for Continued Examination (RCE) were filed, November 16, 2009, with an amendment as the submission required by 37 CFR 1.114. A Notice of Non-Compliant Amendment (37 CFR 1.121) was mailed December 16, 2009, however, no further response to the Final Office Action having been timely filed, the application was held abandoned. Accordingly, a Notice of Abandonment was mailed September 17, 2010.

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[1]Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

In response to the Notice of Non-Compliant Amendment (37 CFR 1.121), petitioner has submitted an amendment as the submission required under 37 CFR 1.114.

The application is being forwarded to Technology Center 2861 for processing of the RCE filed November 16, 2009 and the amendment filed 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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

David W. Carrithers
CARRITHERS LAW OFFICE, PLLC
One Paragon Centre, Suite 140
6060 Dutchman's Lane
Louisville KY 40205

MAILED
AUG 3 0 2010
OFFICE OF PETITIONS

In re Application of :
Michael D. Maynard et al. :
Application No. 11/095,030 : DECISION ON PETITION
Filed: March 31, 2005 :
Attorney Docket No. AE117/2002RC :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 24, 2009, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, August 15, 2008, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on November 16, 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.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $810, and (3) a proper statement of unintentional delay. Accordingly, the reply to the non-final Office action of August 15, 2008 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 Technology Center AU 3652 for appropriate action on the concurrently filed amendment.

/Ramesh Krishnamurthy/
Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

cc: **DAVID W. CARRITHERS**
CARRITHERS LAW OFFICE, PLLC
6200 DUTCHMANS LANE, STE. 206
LOUISVILLE KY 40205

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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ELMORE PATENT LAW GROUP, PC
515 GROTON ROAD
UNIT 1R
WESTFORD, MA 01886

MAILED

AUG 27 2010

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Padmanabhan et al. :
Application No. 11/095,077 :
Filed: March 31, 2005 :
Attorney Docket No. 4011.3003 US3 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 28, 2010, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned as a result of petitioner's failure to file a complete and proper appeal brief 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 September 17, 2009, and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(b). As no claim was allowed, the application became abandoned by operation of law on November 18, 2009. *See* MPEP 1215.04.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed, (2) the petition fee as set forth in 37 CFR 1.17(m), and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. 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 petition lacks item (1), the required reply. Petitioner submitted a one month extension of time as a reply, which is improper. A proper reply would be (A) an appeal brief in compliance with 37 CFR 41.37 (c) and appeal brief fee; (B) the filing of an RCE accompanied by a submission and the requisite fee in compliance with 37 CFR 1.114 or (C) the filing of a continuing application under 37 CFR 1.53(b). Accordingly, this application cannot be revived until a proper response if filed.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $65 extension of time fee submitted with the petition on April 28, 2010, was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account as authorized.

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 Internet: EFS-Web[1]

By Facsimile: **(571) 273-8300**

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6059.

Alicia Kelley
Petitions Examiner
Office of Petitions

[1] www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

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ELMORE PATENT LAW GROUP, PC
515 GROTON ROAD
UNIT 1R
WESTFORD, MA 01886

In re Application of :
Padmanabhan et al. :
Application No. 11/095,077 : ON PETITION
Filed: March 31, 2005 :
Attorney Docket No. 4011.3003 US3 :

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed September 7, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned as a result of petitioner's failure to file a complete and proper appeal brief 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 September 17, 2009, 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 by operation of law on November 18, 2009. *See* MPEP 1215.04.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application, (2) the petition fee of $810, and (3) a proper statement of unintentional delay.

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuing application number 12/641,002.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6059.

A. Kelley

Alicia Kelley
Petitions Examiner
Office of Petitions

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SUITE 3400
CHICAGO IL 60661

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AUG 23 2010

OFFICE OF PETITIONS

In re Application of
Kishore, et al.
Application No. 11/095,094
Filed: March 30, 2005
Attorney Docket Number: 15943US01

: ON REQUEST FOR
: RECONSIDERATION OF
: PATENT TERM ADJUSTMENT

This is a decision on the petition under 37 CFR 1.705(b), filed July 2, 2010. Applicants believe that they should be accorded an additional PTA of 681 days. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment solely as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file a request for reconsideration of patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

In view thereof, the correct determination of PTA at the time of the mailing of the Notice of Allowance is **eight hundred twenty five (825) days** (916 days of PTO delay, reduced by 91 days of Applicant delay).

Receipt of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged.

The application is being forwarded to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to Petitions Attorney Cliff Congo at (571) 272-3207.

Anthony Knight
Director
Office of Petitions

[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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JUL 19 2011

OFFICE OF PETITIONS

MCANDREWS HELD & MALLOY LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

In re Patent No. 7,801,935	: DECISION ON
Kishore, et al.	: REQUEST FOR RECONSIDERATION
Application No. 11/095,094	: of PATENT TERM ADJUSTMENT
Issue Date: September 21, 2010	: and
Filed: March 30, 2005	: NOTICE OF INTENT TO ISSUE
Attorney Docket No. 15943US01	: CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR §1.705(d)", filed November 22, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected from one thousand four hundred eighty-four (1484) days to one thousand four hundred eighty-five (1485) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.**

On September 21, 2010, the instant application matured into U.S. Patent No. 7,801,935 with a patent term adjustment of 1484 days. The Office determined a patent term adjustment of 1484 days based upon 906 days of Office delay pursuant to 37 CFR 1.703(a)(1), 10 days pursuant to 37 CFR 1.703(a)(3), and 775 days pursuant to CFR 1.703(b), reduced by 30 and 61 days of Applicant delay pursuant to 37 CFR 1.704(b), and 116 days of overlap between "A" and "B" delay.

Patentees are correct that the proper amount of days over 36 months from the filing date of the application until the issue date was not included in the "B" delay period. The over three year period began on March 31, 2008 and ended on September 21, 2010 (the patent issue date), and is 896 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). In this instance the period consumed by appellate review is 131 days, beginning on November 23, 2009, the date of filing of the notice of appeal, and ending on April 2, 2010, the date of the mailing of the notice of allowance. Thus, B delay is 765 (896 – 131) days.

Patentees are correct that the number of days of overlap is 236 days, not 116 days. The overlap period ran from March 31, 2008 to November 21, 2008.

In view thereof, the correct number of days of patent term adjustment is **one thousand three hundred fifty-four (1354)** days (916 days of "A" delay and 765 days of "B" delay, reduced by 91 days of Applicant delay and 236 days of overlap).

It is noted that the Office issued a Notice of proposed rulemaking entitled *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review and Information Disclosure Statements*, 76 FR 18990 (April 6, 2011). To the extent that the final rule on *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review* revises the interpretation of appellate review applied in this decision, Patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the date of the final rule to file a request for reconsideration. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The application is being forwarded to the Certificate of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand three hundred fifty-four (1354) days.**

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,801,935 B2

DATED : **September 21, 2010**

INVENTOR(S) : Kishore 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 1484 days.

Delete the phrase "by 1484 days" and insert – by 1354 days--

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OCT 15 2010

OFFICE OF PETITIONS

APNEOS CORPORATION
2033 RALSTON AVENUE #41
BELMONT CA 94002

In re Application of	:	
Sotos et al.	:	
Application No. 11/095,154	:	DECISION DISMISSING
Filed: March 31, 2005	:	PETITION UNDER 37 CFR 1.10 (d)
Attorney Docket No. APN-005	:	

This is a decision on the petition filed August 2, 2010, which is properly treated as a petition under 37 CFR 1.10(d) requesting that the above-identified application be considered as filed on March 30, 2005, rather than the presently accorded filing date of March 31, 2005.

The petition is **DISMISSED.**

Any request for reconsideration of this decision should be filed within TWO MONTHS of the date of this decision in order to be considered timely (see 37 CFR 1.181(f). No extensions of time pursuant to the provisions of 37 CFR 1.136 are permitted. If reconsideration is not requested within the time period specified above, the above-identified application will be referred to the Office of Data Management with the presently accorded filing date of March 31, 2005.

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Director to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS.

Petitioner requests the earlier filing date on the basis that the application was purportedly deposited in Express Mail service on March 30, 2005, pursuant to the requirements of 37 CFR 1.10. The petition is accompanied by: Attachment #2 - a copy of the Express Mail mailing label ER 885215240 US; Attachment #4 - a copy of the Track & Confirm shipment details; Attachment #3 - copy of the postcard receipt; and Attachment #1 – a copy of what appears to be a postal service sales receipt.

A grantable petition under 37 CFR 1.10(d) must include:

> (1) The filing of a petition promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

2) The placement of the "Express Mail" number on the mailing label of the paper(s) or fee(s) that constitutes the correspondence prior to the original mailing by "Express Mail" ; and

(3) A showing which establishes, to the satisfaction of the Director, 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. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

The petition lacks item (3).

With regards to item (3), 37 CFR 1.10(b) provides that correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked, and that persons dealing indirectly with the employees of the USPS (such as by depositing correspondence in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked. The failure to obtain an "Express Mail" receipt with the "date-in" clearly marked could have been avoided by the exercise of due care, as discussed below. While the Office strongly urges direct deposit of "Express Mail" correspondence in order to obtain a legible copy of the "Express Mail" mailing label, parties are not precluded from using "Express Mail" drop boxes, but do so at their own risk.

A paper or fee placed in an "Express Mail" box receptacle after the box has been cleared for the last time on a given day will be considered to be deposited as of the date of receipt ("date-in") indicated on the "Express Mail" mailing label by the Postal Service "Express Mail" acceptance clerk. 37 CFR 1.10(d) permits the Office to correct a USPS "date-in" error when the correspondence is deposited in an "Express Mail" drop box prior to last scheduled pick up of the day, that is, the time clearly marked on the "Express Mail" drop box indicating when the box will be cleared for the last time on the date of deposit. 37 CFR 1.10(d) sets forth the procedures to be followed to be entitled to such a correction.

Parties who do use drop boxes can protect themselves from uncertainty due to illegible mailing labels by routinely maintaining a log of "Express Mail" deposits in which notations are entered by the person who deposited the correspondence as "Express Mail" within one business day after deposit with the USPS. Such evidence could be useful to later support a petition filed under 37 CFR 1.10(c), (d), (e), or (g). Evidence that came into being after deposit and within one day after the deposit of the correspondence as "Express Mail" may be in the form of a log book which contains information such as the "Express Mail" number; the application number, attorney docket number or other such file identification number; the place, date and time of deposit; the time of the last scheduled pick-up for that date and place of deposit; the depositor's initials or signature; and the date and time of entry in the log.

Further, petitioner has also submitted a copy of a postal service sales receipt that is unreadable and does not appear to list any specific Express Mail mailing label numbers and therefore cannot be used as evidence.

The USPS Express Mail Track and Confirm record, submitted by petitioner, shows that the package in question was accepted on March 31, 2005 at the Menlo Park, CA USPS at 8:25 a.m., not March 30, 2005. Petitioner may wish to contact the USPS concerning the March 30, 2005 mailing date in order to acquire corroborating evidence. Petitioner may then submit that information to the Office.

As such, a review of the records and the documents submitted with the instant petition does not support petitioner's request.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

Telephone inquires concerning this matter may be directed to Joan Olszewski at (571) 272-7751.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

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Technology Center 2100

TROP, PRUNER & HU, P.C.
1616 S. VOSS ROAD, SUITE 750
HOUSTON TX 77057-2631

In re Application of:
CLAPPER, Edward
Application No. 11/095,236
Filed: March 25, 2005
For: **DISPLAYING VIDEO INFORMATION**

DECISION ON PETITION UNDER 37 C.F.R. § 1.181

This is a decision on the petition filed January 24, 2011 to enter the after final amendment filed on December 29, 2010, and to withdraw the finality of the Office action mailed October 27, 2010.

The petition is **GRANTED-IN-PART**.

BACKGROUND

The examiner issued a final rejection on October 27, 2010 in response to an amendment filed by applicant on July 23, 2010.

In response to the final rejection, applicant filed an after final amendment on December 29, 2010.

On January 13, 2011, the examiner issued an advisory action denying entry of the after final amendment on the basis that the new claim phrase "time duration" raises new issues that require further consideration and/or search.

RULES AND PROCEDURES

MPEP §714.13 states in part:

> "Except where an amendment merely cancels claims, adopts examiner suggestions, removes issues for appeal, or in some other way requires only

a cursory review by the examiner, compliance with the requirement of a showing under 37 CFR § 1.116(b)(3) is expected in all amendments after final rejection."

"In the event that a proposed amendment does not place the case in better form for appeal, nor in condition for allowance, applicant should be promptly informed of this fact, whenever possible, within the statutory period. The refusal to enter the proposed amendment should not be arbitrary. The proposed amendment should be given sufficient consideration to determine whether the claims are in condition for allowance and/or whether the issues on appeal are simplified."

MPEP §706.07(a) states in part:

"Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims, nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the free set forth in 37 CFR 1.17(p)."

DECISION

In the Office action mailed on October 27, 2010, claims 31, 33, 36, 45 and 47 were rejected under 35 USC §103(a) as being unpatentable over Ubillons et al. in view of Yaegashi et al.. Claims 37 and 48 were rejected under 35 USC §103(a) as being unpatentable over Ubillons et al. in view of Yaegashi et al., and further in view of Anderson. Additionally, claims 31, 33, 45 and 47 were objected to for lacking antecedent basis for specific phrases appearing in these claims. Upon comparing these rejections with the rejections made in the Office action mailed April 27, 2010, the rejections and objection introduced in the October 27, 2010 action were on new grounds. However, the new grounds of rejections were necessitated by the amendment filed by applicant on July 23, 2010. Therefore, pursuant to MPEP §706.07(a), the finality of the Office action mailed October 27, 2010 is proper.

Furthermore, had the examiner rejected claims 31, 33, 45 and 47 under 35 USC §112, 2nd paragraph, rather than objecting to them for lack of antecedent basis, the finality would continue to be proper since this hypothetical rejection would have been "necessitated by applicant's amendment." Nevertheless, MPEP §706.07(a) only applies to rejections since objections are not appealable issues.

The after final amendment filed on December 29, 2010 amending claims 31 and 45 by substituting the term "time" for the term "specified" appears to be an attempt by the applicant to "adopt[] examiner['s] suggestions" and to "remove[] issues for appeal." Therefore, the advisory action denying entry of the after final amendment because "they raise new issues that would

require further consideration and/or search" is unreasonable. Pursuant to MPEP §714.13, the after final amendment should have been entered by the examiner.

Accordingly, the petition is **GRANTED-IN-PART** where the after final amendment filed on December 29, 2010 will be entered, however, the finality of the Office action mailed October 27, 2010 will be maintained. Therefore, the shortened statutory period continues to run from the mail date of the final Office action.

A new advisory action will be issued shortly notifying applicant of the entry of the after final amendment.

Any inquiry regarding this decision should be directed to Eddie C. Lee at (571) 272-1732.

Wendy Garber
Director, Technology Center 2100

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	11095479
Filing Date	01-Apr-2005
First Named Inventor	Masahiko Hayakawa
Art Unit	2624
Examiner Name	JAYESH PATEL
Attorney Docket Number	0756-7503
Title	IMAGE ANALYSIS METHOD, IMAGE ANALYSIS PROGRAM, PIXEL EVALUATION SYSTEM HAVING THE IMAGE ANALYSIS METHOD, AND PIXEL EVALUATION SYSTEM HAVING THE IMAGE ANALYSIS PROGRAM

An application may be withdrawn from issue for further action upon petition by the applicant. To request that the Office withdraw an application from issue, applicant must file a petition under this section including the fee set forth in § 1.17(h) and a showing of good and sufficient reasons why withdrawal of the application from issue is necessary.

APPLICANT HEREBY PETITIONS TO WITHDRAW THIS APPLICATION FROM ISSUE UNDER 37 CFR 1.313(c).

A grantable petition requires the following items:
(1) Petition fee; and
(2) One of the following reasons:
(a) Unpatentability of one or more claims, which must be accompanied by an unequivocal statement that one or more claims are unpatentable, an amendment to such claim or claims, and an explanation as to how the amendment causes such claim or claims to be patentable;
(b) Consideration of a request for continued examination in compliance with § 1.114 (for a utility or plant application only); or
(c) Express abandonment of the application. Such express abandonment may be in favor of a continuing application, but not a CPA under 37 CFR 1.53(d).

Petition Fee

☐ Applicant claims SMALL ENTITY status. See 37 CFR 1.27.

☐ Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

☐ Applicant(s) status remains as SMALL ENTITY.

☒ Applicant(s) status remains as other than SMALL ENTITY

Reason for withdrawal from issue

◯ One or more claims are unpatentable ◉ Consideration of a request for continued examination (RCE) (List of Required Documents and Fees) ◯ Applicant hereby expressly abandons the instant application (any attorney/agent signing for this reason must have power of attorney pursuant to 37 CFR 1.32(b)).	
RCE request,submission, and fee. ☐ I certify, in accordance with 37 CFR 1.4(d)(4) that : The RCE request ,submission, and fee have already been filed in the above-identified application on ☒ Are attached.	
THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES I certify, in accordance with 37 CFR 1.4(d)(4) that I am: ◉ An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application. ◯ An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity. ◯ A sole inventor ◯ A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors ◯ A joint inventor; all of whom are signing this e-petition ◯ The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71	
Signature	/Eric J. Robinson/
Name	Eric J. Robinson
Registration Number	38285

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Decision Date : June 23,2011

In re Application of :

Masahiko Hayakawa

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11095479

Filed : 01-Apr-2005

Attorney Docket No : 0756-7503

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed June 23,2011 , to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid in this application cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

This application file is being referred to Technology Center AU 2624 for processing of the request for continuing examination under 37 CFR 1.114 .

Office of Petitions

Doc Code: PET.AUTO Document Description: Petition automatically granted by EFS-Web	PTO/SB/140 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	**PETITION TO WITHDRAW AN APPLICATION FROM ISSUE AFTER PAYMENT OF THE ISSUE FEE UNDER 37 CFR 1.313(c)**
Application Number	11095479
Filing Date	01-Apr-2005
First Named Inventor	Masahiko Hayakawa
Art Unit	2624
Examiner Name	JAYESH PATEL
Attorney Docket Number	0756-7503
Title	IMAGE ANALYSIS METHOD, IMAGE ANALYSIS PROGRAM, PIXEL EVALUATION SYSTEM HAVING THE IMAGE ANALYSIS METHOD, AND PIXEL EVALUATION SYSTEM HAVING THE IMAGE ANALYSIS PROGRAM

An application may be withdrawn from issue for further action upon petition by the applicant. To request that the Office withdraw an application from issue, applicant must file a petition under this section including the fee set forth in § 1.17(h) and a showing of good and sufficient reasons why withdrawal of the application from issue is necessary.

APPLICANT HEREBY PETITIONS TO WITHDRAW THIS APPLICATION FROM ISSUE UNDER 37 CFR 1.313(c).

A grantable petition requires the following items:
(1) Petition fee; and
(2) One of the following reasons:
(a) Unpatentability of one or more claims, which must be accompanied by an unequivocal statement that one or more claims are unpatentable, an amendment to such claim or claims, and an explanation as to how the amendment causes such claim or claims to be patentable;
(b) Consideration of a request for continued examination in compliance with § 1.114 (for a utility or plant application only); or
(c) Express abandonment of the application. Such express abandonment may be in favor of a continuing application, but not a CPA under 37 CFR 1.53(d).

Petition Fee

☐ Applicant claims SMALL ENTITY status. See 37 CFR 1.27.

☐ Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

☐ Applicant(s) status remains as SMALL ENTITY.

☒ Applicant(s) status remains as other than SMALL ENTITY

Reason for withdrawal from issue

◯ One or more claims are unpatentable ◉ Consideration of a request for continued examination (RCE) (List of Required Documents and Fees) ◯ Applicant hereby expressly abandons the instant application (any attorney/agent signing for this reason must have power of attorney pursuant to 37 CFR 1.32(b)).	
RCE request,submission, and fee. ☐ I certify, in accordance with 37 CFR 1.4(d)(4) that : The RCE request ,submission, and fee have already been filed in the above-identified application on ☒ Are attached.	
THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES I certify, in accordance with 37 CFR 1.4(d)(4) that I am: ◉ An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application. ◯ An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity. ◯ A sole inventor ◯ A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors ◯ A joint inventor; all of whom are signing this e-petition ◯ The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71	
Signature	/Eric J. Robinson/
Name	Eric J. Robinson
Registration Number	38285

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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Decision Date : January 6, 2012

In re Application of :

Masahiko Hayakawa

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11095479

Filed : 01-Apr-2005

Attorney Docket No : 0756-7503

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed January 6, 2012 , to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid in this application cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

This application file is being referred to Technology Center AU 2624 for processing of the request for continuing examination under 37 CFR 1.114 .

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: DDI5085USNP	
Application Number: 11/095,636	Filing Date (or 371(b) or (f) Date): March 30, 2005
Patent Number: 7,665,303	Issue Date:
First Named Inventor: Sebastian BOHM, et al.	
Title: Method of segregating a bolus of fluid using a pneumatic actuator in a fluid handling circuit	

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 /Lois A. Gianneschi/	Date August 23, 2010
Name (Print/Typed) Lois A. Gianneschi	Registration Number 35,519

Note: *Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below**.

☐ *Total of _____ forms are submitted.

The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 10 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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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PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK, NJ 08933-7003

Mail Date: 09/07/2010

Applicant	: Sebastian Bohm	: DECISION ON REQUEST FOR
Patent Number	: 7665303	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/095,636	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 03/30/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1080** 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

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JUL 22 2011

Paper No.

OFFICE OF PETITIONS

MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

In re Patent No. 7,853,255 :
Karaoguz et al. :
Application No. 11/095,639 : LETTER REGARDING
Issue Date: December 14, 2010 : PATENT TERM ADJUSTMENT
Filed: March 30, 2005 :
Atty Docket No. 15732US02 :

This is a decision on the "APPLICATION FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT UNDER 35 U.S.C. § 154(b) INDICATED IN THE PATENT (37 CFR § 1.705(d)," filed February 11, 2011, requesting that the patent term adjustment determination for the above-identified patent be changed from one thousand, one hundred and seventy-one (1171) days to one thousand, two hundred and forty-two (1242) days.

The request for reconsideration of patent term adjustment is **DISMISSED**.

BACKGROUND

On December 14, 2010, the above-identified application matured into US Patent No. 7,853,255 with a patent term adjustment of 1171 days. This request for reconsideration of patent term adjustment was timely filed within two months of the issue date of the patent. See 37 C.F.R. § 1.705(d).

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The record supports a conclusion that this patent is not subject to a terminal disclaimer.

At issuance, Patentee was accorded 778 (989 - 211) days of B-delay. Patentee maintains entitlement to a period of adjustment due to the Three Year Delay by the Office, pursuant to 37 C.F.R.

§ 1.703(b), of 849 (989 - 140) days. In other words, Patentee argues 140 days, not 211 days, should have been excluded from B-delay for time consumed by appellate review.

RELEVANT STATUTE AND REGULATIONS

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including –

> (i) any time consumed by continued examination of the application requested by the applicant under section 132(b);
> (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or
> (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 C.F.R. § 1.702(b) provides that:

> Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:
> (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);
> (2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);
> (3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;
> (4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or
> (5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

At issue is the language "[a]ny time consumed by review by the Board of Patent Appeals and Interferences" of 37 C.F.R. § 1.702(b).

A first notice of appeal was filed on July 29, 2009, and a non-final Office action was mailed on October 20, 2009. The 84 days of the over three year period consumed by appellate review, beginning on July 29, 2009 and ending on October 20, 2009, is not included in the B delay. Similarly, a second notice of appeal was filed on April 19, 2010 and a notice of allowance was mailed on August 23, 2010. The 127 days of the over three year period consumed by appellate review, beginning on April 19, 2010 and ending on August 23, 2010, is not included in the B delay. See 35 U.S.C. § 154(b)(1)(B)(ii). It follows that 211 (84 + 127) days are excluded from the over three-year period.

First, Patentee argues that the first excluded period should total 14 days, and should run from the filing of the first notice of appeal on July 29, 2009 until the mailing of a Notice of Panel Decision from Pre-Appeal Brief Review on August 12, 2009.[1, 2]

Patentee's argument has been considered, but not found persuasive. The period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). An appeal to the Board of Patent Appeals and Interferences commences with the filing of a notice of appeal. See 35 U.S.C. 134(a). Generally, an appeal to the Board of Patent Appeals and Interferences ends with either 1) a Board decision, 2) the examiner reopening prosecution and issuing another Office action, or 3) the applicant filing a request to withdraw the appeal and reopen prosecution (e.g. the filing of a request for continued examination). In this instance the period consumed by appellate

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[1] Petition, page 3.

[2] It is noted in passing that this period totals 15 days, not 14 days. Patentee has arrived at 14 days because he has erroneously included the date on which the notice of appeal was filed in the period of B-delay. The filing of the first notice of appeal is the first day of the first excluded appellate period. As such, the last day of B-delay that is prior to the commencement of the first appellate excluded period that results from the filing of the first notice of appeal on July 29, 2009 is July 28, 2009, and not July 29, 2009.

review is 84 days, beginning on July 29, 2009, the date of filing of the notice of appeal and ending on October 20, 2009, the subsequent date of the mailing of a non-final Office action. Put another way, the first excluded period terminated with the mailing of the non-final Office action of October 20, 2009, and not the mailing of a Notice of Panel Decision from Pre-Appeal Brief Review on August 12, 2009.

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.

Second, Patentee argues that the second excluded period should total 126 days.[3, 4] As discussed above, the filing of the second notice of appeal is the first day of the second excluded appellate period. As such, the last day of B-delay that is prior to the commencement of the second appellate excluded period is April 18, 2010, and not April 19, 2010.

Any subsequent filing pertaining to this matter should indicate 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]

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[3] Petition, pages 3-4.

[4] Similar to the above discussion, Patentee has arrived at 126 days instead of 127 days because he has erroneously included the date on which the second notice of appeal was filed in the period of B-delay. See Renewed petition, page 2.

[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

CONCLUSION

In view thereof, no adjustment to the patent term will be made. It follows that a certificate of correction is not required.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3225.[9]

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

[9] Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.

UNITED STATES PATENT AND TRADEMARK OFFICE

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PILLSBURY WINTHROP SHAW PITTMAN, LLP
P.O. BOX 10500
MCLEAN VA 22102

MAILED
JUN 02 2011
OFFICE OF PETITIONS

In re Patent No. 7,857,911 :
Issue Date: December 28, 2010 :
Application No. 11/095,671 : DECISION ON PETITION
Filed: April 1, 2005 :
Attorney Docket No. 030157-0315610 :

This is a decision on the Request For Certificate Of Correction Under 35 U.S.C. §255 and Pursuant To 37 C.F.R. §§1.323 and 3.81(b), filed January 18, 2011, which is being treated as a Petition Under 37 CFR §3.81(b), to identify the correct assignee's name. A completed Certificate of Correction Form (PTO/SB/44) was submitted with Petition.

The petition under 37 CFR §3.81(b) is **GRANTED**.

Petitioner requests that the present Petition was submitted to correct the assignee's name on the previously submitted PTOL 85B and such error was a clerical mistake made by Applicant. Accordingly, petitioner requests that a Certificate of Correction (PTO/SB/44) be issued to correct assignee's name to the Title Page of the Letters Patent.

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in §3.11 before issuance of the patent, and must include a request for a certificate of correction under §1.323 of this chapter (accompanied by the fee set forth in §1.20(a) and the processing fee set forth in §1.17(i) of this chapter.

The requisite $100.00 fee (Fee Code 1811), as set forth under 37 CFR 1.20(a), and the requisite $130.00 processing fee (Fee Code 1464), as set forth under 37 CFR 1.17(i), have been submitted. Further, Office assignment records are consistent with the requested correction. Accordingly, since the Petition complies with the provisions of 37 CFR 3.81(b), it is appropriate for the Office to issue a Certificate of Correction in accordance with the content of the Form (PTO/SB/44) submitted with Petition.

Inquiries related this communication should be directed to the undersigned at (571)272-3213.

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (703)756-1814.

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. 7,857,911.

Cheryl Gibson-Baylor
Petitions Examiner
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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NOV 04 2011

OFFICE OF PETITIONS

In re Patent No. 8,005,476	:	DECISION ON REQUEST
Karaoguz et al.	:	FOR
Application Number: 11/095,841	:	RECONSIDERATION OF
Issue Date: 08/23/2011	:	PATENT TERM ADJUSTMENT
Filing or 371(c) Date: 03/30/2005	:	
Atty Docket No. 15725US02	:	

This is a decision on the APPLICATION FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT UNDER 35 U.S.C. § 154(b) INDICATED IN THE PATENT (37 CFR § 1.705(d)), filed on October 21, 2011, which is being treated as a petition 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 three hundred seventy-nine (379) 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 two hundred forty-seven (247) days.

Patentee disputes the calculation of the "B" delay. Specifically, patentee avers that (a) the period between the date after the day three years after the date the application was filed and the filing of the RCE should be 291 days, rather than 290 days, and (b) the period of time excluded from "B" delay for appellate review should be 131 days rather than 287 days. Patentee's argument has been considered, but is not found persuasive.

37 CFR 1.703(b) indicates that the period of adjustment under 37 CFR 1.702(b) ("over three year period") is the number of days, if any, in the period beginning on the day after the date that is three years after the actual filing date of the application and ending on the date a patent was issued. 35 U.S.C. 154(b)(1)(B). Pursuant to 37 CFR 1.703(b)(1), however, the "B" delay period does not include 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. In this instance, the "over three year period" is 290 days, beginning on March 31, 2008, the date after the date that is three years after the filing date of the application and ending on January 14, 2009, the date before the day a request for continued examination was filed. Consequently, the "B" delay period is 290, not 291 days.

However, 37 CFR 1.703(b) also sets forth the limitations on patent term adjustment specified in 35 U.S.C. 154(b)(1)(B)(i) and (ii). Specifically, the period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). An appeal to the Board of Patent Appeals and Interferences commences with the filing of a notice of appeal. See 35 U.S.C. 134(a). Generally, an appeal to the Board of Patent Appeals and Interferences ends with either 1) a Board decision, 2) the examiner reopening prosecution and issuing another Office action, or 3) the applicant filing a request to withdraw the appeal and reopen prosecution (e.g. the filing of a request for continued examination). In this instance the periods consumed by appellate review are (a) 131 days, beginning on September 14, 2007, the date of filing of the notice of appeal and ending on January 22, 2008, the subsequent date of the mailing of an Office action, and (b) 155 days, beginning on August 13, 2008, the date of filing of the notice of appeal and ending on January 14, 2009, the date before the day the request for continued examination was filed. Thus, B delay is 4 days (290 – 286 (131 + 155)).

It is noted that the Office issued a Notice of proposed rulemaking entitled *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review and Information Disclosure Statements*, 76 FR 18990 (April 6, 2011). To the extent that the final rule on *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review* revises the interpretation of appellate review applied in this decision, Patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the date of the final rule to file a request for reconsideration. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Accordingly, no change will be made to the patent term adjustment of 247 days (378 days of A delay + 4 days of B delay – 0 overlapping days - 135 days of applicant delay) as set forth on the face of the issued patent.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3231.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450

Paul E Schaafsma, NovusIP, LLC
Suite 221
521 West Superior
Chicago IL 60610

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OCT 21 2011

OFFICE OF PETITIONS

In re Patent No. 7,236,766 :
Issue Date: June 26, 2007 : ON PETITION
Application No.: 11/095,867 :
Filed: March 31, 2005 :

This is a decision on the petition under 37 CFR 1.378(c), filed September 26, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified application.

The petition is **DISMISSED**.

This petition expired on June 27, 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 provide in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The statement of delay is not acceptable. In this regard, petitioner's attention is directed to 37 CFR 1.33(b), which states.

> (b) Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:
> (1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
> (2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;
> (3) An assignee as provided for under §3.71(b) of this chapter; or
> (4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

An unsigned amendment (or other paper) or one not properly signed by a person having authority to prosecute the application/patent is not entered.

Therefore, as the petition is not signed, the petition is considered to not contain a proper statement of unintentional delay.

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.

If this petition is not renewed or if renewed and not granted, then petitioner may request a refund of the maintenance fee and surcharge fees paid. The fee for requesting reconsideration is not refundable.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:
Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand:
U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300.**

Telephone inquiries relating to this decision should be directed to Robert DeWitty (571-272-8427).

for Rajnesh Krishnamurthy

Anthony Knight
Director
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450

MAILED

DEC 05 2011

OFFICE OF PETITIONS

Paul E Schaafsma, NovusIP, LLC
Suite 221
521 West Superior
Chicago IL 60610

In re Patent No. 7,236,766 :
Issue Date: June 26, 2007 : ON PETITION
Application No.: 11/095,867 :
Filed: March 31, 2005 :

This is a decision on the petition for reconsideration under 37 CFR 1.378(c), filed November 3, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified application.

The petition is **DISMISSED**.

This petition expired on June 27, 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 provide in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

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.

Whereas the maintenance fee and surcharge were indicated in the instant petition, the Office was unable to charge the fees t o the credit card specified in the form PTO-2038. Additionally, the Office did not have a deposit account on file. Lastly, The petition fee as set forth in 37 CFR 1.17(f) of $400 has not been paid. Therefore, the total fees due is **$2605**.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300.**

Telephone inquiries relating to this decision should be directed to Robert DeWitty (571-272-8427).

Ramesh Krishnamurthy
Patent Examiner
Office of Petitions

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FITCH EVEN TABIN & FLANNERY
120 SOUTH LASALLE STREET
SUITE 1600
CHICAGO IL 60603-3406

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NOV 21 2011

OFFICE OF PETITIONS

In re Application of :
LOFTIN, et al :
Application No. 11/095,874 : DECISION ON PETITION
Filed: March 31, 2005 : TO WITHDRAW
Attorney Docket No. 5569-91457-US : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed November 2, 2011.

The request is **NOT APPROVED.**

The Office cannot approve the request at this time since the reasons provided do not meet any of the conditions under the mandatory or permissive categories enumerated in 37 CFR 10.40. Section 10.40 of Title 37 of the Code of Federal Regulation states, "[a] practitioner shall not withdraw from employment in a proceeding before the Office without permission from the Office[.]" More specifically, 37 CFR 10.40 states, "[i]f paragraph (b) of this section is not applicable, a practitioner may not request permission to withdraw in matter pending before the Office unless such request or such withdrawal is" for one the permissive reasons listed in 37 CFR 10.40(c). The reasons set forth in the request, "Application was purchased by new Assignee, Lance Cornstock" do not meet any the conditions set forth in 37 CFR 10.40.

Further, the request to withdraw from record cannot be approved because the request to change the correspondence address is not acceptable. The Office will either change the correspondence address of record to the most current address information provided for the assignee of the entire interest who properly became of record under 37 CFR 3.71 or, if no assignee of the entire interest has properly been made of record under 37 CFR 3.71, the most current address information provided for the first named inventor. 37 CFR 3.71 states:

> *An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement incompliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.*

According to a review of Office records, there is currently no Statement under 37 CFR 3.73(b) of record in the instant application for the assignee. In this regard, the Office cannot change the correspondence address to the address indicated on the Request for Withdrawal as Attorney filed November 2, 2011.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by the applicant.

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-6735.

/Diane Goodwyn/
Diane Goodwyn
Petitions Examiner
Office of Petitions

cc: LANCE CORNSTOCK
9160 EAST BAHIA DRIVE
SCOTTSDALE AZ 85260

UNITED STATES PATENT AND TRADEMARK OFFICE

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FITCH EVEN TABIN & FLANNERY
120 SOUTH LASALLE STREET
SUITE 1600
CHICAGO IL 60603-3406

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OFFICE OF PETITIONS

In re Application of	:	
LOFTIN, et al	:	
Application No. 11/095,874	:	DECISION ON PETITION
Filed: March 31, 2005	:	TO WITHDRAW
Attorney Docket No. 5569-91457-US	:	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 3, 2012.

The request is **APPROVED.**

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. 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 Nicholas T. Peters behalf of the attorneys of record associated with Customer No. 22242.

The attorneys of record associated with Customer No. 22242 have been withdrawn.

Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address copied below until otherwise properly notified.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by the applicant.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

/Diane Goodwyn/
Diane Goodwyn
Petitions Examiner
Office of Petitions

cc: PREFERRED TECHNOLOGY SYSTEMS, LLC
9160 EAST BAHIA DRIVE
SCOTTSDALE AZ 85260

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
11/095,874	03/31/2005	Jon Loftin	5569-91457-US

CONFIRMATION NO. 3173

22242
FITCH EVEN TABIN & FLANNERY, LLP
120 SOUTH LASALLE STREET
SUITE 1600
CHICAGO, IL 60603-3406

POWER OF ATTORNEY NOTICE

OC000000052978626

Date Mailed: 03/06/2012

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 02/03/2012.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/dcgoodwyn/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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COOPER & DUNHAM, LLP
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20th Floor
NEW YORK NY 10112

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OFFICE OF PETITIONS

In re Patent of Pickutoski et al.: DECISION ON REQUEST
Patent No. 7,906,194 : FOR RECONSIDERATION OF
Issue Date: March 15, 2011 : PATENT TERM ADJUSTMENT
Application No. 11/095,903 :
Filed: March 31, 2005 :
Docket No. 0656/73199 :

This is a decision on the petition, filed May 16, 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 five hundred sixty-three (563) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by five hundred sixty-three (563) days is **dismissed.**

Patentees argue the Office miscalculated (1) the period of "B delay" pursuant to 37 CFR 1.702(b) and (2) the period of adjustment pursuant to 37 CFR 1.702(a)(2) associated with the mailing of final Office action on March 9, 2009. It is noted that patentees' final calculation of Applicant delay of 9 days fails to include the 26 day reduction under 37 CFR 1.704(c)(8) for the filing of an IDS on September 23, 2009 after a reply was filed on August 28, 2009.

Patentees argue the period of B delay is 81, not 80 days. Per 35 U.S.C. § 154(b)(1)(B)(i), B Delay does not include "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Per the language of 37 CFR 1.703(b)(1):

> (b) The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date

> on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the following periods:
>
> (1) The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued;

As stated above, the date on which a RCE was filed is not included in the B Delay period. The B Delay in this case is 80 days, which is the number of days beginning on April 1, 2008, the day after the date three years after the application's filing date, and ending on June 19, 2008, the day *before* the date the RCE was filed.

Patentees argue the Office miscalculated the period of adjustment pursuant to 37 CFR 1.702(a)(2) associated with the mailing of final Office action on March 9, 2009.

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.

A patentee is not permitted to raise an issue that could have been raised in an application for patent term adjustment under 37 CFR 1.705(b) in any post patent grant petition. If patentees did not agree with the length of the period of adjustment pursuant to 37 CFR 1.702(a)(2) associated with the mailing of final Office action on March 9, 2009, the appropriate time to contest it would have been after the Notice of Allowance was mailed and prior to payment of the issue fee.

Likewise, failing to address the 26 day reduction under 37 CFR 1.704(c)(8) for the filing of a supplemental paper in the form of an IDS on September 23, 2009 in a petition under 37 CFR 1.705(d) will not give rise to a discussion of the reduction. It should have been brought up in a petition under 37 CFR 1.705(b).

In light thereof, the correct patent term adjustment remains 535 days, which is the sum of 490 days of delay under 35 U.S.C. 154(b)(1)(A) and 80 days of B Delay, reduced by 35 days of Applicant delay.

Deposit account no. 03-3125 will be charged the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley
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

FEB 14 2011

OFFICE OF PETITIONS

In re Patent No. 7,852,949 :
Application No. 11/096,013 :
Filed: March 31, 2005 : ON PETITION
Issued: December 14, 2010 :
Attorney Docket No. 282790US8X :

This is a decision on the petition filed January 12, 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**.

This matter is being referred to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-7751. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

Joan Olszewski
Petitions Examiner
Office of Petitions

[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

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Alexandria, VA 22313-1450
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HOGAN LOVELLS US LLP
ONE TABOR CENTER, SUITE 1500
1200 SEVENTEENTH ST
DENVER CO 80202

MAILED
JUL 21 2011
OFFICE OF PETITIONS

In re Patent No. 7,172,115 :
Issue Date: February 6, 2007 :
Application No. 11/096,073 : ON PETITION
Filed: March 31, 2005 :
Attorney Docket No. RIP0001 :

This is a decision on the petition under 37 CFR 1.378(c), filed June 22, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on February 6, 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).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Petitioner will not receive future correspondence related to maintenance fees for the patent unless a "Fee Address" Indication Form (see PTO/SB/47) and Request for Customer Number (see PTO/SB/125) are submitted.

Telephone inquiries concerning this decision should be directed to undersigned at (571) 272-1642.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

cc: GARY A. LAUDEN
1100 HILLS CREEK DRIVE
MCKINNEY, TX 75070

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WALL & TONG, LLP/
ALCATEL-LUCENT USA INC.
25 James Way
Eatontown NJ 07724

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MAY 12 2011

OFFICE OF PETITIONS

In re Application of	:	
Dennis Johannes Bijwaard, et al.	:	
Application No. 11/096,218	:	DECISION DISMISSING PETITION
Filed: March 31, 2005	:	UNDER 37 CFR 1.313(a)
Attorney Docket No. DJA BIJWAARD 2-2	:	

This is a decision on the petition under 37 CFR 1.313(a), filed May 10, 2011, requesting withdrawal of the above-identified application from issue.

The petition is **dismissed** as moot for the reasons stated below.

A review of the file record discloses that a Notice of Allowance and Fee(s) Due was mailed on March 21, 2011, with the issue fee being due on or before June 21, 2011.

The filing of a petition under 37 CFR 1.313(a) is unnecessary, since the mere filing of an RCE and submission will effectively withdraw an application from issue prior to payment of the issue fee. In view thereof, the petition to withdraw from issue is dismissed as involving a moot issue. *Note* MPEP §§ 706.07(h)(IX) and 1308.

Inquiries concerning this decision may be directed to Terri Johnson at (571) 272-2991.

The matter is being referred to Technology Center AU 2473 for appropriate processing of the RCE filed May 10, 2011, and for consideration of the concurrently filed information disclosure statement.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

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Alexandria, VA 22313-1450
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WALL & TONG, LLP/
ALCATEL-LUCENT USA INC.
25 James Way
Eatontown NJ 07724

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SEP 08 2011

OFFICE OF PETITIONS

In re Application of	:	
Dennis Johannes Bijwaard, et al.	:	
Application No. 11/096,218	:	DECISION GRANTING PETITION
Filed: March 31, 2005	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. DJA BIJWAARD 2-2	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, September 7, 2011 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on August 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 should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to Technology Center AU 2473 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

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OCT 12 2010

OFFICE OF PETITIONS

DOWELL & DOWELL P.C.
103 ORONOCO STREET, SUITE 220
ALEXANDRIA, VA 22314

In re Application of :
Melvin S. MOGIL, et *al.* :
Application No. 11/096,273 : DECISION GRANTING PETITION
Filed: April 1, 2005 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **15031** :

This is a decision on the petition under 37 CFR 1.313(c)(2), filed October 8, 2010, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on September 23, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-7253.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

This application is being referred to Technology Center AU 2441 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed amendment and information disclosure statement.

/Monica A. Graves/
Petitions Examiner, Office of Petitions

cc: **BERESKIN & PARR, LLP**
40 KING STREET W., 40TH FLOOR
TORONTO, ONTARIO M5H 3Y2
CANADA

[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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MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED

DEC 02 2010

OFFICE OF PETITIONS

In re Application of	:	
Zhang et al.	:	
Application No. 11/096467	:	ON APPLICATION FOR
Filing or 371(c) Date: 04/01/2005	:	PATENT TERM ADJUSTMENT
Atty Docket No.:	:	
16289US01	:	

This is in response to the APPLICATION FOR RECONSIDERATION OF THE DETERMINATION OF PATENT TERM ADJUSTMENT UNDER 35 U.S.C. 154(b) ACCOMPANYING THE NOTICE OF ALLOWANCE, filed September 1, 2010. Applicant requests that the Patent Term Adjustment be changed to reflect 1506 days, not 892 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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KING & PARTNERS, PLC
F/B/O/ GENTEX CORPORATION
170 COLLEGE AVENUE, SUITE 230
HOLLAND MI 49423

In re Application of	:	
GIRI, PUNAM	:	
Application No.: 11/096470	:	DECISION ON
Filing or 371(c) Date: April 1, 2005	:	PETITION
Attorney Docket Number: **GEN-031208 C1**	:	

This is a decision on the Petition to Withdraw Holding of Abandonment under 37CFR 1.81 (a), received in the United States Patent and Trademark Office (USPTO) December 24, 2009.

This petition is **GRANTED**.

The above-identified application became abandoned for failure to timely submit the Issue Fee and Publication Fee as required by the Notice of Allowance, mailed November 2, 2009 which set forth a three (3) month statutory period of reply. The Notice of Abandonment was mailed on November 10, 2005.

Petitioner states that the issue fee and publication fee were timely submitted. As evidence, petitioner submitted a copy of the previously filed correspondence which included a completed Certificate of Mailing and a statement which attests to the previous mailing.

In view of the above, the holding of abandonment is hereby withdrawn and the application has been restored to pending status.

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 756-1499.

Kendrick Sprunt
Office of Data Management

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MAY 19 2011

OFFICE OF PETITIONS

TAROLLI, SUNDHEIM, COVELL & TUMMINO L.L.P.
1300 EAST NINTH STREET, SUITE 1700
CLEVELAND OH 44114

In re Application of :
Paul C. Downey :
Application No. 11/096,589 : DECISION ON PETITION
Filed: April 1, 2005 :
Attorney Docket No. SMB-7605 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 11, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned 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 August 2, 2010. A three month extension of time under the provisions of 37 CFR 1.136(a) was obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 41.37(b). As no claim was allowed, the application became abandoned on October 3, 2010. See MPEP 1215.04. A Notice of Abandonment was mailed March 9, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of RCE (Request for Continued Examination), with the required fee of $405, (2) the petition fee of $810, and (3) a proper statement of unintentional delay. Accordingly the RCE is accepted as being unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

This application is being referred to the Technology Center AU 2832 for appropriate action in the normal course of business for processing of the RCE received April 11, 2011.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 9/12/2011

TO SPE OF : ART UNIT 3763

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/096592 Patent No.: 7879022B2

CofC mailroom date: 9/7/2011

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Note: _____

_____

Virginia Tolbert

Certificates of Correction Branch

(571) 272-0460

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☐ **Approved** — **All** changes apply.
- ☑ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: The correction to Claim 3 has been approved
The corrections to claims 13 and 14 have been
denied

SPE 3763 Art Unit

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AUG 22 2011

OFFICE OF PETITIONS

CHEVRON CORPORATION
P.O. BOX 6006
SAN RAMON CA 94583-0806

In re Application of :
Kenneth Dale NELSON et al. : ON PETITION
Application No. 11/096679 :
Filed: March 31, 2005 :
Atty. Docket No.: T-6289

This is in response to the petition under 37 CFR 1.137(b), filed July 29, 2011, to revive the above-identified application.

The petition is **GRANTED.**

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed April 6, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) was obtained. The application became abandoned on July 7, 2010. A Notice of Abandonment was mailed November 9, 2010.

The petition satisfies the conditions for revival pursuant to 37 CFR 1.137(b) by including (1) a reply in the form of a response to the Office action mailed April 6, 2010, (2) a petition fee of $810, and (3) a statement of unintentional delay.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. If the person signing the instant petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed to the address currently of record until such time as appropriate instructions are received to the contrary.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. *See*, 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997).

In the event that date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquires regarding this decision should be directed to Robert DeWitty, Petitions Attorney, Office of Petitions (571-272-8427).

The application will be referred to the Technology Center 1771 for further action on the filed Response.

Ramesh Krishnamurthy

for Anthony Knight
Director
Office of Petitions

cc: Michael E. Carmen
M. Carmen & Associates, PLLC
1201 RXR Plaza, Uniondale, NY 11556

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LADAS & PARRY
26 West 61st Street
NEW YORK NY 10023

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JAN 12 2011

OFFICE OF PETITIONS

In re Application of :
Ricco et al. : DECISION ON PETITION
Application Number: 11/096874 :
Filing Date: 04/01/2005 :
Attorney Docket Number: U :
015705-1

This is a decision on the petition filed on November 9, 2010, under 37 CFR 1.137(b) to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on September 26, 2010, for failure to timely submit the issue and publication fees in response to the Notice of Allowance and Fee(s) Due mailed on June 25, 2010, which set a three (3)-month statutory period for reply. On October 12, 2010, Notice of Abandonment was mailed.

Receipt of the issue and publication fees 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.

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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Patent No. : **7789018**
Ser. No. : **11/096887**
Inventor(s) : **BURNS, SEAN P.**
Issued : **09/07/2010**
Title : **GAS GENERATOR ASSEMBLY**
Docket No. : **5702-01082**

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322 and/or 1.323.

In regards to the alleged error(s) in the Specification, Column 2 Line 19 of the Specification is printed in accordance with the Specification filed on 4-1-05 by the applicant/attorney.

In view of the foregoing, your request, in this matter, is hereby denied.

A Certificate of Correction Request accompanied by the $100 fee can be filed to correct this error.

Omega Lewis
For Mary Diggs
Decisions & Certificates
Of Correction Branch
(703)756-1575 or (703) 756-1814

Laurence C. Begin
L.C. Begin & Associates, PLLC
PMB 403
510 Highland Avenue
Milford MI 48381

OL

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United States Patent and Trademark Office
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VIDAS ARRETT & STEINKRAUS PA
SUITE 400, 6640 SHADY OAK ROAD
EDEN PRAIRIE MN 55344

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DEC 16 2010
OFFICE OF PETITIONS

In re
Patent No. 7,642,088
Issued: January 5, 2010
Application No. 11/096,904
Filed: April 1, 2005

DECISION

This is a decision on the fee deficiency submission under 37 CFR 1.28(c), filed October 19, 2010.

The fee deficiency submission under 37 CFR 1.28 of $590 for the filing fee, $585 for a three month extension of time, $405 for the RCE, and $555 for another three month extension of time is hereby accepted.

The change of status to large entity has been entered.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3207.

Cliff Congo
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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Lisa K. Jorgenson, Esq.
STMicroelectronics, Inc.
1310 Electronics Drive
Carrollton, TX 75006

Mail Date: 08/24/2010

Applicant	: Philip P. Dang	: DECISION ON REQUEST FOR
Patent Number	: 7653132	: RECALCULATION of PATENT
Issue Date	: 01/26/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/096,906	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/01/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1215** 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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P.O. Box 1450
Alexandria, VA 22313-1450
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MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED

DEC 07 2010

OFFICE OF PETITIONS

In re Application :
Sherigar, et al. :
Application No. 11/096,988 : PATENT TERM ADJUSTMENT
Filing or 371(c) Date: April 1, 2005 :
Dkt. No.: 15933US01 :

This is in response to the application for patent term adjustment under 37 CFR 1.705(b), filed November 23, 2010.

Applicant submits that the correct patent term adjustment to be indicated on the patent is 1,613 days, not 999 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction on the basis that the Office will take in excess of three years to issue this patent.

Insofar as the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is DISMISSED as PREMATURE.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See, § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time

of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

Receipt is hereby acknowledged of the required patent term adjustment application fee under 37 CFR 1.705(b) of $200.00. See, 37 CFR 1.18(e).

However, any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and **must** include payment of the required fee under 37 CFR 1.18(e).

The application file is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
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.

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FULWIDER PATTON LLP
HOWARD HUGHES CENTER
6060 CENTER DRIVE, TENTH FLOOR
LOS ANGELES CA 90045

MAILED

NOV 03 2011

OFFICE OF PETITIONS

In re Application of
Gregory W. Fung et al.
Application No. 11/097,010
Filed: March 31, 2005
Attorney Docket No. ENDOS 69427
(GG0108USO1)

ON PETITION

This is a decision on the petition filed October 26, 2011, under 37 CFR 1.137(a) to revive the above-identified application and on the request for refund filed on even date. The petition is treated as a Petition to Withdraw Holding of Abandonment, under 37 CFR 1.181.

The petition under 37 CFR 1.181 is **GRANTED**.

In response to a Final Office Action mailed May 25, 2010, a Notice of Appeal was filed August 20, 2010. A Notice of Panel Decision from Pre-Appeal Brief Review mailed August 18, 2011 set a period of one month for the filing of an Appeal Brief by September 18, 2011. Petitioner argues that a Request for Continued Examination (RCE) and amendment were filed on September 16, 2011, however, the application was held abandoned and a Notice of Abandonment was mailed September 22, 2011.

A search of the application file and the USPTO records reveals that in fact, the RCE was timely filed on September 16, 2011 and is of record.

Accordingly, the response was timely and the Notice of Abandonment mailed September 22, 2011 was mailed in error and is hereby withdrawn. The petition fee in the amount of $620 is being refunded to the credit card provided.

This matter is being referred to Technology Center 3736 for processing the RCE filed September 16, 2011.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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INTEGRAL INTELLECTUAL PROPERTY INC./RIM
1370 DON MILLS ROAD, SUITE 300
TORONTO ON M3B 3N7 CA CANADA

MAILED
NOV 25 2011
OFFICE OF PETITIONS

In re Patent No. 8,024,809 :
Issued: September 20, 2011 : LETTER REGARDING
Application No. 11/097,147 : PATENT TERM ADJUSTMENT
Filed: April 4, 2005 :
Attorney Docket No. RIM012-01US :

This is a decision on the "Application for Patent Term Adjustment under 37 C.F.R. § 1.705(d)" filed on November 14, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected from 1668 days to 1723 days.

The request for review of the patent term adjustment is **DISMISSED.**

Patentee is given **THIRTY (30) DAYS or ONE (1) MONTH, whichever is longer,** from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The patent term adjustment indicated in the patent is properly reflected.

Patentee fails to account for the filing of the Notice of Appeal on February 1, 2010 and the Notice of Appeal on November 22, 2010. The period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). The 183 days of the over three year period consumed by appellate review, beginning on February 1, 2010 and ending on May 6, 2010 with the mailing of the non-Final Office Action and beginning on November 22, 2010 and ending on February 17, 2011 with the mailing of the non-Final Office Action are not included in the B delay. *See* 35 U.S.C. § 154(b)(1)(B)(ii). The Office has also determined that the period of overlap is 67 days. Thus, B delay is 1081 days, considering the 67 days of overlap. As such, the patent term adjustment is 1668 (731 + 67 "A delay" days + 1081 "B delay" days - 67 days of overlap - 144 Applicant delay days) days, not 1723 days.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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OBLON SPIVAK MCCLELLAND
MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA, VA 22314

MAILED

DEC 13 2010

OFFICE OF PETITIONS

In re Application of
Junpei Endo et al
Application No. 11/097,187
Filed: April 4, 2005
Attorney Docket No. 270158US53

ON PETITION

This is a decision on the petition, filed December 13, 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 November 10, 2010 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Irvin Dingle at (571) 272-3210.

This matter is being referred to Technology Center AU 2622 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

/Irvin Dingle/
Irvin Dingle
Petitions Examiner
Office of Petitions

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above. Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

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PERLEY-ROBERTSON, HILL & MCDOUGALL LLP
1400-340 Albert Street
OTTAWA ON K1R 0A5 CA CANADA

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OCT 20 2011
OFFICE OF PETITIONS

In re Application of :
Saul CAETANO et al. :
Application No. 11/097,284 : ON PETITION
Filed: April 4, 2005 :
Attorney Docket No. TOCA-002PUS :

This is a decision on the petition under 37 CFR 1.137(b), filed August 16, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office Action mailed December 9, 2010 which set a shortened statutory period for reply of three (3) months. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on March 10, 2011.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment, Request for Continued Examination, and the filing fee of $405; (2) the petition fee of $810; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final Office Action of December 9, 2010 is accepted as having been unintentionally delayed.

Petitioner previously submitted the $405 RCE fee on July 27, 2011. Accordingly, $405 RCE fee submitted with the petition is unnecessary and will be refunded to petitioner by treasury check.

Application No. 11/097,284

Telephone inquiries concerning this decision should be directed to Wilson Lee at (571) 272-1824 or in his absence, the undersigned at (571) 272-7099.

The application file is being referred to Technology Center AU 3611 for appropriate action on the concurrently filed amendment.

David Bucci
Petitions Examiner
Office of Petitions

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

ENZO BIOCHEM, INC.
527 MADISON AVENUE (9TH FLOOR)
NEW YORK NY 10022

MAILED
MAR 14 2012
OFFICE OF PETITIONS

In re Application of :
ZHENG et al. :
Application No. 11/097,518 : DECISION GRANTING PETITIONS
Filed: April 1, 2005 : UNDER 37 CFR 1.78(a)(3) AND (a)(6)
Attorney Docket No. Enz-68(CIP-2) :

This is a decision on the petition under 37 CFR 1.78(a)(3) and 1.78(a)(6), filed February 10, 2012, to accept an unintentionally delayed claim under 35 U.S.C. 120 and 119(e) for the benefit of the prior-filed applications set forth in the concurrently filed supplemental amendment.

The petitions are **GRANTED.**

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

(1) the reference required by 35 U.S.C. 120 and 119(e) and 37 CFR 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The reference must be submitted during the pendency of the later-filed application as required by 37 CFR 1.78(a)(5)(ii). Further, the nonprovisional application claiming the benefit of the prior-filed provisional application must have been filed within twelve months of the filing date of the prior-filed provisional application.

All the above requirements having been satisfied, the late claim under 35 U.S.C. 120 and 119(e) for the benefit of the prior-filed applications is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) and 1.78(a)(6) should not be construed as meaning that this application is entitled to the benefit of the filing date of the prior-filed applications. In order for this application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. 120 and 37 CFR 1.78(a)(1) and (a)(2) and under 35 U.S.C. 119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the claim under 35 U.S.C. 120 and 119(e) for the benefit of the prior-filed applications, accompanies this decision on petition.

This application is being forwarded to Technology Center Art Unit 1647 for consideration by the examiner of the claim under 35 U.S.C. 120 and 119(e) of the prior-filed nonprovisional and provisional applications.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3211. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/097,518	04/01/2005	1647	8290	Enz-68(CIP-2)	149	48

CONFIRMATION NO. 8667

28171
ENZO BIOCHEM, INC.
527 MADISON AVENUE (9TH FLOOR)
NEW YORK, NY 10022

CORRECTED FILING RECEIPT

OC000000053132012

Date Mailed: 03/14/2012

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)

Jie Zheng, Memphis, TN;
Jufang Shan, Memphis, TN;
Dianqing Wu, Cheshire, CT;

Power of Attorney: None

Domestic Priority data as claimed by applicant

This application is a CIP of 10/849,067 05/19/2004
which claims benefit of 60/504,860 09/22/2003

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 06/27/2005

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/097,518**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No
**** SMALL ENTITY ****

Title

Compositions and methods for the inhibition of dishevelled proteins

Preliminary Class

514

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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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/097,523	03/31/2005	Jay Shiro Tashiro	WOLFSONG 05.01	8669

43755 7590 06/01/2011

DALE F. REGELMAN
QUARLES & BRADY, LLP
ONE SOUTH CHURCH AVENUE AVE, STE. 1700
TUCSON, AZ 85701-1621

EXAMINER	
MOSSER, KATHLEEN MICHELE	

ART UNIT	PAPER NUMBER
3715	

NOTIFICATION DATE	DELIVERY MODE
06/01/2011	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):

reena.mendez@quarles.com
pat-dept@quarles.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE
BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte JAY SHIRO TASHIRO & DARREN R. CHOATE

Appeal No. 2011-002058
Application 11/097,523
Technology Center 3700

DECISION ON PETITION

This is a decision on the "Petition to the Accept Reply Brief" filed January 31, 2011 ("Petition"). The Petition seeks "to enter the Appellants' Reply Brief filed on even date herewith." Petition, 2. The Petition will be treated as a petition to the Chief Administrative Patent Judge under 37 C.F.R. § 41.3 (withdraw holding of abandonment). *See* 75 Fed. Reg. 15,690 (Mar. 30, 2010) for authority of Chief Administrative Patent Judge.

FINDINGS

1. On September 12, 2009, Appellants filed a change of address form. However, the change of address had a typographical error, and the Form was placed in Application 11/097,572.

2. On December 18, 2009, Appellants filed a Notice of Appeal.

3. On May 18, 2010, Appellants filed a three month extension of time, an Amendment after Final Rejection, and an Appeal Brief.

4. On July 13, 2010, the Examiner mailed an Advisory Action to Appellants, entering the May 18, 2010 Amendment.

5. On August 2, 2010, the Examiner mailed an Examiner's Answer to counsel to the following address, 4231 S. Fremont Avenue Tucson, AZ 85714.

6. The mailing address of the August 2, 2010 Examiner's Answer was not the correct address at the time of mailing.

7. On September 13, 2010, Appellants filed a second Change of Address form. This was a copy of the Change of Address form filed September 12, 2009.

8. On November 23, 2010, the Board of Appeals and Interferences (Board) mailed a Docketing Notice to Appellants.

9. On January 31, 2011, Appellants filed the Petition, an Affidavit and a Proposed Reply Brief. Thus, the period from the last date on which a compliant brief could be timely filed, October 2, 2010, until the date on which the Petition was filed, January 31, 2011, was almost 4 months.

10. Appellants' attorney states that he "recently reviewed the status of this case using the PAIR facility and learned that an Examiner's Answer was mailed on August 2, 2010." Petition, 2.

DISCUSSION

In view of the fact that Appellants filed a Change of Address form prior to the mailing of the Examiner's Answer, the petition is granted.

DECISION

In view of the foregoing, the Petition is GRANTED.

The application will be remanded to the Examiner to consider the Reply Brief filed with this Petition.

James Donald Smith
Chief Administrative Patent Judge
Board of Patent Appeals and Interferences

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SUITE 1600
CHICAGO IL 60603-3406

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NOV 02 2010

OFFICE OF PETITIONS

In re Application of :
Peter J. Legg :
Application No. 11/097,584 : DECISION ON PETITION
Filed: April 01, 2005 :
Attorney Docket No. **9010/96610 (05-0102)** :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 16, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, April 28, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on July 29, 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) an adequate statement of unintentional delay. Accordingly, the reply to the non-final Office April 28, 2009, is accepted as having been unintentionally delayed.

37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Since the statement appearing in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the required statement. Petitioner must notify the Office if this is **not** a correct reading of the statement appearing in the petition.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and

Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at (571) 272-2783.

This application is being referred to Technology Center AU 2461 for appropriate action on the concurrently filed amendment

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP
1279 OAKMEAD PARKWAY
SUNNYVALE, CA 94085-4040

Mail Date: 08/02/2010

Applicant	: Harsha L. Narayan	: DECISION ON REQUEST FOR
Patent Number	: 7668160	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/097,628	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 03/31/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **974** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

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Paper No.

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DEC 21 2010

OFFICE OF PETITIONS

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. BOX 2938
MINNEAPOLIS MN 55402

In re Application of :
Reardan et al. :
Application No. 11/097,651 :
Patent No. 7,797,171 :
Filed: April 1, 2005 :
Issued: September 14, 2010 :
Attorney Docket No. 101.031US3 :
Title: SENSITIVE DRUG DISTRIBUTION SYSTEM AND METHOD :

DECISION ON PETITION PURSUANT TO 37 C.F.R. § 1.182

This is in response to the petition pursuant to 37 C.F.R. § 1.182, requesting the entry of a terminal disclaimer subsequent to the issuance of a patent, filed on November 19, 2010.

This petition is **GRANTED**.

Receipt of the petition fee is acknowledged. The terminal disclaimer, submitted concurrently with this petition on November 19, 2010, is accepted, and it appears in the electronic record.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[1]

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

1 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 10/14/10 Paper No.: —

TO SPE OF : ART UNIT 3626

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/097651 Patent No.: 7797171B2

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Virginia Tolbert
Certificates of Correction Branch
571-272-0460

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☐ **Approved** — **All** changes apply.
- ☒ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: Do NOT add Lawrence '977 to field 56.

/Robert Morgan/
SPE Art Unit 3626 1/9/12

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DEC 16 2010

OFFICE OF PETITIONS

PERKINS COIE, LLP
P.O. BOX 1247
SEATTLE, WA 98111

In re Application of
Martin T. King, et al.
Application No. 11/097,833
Filed: April 1, 2005
Attorney Docket No.: EXBI-2008121

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed November 11, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed July 7, 2009. In view of the 2-month extension of time under the provisions of 37 CFR 1.136(a), the application became abandoned on December 8, 2009. This decision precedes the mailing of a Notice of Abandonment.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) under 37 CFR 1.114 and fee of $405, (2) the petition fee of $810, and (3) an adequate statement of unintentional delay.

This application is being referred to Technology Center AU 3625 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/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE CA 92614

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DEC 07 2011
OFFICE OF PETITIONS

In re Application of :
Brown-Driver, et al. :
Application No. 11/097,928 : RESPONSE TO PETITION
Filed: April 1, 2005 :
Attorney Docket No. RTS-0531US :

This is a decision on the petition under 37 CFR 1.59, filed July 25, 2011, requesting that the statements in several Office actions and information identified in a citation within an Office action be expunged from the record.

The petition is **dismissed**.

The patent examiner presented information in Office actions mailed September 28, 2007; May 19, 2008; December 15, 2009; May 19, 2010; January 19, 2011; and January 25, 2011. The petition asserts that the sequences and nucleotide ranges set forth in the Office actions should not be part of the prosecution record. The petition further asserts that expungement of the sequences and nucleotide ranges set forth in the Office actions was discussed with Supervisory Examiner Heather Calamita, Training Quality Assurance Specialist Bennett Celsa and Examiner Dana Shin in an interview on June 8, 2011 with respect to related Application No. 12/273,731. The petition states: "Applicants note that during the interview, Supervisory Examiner Calamita and Training Quality Assurance Specialist Celsa agreed that statements regarding sequences and nucleotide ranges created by the Examiner should be expunged from the record..."

37 CFR 1.59 provides for the applicant's request for expungement of information in a patent application, other than the original papers upon which the filing date was granted. However, under the terms of the rule, petitioner "must ...establish to the satisfaction of the Director that the expungement of the information is appropriate..." See 37 CFR 1.59(b). Under the circumstances of this case, petitioner has not met his burden of proof.

While petitioner may disagree with some of the contents of the contested Office actions, the USPTO has long held that a mere difference in opinion does not warrant expungement of part or all of a contested communication from the file record. See, e.g., Ex Parte Fox, 1910 Dec. Commissioner Pat. 123 (Comm'r Pat. 1910). The MPEP makes clear that the expungement of record information should occur in very limited situations. See MPEP 724.05. That particular

section of the MPEP and referenced-sections (e.g., MPEP § 724.02) address the following types of information as subject (or susceptible) to possible expungement:

1) trade secret information;
2) proprietary information;
3) protective order material;
4) unintentionally-submitted information; and
5) information submitted in a wrong application.

Petitioner has not alleged that the contested Office actions include any trade secret, are proprietary in nature, or are subject to a protective order. It is also evident that the information was not wrongly submitted.

Furthermore, expungement of an Office communication would be justified where an Office communication contained inappropriate statements that were not suitable for retention in the administrative record. Cf. 37 CFR 1.3, which requires that applicants must conduct their business with the USPTO with decorum and courtesy. Even where expungement is warranted under § 1.3 for an Office communication, a redacted version is maintained in the file; only the offensive language is removed.

However, in the information to be expunged the examiner presents numerous conclusions regarding the obvious character of the claimed invention. There is no apparent failure by the examiner to conduct business with decorum and courtesy in the presentation of these conclusions.

Accordingly, no adequate basis is given or apparent for expunging the contested portions of the Office actions, and the USPTO sees no reason to exercise its discretion to deviate from, or expand upon, the above long-established reasons for expungement. See, e.g., Saxbe v. Bustos, 419 U.S. 65, 74 (1974) (acknowledging an agency's right to maintain a "longstanding administrative construction").

As suggested in the petition, Supervisory Examiner Calamita and Training Quality Assurance Specialist Celsa were contacted regarding the expungement and they did not recommend that the petition be granted.

Moreover, there is no record in application no. 11/097,928 of the June 8, 2011 interview in which the sequences and nucleotide ranges set forth in the Office actions of this application are addressed. The importance of recording the substance of an interview is discussed in MPEP 713.04. Recordation should include as appropriate:

(A) a brief description of the nature of any exhibit shown or any demonstration conducted;
(B) identification of the claims discussed;
(C) identification of specific prior art discussed;
(D) identification of the principal proposed amendments of a substantive nature discussed;

(E) the general thrust of the principal arguments of the applicant and the examiner, even where the interview is initiated by the examiner. The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments can be understood in the context of the application file;
(F) a general indication of any other pertinent matters discussed; and
(G) the general results or outcome of the interview.

To date, petitioner has not yet filed a summary of the interview as it was witnessed by him. MPEP 713.04 notes that, in accordance with 37 CFR §§ 1.2 and 1.133(b), applicant or his attorney or agent has the responsibility of making the substance of an interview of record in the application file, and that the examiner has the responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability. Petitioner should file an interview summary to ensure that the substance of the interview is made of record in the present application. Furthermore, petitioner is reminded that alleged oral promises will not be honored. As 37 CFR 1.2 states:

> 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.

Also, any renewed petition should explain for the record the nature of the contested information. The explanation should be supported by appropriate evidence of the information's trade secret or proprietary nature, or the protective order to which the information is subject.

The USPTO strives to maintain a complete record of proceedings in the prosecution of an application and desires to conduct its business with transparency. Conclusions made by an examiner, with decorum and courtesy, and on the record during the prosecution of the application will not be removed absent substantial justification. The examiner's conclusions may be appealed, not expunged, if petitioner considers them to be technically inaccurate or unsubstantiated conjecture.

Telephone inquiries concerning this communication should be directed to the undersigned at (571) 272-6692.

Christopher Bottorff
Petitions Examiner
Office of Petitions

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DINSMORE & SHOHL LLP
ONE DAYTON CENTRE
SUITE 1300
ONE SOUTH MAIN STREET
DAYTON OH 45402-2023

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OFFICE OF PETITIONS

In re Application of
Changming Li
Application No. 11/097,945
Filed: April 1, 2005
Attorney Docket No. NAY 0009 PA/31558.11

: ON PETITION

This is a decision on the petition under 37 CFR 1.137(b)[1], filed December 13, 2010, 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 May 20, 2010. A response was filed November 22, 2010 with a three month extension of time, but by Advisory Action of December 3, 2010, petitioner was advised that the response did not place the application in condition for allowance. The instant petition precedes the mailing of the Notice of Abandonment.

Petitioner has submitted a Request for Continued Examination (RCE) and an amendment as the submission required under 37 CFR 1.114.

This matter is being referred to Technology Center 1759 for processing of the RCE.

Telephone inquiries related to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

[1]Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The 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)).

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 1965, 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:	20344-0002001		
Application Number:	11/097,956	Filing Date (or 371(b) or (f) Date):	April 1, 2005
Patent Number:	7,659,915	Issue Date:	February 9, 2010
First Named Inventor:	Raymond C. Kurzweil		
Title:	Portable Reading Device with Mode Processing		

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	/Denis G. Maloney/	Date	August 9, 2010
Name: (Print/Type)	Denis G. Maloney		Registration Number: 29,670

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.

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MINNEAPOLIS, MN 55440-1022

Mail Date: 09/02/2010

Applicant	: Raymond C. Kurzweil	: DECISION ON REQUEST FOR
Patent Number	: 7659915	: RECALCULATION of PATENT
Issue Date	: 02/09/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/097,956	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/01/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **959** 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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Margaret Anderson
106 E. 6th Street, Suite 900
Austin TX 78701

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MAR 14 2011

OFFICE OF PETITIONS

In re Application of :
ALEXANDER J. COHEN, ET AL. :
Application No. 11/097,977 : DECISION ON PETITION
Filed: March 31, 2005 : TO WITHDRAW
Attorney Docket No. **QQ1-0146US** : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed January 27, 2011.

The request is **NOT APPROVED**.

The request cannot be approved because the Office no longer accept address changes to a new practitioner/customer number or law firm filed with a request, absent the filing of a power of attorney to the new representative.

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, the most current address information provided for the first named inventor. 37 CFR 3.71(c) states:

> *An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.*

The assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, the statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (*e.g.*, reel and frame number).

A courtesy copy of this decision is being mailed to the address on the request. However, 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 JoAnne Burke at 571-272-4584.

JoAnne Burke
Petitions Examiner
Office of Petitions

cc: LEE & HAYE, PLLC
601 W RIVERSIDE
SUITE 1400
SPOKANE, WA 99201

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Margaret Anderson
106 E. 6th Street, Suite 900
Austin TX 78701

MAILED

MAR 14 2011

OFFICE OF PETITIONS

In re Application of :
ALEXANDER J. COHEN, ET AL. :
Application No. 11/097,980 : DECISION ON PETITION
Filed: March 31, 2005 : TO WITHDRAW
Attorney Docket No. **QQ1-0155US** : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed January 27, 2011.

The request is **NOT APPROVED**.

The request cannot be approved because the Office no longer accept address changes to a new practitioner/customer number or law firm filed with a request, absent the filing of a power of attorney to the new representative.

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, the most current address information provided for the first named inventor. 37 CFR 3.71(c) states:

> *An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.*

The assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, the statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (*e.g.*, reel and frame number).

A courtesy copy of this decision is being mailed to the address on the request. However, 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 JoAnne Burke at 571-272-4584.

JoAnne Burke
Petitions Examiner
Office of Petitions

cc: LEE & HAYE, PLLC
601 W RIVERSIDE
SUITE 1400
SPOKANE, WA 99201

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P.O. BOX 2938
MINNEAPOLIS MN 55402

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FEB 04 2011

OFFICE OF PETITIONS

In re Patent No. 7,765,107
Issued: July 27, 2010
Application No. 11/097,985
Filed: April 1, 2005
Attorney Docket No. 101.031US4

ON PETITION

This is a decision on the PETITION UNDER 37 CFR 1.182 TO CORRECT THE NAME OF THE ASSIGNEE ON THE TERMINAL DISCLAIMER" filed November 20, 2010, requesting correction to the terminal disclaimer filed on February 9, 2010.

The petition is **DISMISSED** to the extent that the Terminal Disclaimer filed February 9, 2010 will not be removed from the record.

Any request for reconsideration must be filed within TWO (2) MONTHS. This 2-month period is governed by 37 CFR 1.181(f) and is not extendable under 37 CFR 1.136.

Application No. 11/097,651 was filed on April 1, 2005 and issued as U.S. Patent No. 7,765,107 on July 27, 2010.

Patentees state that a terminal disclaimer was originally filed on February 9, 2010. However, there was a clerical error in the originally filed Terminal Disclaimer with respect to the identified Assignee. Patentees request that the attached replacement Terminal Disclaimer be entered into the Official file in lieu of the Terminal Disclaimer filed on February 9, 2010, to correct the clerical error.

The Terminal Disclaimer filed February 10, 2010 (February 9, 2010 certificate of mail date) disclaimed, "the terminal part of the statutory term of any patent granted on the above-identified patent application, which would extend beyond the expiration date of the full statutory term, as presently shortened by any terminal disclaimers, of any patent issuing from U.S. Serial No. 11/097,651. The assignee hereby agrees that any patent to be granted on the captioned application shall be enforceable only for and during such period as such patent is commonly owned with any patent issuing from U.S. Serial No. 11/097,651. This agreement shall run with any patent granted on the above-identified application and shall be binding upon the assignee's successors and assigns".

The captioned application as well as U.S. Application Serial No. 10/979,665 are both divisional applications of U.S. Application Serial No. 10/322,348. The assignment for

U.S. Serial No. 10/322,348 was recorded on February 19, 2010 at Reel 023962, Frames 0725 - 0731. That assignment assigned the application underlying U.S. Serial No. 10/322,348, as well as, inter alia, all continuations and divisionals based upon that application. The Terminal Disclaimer filed February 10, 2010 (February 9, 2010 certificate of mail date) is signed by Bradley A. Forrest on behalf of assignee Jazz Pharmaceuticals, Inc.

The "replacement" Terminal Disclaimer however is signed by Monique M. Perdok Shonka, on behalf of assignee Jazz Pharmaceuticals, Inc.

The two disclaimers, list Jazz Pharmaceuticals, Inc. as the assignee and are both signed by individuals empowered to act on behalf of Jazz Pharmaceuticals, Inc. however, the difference is that in the parent application, 10/322,348, the complete chain of assignments was not properly recorded at the time the February 10, 2010 (February 9, 2010 certificate of mail date) Terminal Disclaimer was filed. Applicant has now taken the appropriate corrective action by filing assignments from Orphan Medical, Inc. to Orphan Medical, LLC; from Orphan Medical, LLC to JPI Commercial, LLC; and from JPI Commercial, LLC to Jazz Pharmaceuticals, Inc.

The difference in the two disclaimers is the reference to the assignments. A review of Office records confirms that the assignments have all now been recorded.

Nonetheless, the Terminal Disclaimer filed February 10, 2010 (February 9, 2010 certificate of mail date) was accepted and recorded by the examiner.

Moreover, assignment data printed on the patent is based solely on the information so supplied on the Issue Fee Transmittal Form (PTOL-85B). A review of the record indicates that the Issue Fee Transmittal Form (PTOL-85B) submitted June 10, 2010 identified the assignee as JPI Commercial, LLC and thus, the patent properly issued to assignee JPI Commercial, LLC , with a Notice that:

> This patent is subject to a terminal disclaimer.

Thus, there is no issue as to what was dedicated to the public. Patentees do not request that the Terminal Disclaimer be removed or nullified. There is no error in the patent requiring correction. As such, this petition does not necessitate consideration of whether issuance of a certificate of correction is warranted.

Rather, patentees request, in effect, that the Terminal Disclaimer filed February 10, 2010 (February 9, 2010 certificate of mail date) be replaced in the record with the Terminal Disclaimer filed November 20, 2010.

The Terminal Disclaimer filed February 10, 2010 (February 9, 2010 certificate of mail

date) was made of record and considered by the examiner in examination and allowance of this application. Removal of the Terminal Disclaimer filed February 10, 2010 (February 9, 2010 certificate of mail date) from the application record is inappropriate.

Placement of the Terminal Disclaimer filed November 20, 2010 (along with the petition and petition decision) in the record is sufficient to complete the record. The Terminal Disclaimer filed November 20, 2010 is accepted and recorded. No further action will be undertaken.

The petition fee of $400 has been charged to Deposit Account No. 19-0743, as authorized.

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

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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Perkins Coie, LLP
P.O. Box 1247
Seattle WA 98111

MAILED

FEB 23 2011

OFFICE OF PETITIONS

In re Patent No. 7,421,155 :
Issue Date: September 2, 2008 :
Application No. 11/098,016 : DECISION ON PETITION
Filed: April 1, 2005 :
Attorney Docket No. 435188116US :

This is a decision on the petition under 37 CFR 1.182, filed December 24, 2010, requesting issuance of duplicate Letters Patent for the above-identified patent.

The petition is **GRANTED**.

The Office of Data Management is directed to issue duplicate Letters Patent.

As authorized, the $400 fee for the petition under 37 CFR 1.182 has been assessed to petitioner's deposit account.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3205. Inquiries regarding the issuance of duplicate Letters Patent may be directed to Ollie Person in the Office of Data Management at (703) 756-1555.

A copy of this decision is being sent to Office of Data Management for issuance of duplicate Letters Patent.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

cc: Ollie Person, Randolph Square, 9th Floor, Room D30-A (Fax No. (571) 270-9764)
Kimberly Terrell (Fax No. (571) 270-9958)

UNITED STATES PATENT AND TRADEMARK OFFICE

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CARR LLP
670 FOUNDERS SQUARE
900 JACKSON STREET
DALLAS TX 75202

MAILED

AUG 30 2010

OFFICE OF PETITIONS

In re Application of :
Brian Marcus Hudson et al. :
Application No. 11/098,168 : DECISION ON PETITION
Filed: April 4, 2005 :
Attorney Docket No. 13634.0016 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 8, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, July 8, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on October 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 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.

Telephone inquiries concerning this decision should be directed to JoAnne Burke at (571) 272-4584.

This application is being referred to Technology Center AU 3626 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
www.uspto.gov

GREER, BURNS & CRAIN
300 S WACKER DR
25TH FLOOR
CHICAGO IL 60606

MAILED
SEP 26 2011
OFFICE OF PETITIONS

In re Patent No. 7,337,753 :
Issue Date: March 4, 2008 :
Application No. 11/098,174 : NOTICE
Filed: April 4, 2005 :
Attorney Docket No. 1621.72827 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed August 31, 2011. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby accepted. The petition is **GRANTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

This file is being forwarded to Files Repository.

Telephone inquiries related to this decision should be directed to the Kimberly Inabinet at (571) 272-4618.

/Kimberly Inabinet/
Kimberly Inabinet
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MING YAT KWOK
1646 FRANCES ST.
VANCOUVER BC V51 1Z4 CA CANADA

MAILED

SEP 2 9 2010

OFFICE OF PETITIONS

In re Application of :
Kwok, Ming Yat :
Application No. 11/098,196 : ON PETITION
Filed: April 5, 2005 :
Title: Multiple Variable Outlets Shooting Apparatus :

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed September 7, 2010, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:
(1) the required reply,[1]
(2) the petition fee,
(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
(4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information.[2]

The instant petition lacks item(s) (3). Only page 1 of 2 of the instant petition was received. As such, as the unintentional delay statement is located on page 2, the instant petition did not fulfill item (3) as listed above.

Further correspondence with respect to this matter should be addressed as follows:

---

[1] In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

[2] See MPEP 711.03(c)(III)(C) and (D).

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MING YAT KWOK
1646 FRANCES ST.
VANCOUVER BC V51 1Z4 CA CANADA

MAILED

DEC 10 2010

OFFICE OF PETITIONS

In re Application of	:	
Kwok, Ming Yat	:	
Application No. 11/098,196	:	ON PETITION
Filed: April 5, 2005	:	
Title: Multiple Variable Outlets Shooting Apparatus	:	

This is a decision on the renewed petition under 37 C.F.R. § 1.137(b), filed November 16, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The petition now satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and an Amendment (previously submitted), (2) the petition fee of $810.00 (previously submitted), and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3206.

This matter is being referred to Technology Center AU 3696 for further processing of the RCE under 37 CFR 1.114 filed previously on December 14, 2009.

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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3/12-w 01w

Patent No : 8,123,836 B2
Ser. No. : 11/098,202
Inventor(s) : D. Scott Kalous, et. al.
Issued : February 28, 2012

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

Niro, Haller & Niro
181 W. Madison – Suite 4600
Chicago, IL 60602

ej

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MAR 27 2012

NIRO, HALLER & NIRO
181 W. MADISON STREET - SUITE 4600
CHICAGO, ILLINOIS 60602-4515
TELEPHONE NO. (312) 236-0733
FACSIMILE NO. (312) 236-3137

Certificate
MAR 29 2012
of Correction

TO: **U.S. Patent and Trademark Office Central Fax No. 571-273-8300**

Date: March 27, 2012 Time: 11:21 am

TOTAL NUMBER OF PAGES (including cover page): 4 **Please confirm receipt.**
If you do not receive all of the pages, please call (312) 236-0733 and ask for Hannah Martin.

ATTN: Office Of Petitions

FROM: Arthur A. Gasey
Reg. No. 35,150

APPLN: U.S. Patent No. 8,123,836 B2
D. Scott Kalous, et al
Issued: February 28, 2012
Our Docket No. 3742

RE: Request for Certificate of Correction
Authorization to charge Deposit Acctg. 14-1131.

CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. 1.8

I hereby certify that this correspondence is being transmitted by facsimile to the United States Patent and Trademark Office via FAX Number (571) 273-8300 on March 27, 2012.

Hannah Martin
(312) 236-0733

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MAR 27 2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent No.	:	8,123,836 B2
Applicant	:	D. Scott Kalous, et al
Issued	:	February 28, 2012
Title	:	Air Filtration and Purification Apparatus
Art Unit	:	3633
Examiner	:	Ihezie, Joshua K.

REQUEST TO CORRECT ASSIGNEE UNDER 37 CFR 3.81(b)

Mail Stop PETITIONS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

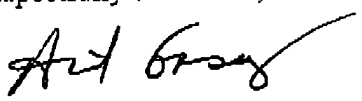
Dear Sir:

Applicant hereby requests correction of the Assignees name on U.S. Patent 8,123,836, issued on February 28, 2012.

When identifying the assignment data on the Issue Fee Transmittal Form PTOL-85B, in error Telefonix, Inc. was listed as the Assignee. The correct assignee is Airistar Technologies, LLC, who is the true owner of the patent and is a company associated with Telefonix, Inc.

A copy of the Notice of Recordation of Assignment reflecting the reel and frame number was recorded is attached. Please charge the $130 processing fee for the correction to Deposit Account No. 14-1131.

Respectfully submitted,



Arthur A. Gasey – Reg. No. 35,150
Niro, Haller & Niro
181 W. Madison – Suite 4600
Chicago, IL 60602

03/28/2012 APEREZAM 00000013 141131 11098202
01 FC:1464 130.00 DA

Dated: March 27, 2012

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MAR 27 2012

United States Patent and Trademark Office

Assignments on the Web > Patent Query

Patent Assignment Assignee Details

NOTE:Results display only for issued patents and published applications. For pending or abandoned applications please consult USPTO staff.

Assignee Name : AIRISTAR TECHNOLOGIES, LLC

Total Assignments: 1

Assignment: 1

Reel/Frame: 020805/0148 **Pages:** 4

Recorded: 04/15/2008

Attorney Dkt #: 4285-002

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignors

1 KALOUS, D. SCOTT **Exec Dt:** 06/23/2005

2 HARRIS, CHARLES **Exec Dt:** 06/15/2005

Assignee

1 AIRISTAR TECHNOLOGIES, LLC
2340 ERNIE KRUEGER CIRCLE
WAUKEGAN, ILLINOIS 60087

Property

Pat #	Pub #	App #
NONE	US20060230934	11098202

Correspondence name and address

PATZIK, FRANK & SAMOTNY LTD.
150 S. WACKER DRIVE
SUITE 1500
CHICAGO, IL 60606

Search Results as of: 02/27/2012 03:57 PM

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.3.1

Web interface last modified: Jan 26, 2012 v.2.3.1

PTO/SB/44 (09-07)
Approved for use through 08/31/2013. OMB 0651-0033
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 8,123,836

APPLICATION NO.: 11/098,202

ISSUE DATE : February 28, 2012

INVENTOR(S) : D. Scott Kalous and Charles Harris

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:

Title Page; Item (73) Assignee:
Cancel Assignee "Telefonix, Incorporated, Waukegan, IL (US)"
Insert Assignee; – Airistar Technologies, LLC, Waukegan, IL (US)–

MAILING ADDRESS OF SENDER (Please do not use customer number below):

Niro, Haller & Niro
181 W. Madison - Suite 4600
Chicago, IL 60602

This collection of information is required by 37 CFR 1.322, 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: **Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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VIDAS, ARRETT & STEINKRAUS, P.A.
RICHARD A. ARRETT
SUITE 400, 6640 SHADY OAK ROAD
6640 SHADY OAK RD.
EDEN PRAIRIE MN 55344

MAILED
DEC 20 2011
OFFICE OF PETITIONS

In re Patent No. 7,392,905 :
Issued: July 1, 2008 :
Application No. 11/098,328 : NOTICE
Filed: April 4, 2005 :
Attorney Docket No. D25.2N-4867-US04 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed November 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**.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20100901

DATE : September 01, 2010

TO SPE OF : ART UNIT 1638

SUBJECT : Request for Certificate of Correction on Patent No.: 7211717

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 petition to approve the change in inventorship under rule 324 is approved and the certificate of correction may issue.

/Anne Marie Grunberg/
Supervisory Patent Examiner.Art Unit 1638

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.
11/098,602	04/04/2005	Steven K. Johnson	DEKA:377US	9033

73905 7590 09/07/2010

SONNENSCHEIN NATH & ROSENTHAL LLP
P.O. BOX 061080
SOUTH WACKER DRIVE STATION, WILLIS TOWER
CHICAGO, IL 60606

EXAMINER	
BUI, PHUONG T	
ART UNIT	**PAPER NUMBER**
1638	

MAIL DATE	DELIVERY MODE
09/07/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

SEP 0 7 2010

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

SONNENSCHEIN NATH & ROSENTHAL LLP
P.O. BOX 061080
SOUTH WACKER DRIVE STATION, WILLIS TOWER
CHICAGO IL 60606

In re Patent No. **7,211717** Johnson et al.
Issue Date: May 1, 2007
Appl No.: 11/098,602
Filed: April 4, 2005
For: Correction of Inventorship

DECISION GRANTING PETITION
37 CFR 1.324

This is a decision on the petition filed August 25, 2010, to correct inventorship under 37 CFR 1.324. The petition has complied with all the requirements under 37 CFR 1.324.

The petition is **GRANTED**.

The patented file is being forwarded to Certificate of Corrections Branch for issuance of a certificate naming only the actual inventor or inventors.

/ Marianne C. 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

DATE: August 30. 2010
TO: Certificates of Correction Branch
FROM: Marianne C. Seidel
Technology Center 1600
SUBJECT: REQUEST FOR CERTIFICATE OF CORRECTION

Please issue a Certificate of Correction in U. S. Letters Patent No. US . **7,211717** as specified on the attached Certificate.

/ Marianne C. Seidel /

Marianne C. Seidel
Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE

Patent No. US **7,211717**
Patented: May 1, 2007

On petition requesting issuance of a certificate for correction of inventorship pursuant to 35 U.S.C. 256, it has been found that the above identified patent, through error and without deceptive intent, improperly sets forth the inventorship. Accordingly, it is hereby certified that the correct inventorship of this patent is:

Bradley A. Sockness

/ Marianne C. Seidel /

Marianne C. Seidel
Technology Center 1600

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20100901

DATE : September 01, 2010

TO SPE OF : ART UNIT 1638

SUBJECT : Request for Certificate of Correction on Patent No.: 7189904

A response is requested with respect to the accompanying request for a certificate of correction.

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - ST (South Tower) 9A22
Palm location **7590** - Tel. No. (703) 305-8309

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Thank You For Your Assistance **Certificates of Correction Branch**

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriated box.

☒ **Approved** All changes apply.

☐ **Approved in Part** Specify below which changes **do not** apply.

☐ **Denied** State the reasons for denial below.

Comments:

The change in inventorship has been approved.

/Anne Marie Grunberg/
Supervisory Patent Examiner.Art Unit 1638

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.
11/098,604	04/04/2005	Steven K. Johnson	DEKA:376US	9029

73905 7590 09/03/2010

SONNENSCHEIN NATH & ROSENTHAL LLP
P.O. BOX 061080
SOUTH WACKER DRIVE STATION, WILLIS TOWER
CHICAGO, IL 60606

EXAMINER	
BUI, PHUONG T	

ART UNIT	PAPER NUMBER
1638	

MAIL DATE	DELIVERY MODE
09/03/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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SEP 0 3 2010

SONNENSCHEIN NATH & ROSENTHAL LLP
P.O. BOX 061080
SOUTH WACKER DRIVE STATION, WILLIS TOWER
CHICAGO IL 60606

In re Patent No. **7,189,904** Johnson et al.
Issue Date: May 1, 2007
Appl No.: 11/098,604
Filed: April 4, 2005
For: Correction of Inventorship

DECISION GRANTING PETITION
37 CFR 1.324

This is a decision on the petition filed August 25, 2010, to correct inventorship under 37 CFR 1.324. The petition has complied with all the requirements under 37 CFR 1.324.

The petition is **GRANTED**.

The patented file is being forwarded to Certificate of Corrections Branch for issuance of a certificate naming only the actual inventor or inventors.

/ Marianne C. 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

DATE: August 30. 2010
TO: Certificates of Correction Branch
FROM: Marianne C. Seidel
Technology Center 1600
SUBJECT: REQUEST FOR CERTIFICATE OF CORRECTION

Please issue a Certificate of Correction in U. S. Letters Patent No. US . **7,189,904** as specified on the attached Certificate.

/ Marianne C. Seidel /

Marianne C. Seidel
Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE

Patent No. US **7,189,904**
Patented: March 13, 2007

On petition requesting issuance of a certificate for correction of inventorship pursuant to 35 U.S.C. 256, it has been found that the above identified patent, through error and without deceptive intent, improperly sets forth the inventorship. Accordingly, it is hereby certified that the correct inventorship of this patent is:

Bradley A. Sockness
Jay R. Hotchkiss

/ Marianne C. Seidel /

Marianne C. Seidel
Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAILED

JUL 18 2011

OFFICE OF PETITIONS

FISH & RICHARDSON P.C. (TC)
PO BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 7,927,581
Zhang, et al.
Issue Date: April 19, 2011
Application No. 11/098,665
Filed: April 4, 2005
Atty Docket No. **29314-0010004**

: DECISION ON REQUEST
: FOR
: RECONSIDERATION OF
: PATENT TERM ADJUSTMENT
: and
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on June 20, 2011, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand, thirty-three (1,033) 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, thirty-three (1,033) days is **GRANTED.**

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The Office is in receipt of the $200. 00 for the fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one thousand, thirty-three (1,033) days.

Telephone inquiries specific to this matter should be directed to the undersigned, at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,927,581 B2

DATED : Apr. 19, 2011

INVENTOR(S) : Zhang et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (1169) days

Delete the phrase "by 1169 days" and insert – by 1033 days--

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 9-21-11

TO SPE OF : ART UNIT 1618

SUBJECT : Request for Certificate of Correction for Appl. No.: 11098665 Patent No.: 7927581

CofC mailroom date: 7-18-11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 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.

X **Approved**	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: The corrections are appropriate.

SPE 1618 Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper #
20100881

DATE : January 25, 2010

TO SPE OF : ART UNIT 2863
SUBJECT : Request for Certificate of Correction for Appl. No.: 11/098788 /Patent no. 7200517

Please respond to this request for a certificate of correction w
ithin 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.

- ☒ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

DREW A. DUNN
SUPERVISORY PATENT EXAMINER

2863
ART UNIT

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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DLA PIPER LLP (US)
4365 EXECUTIVE DRIVE
SUITE 1100
SAN DIEGO CA 92121-2133

MAILED

FEB 27 2012

OFFICE OF PETITIONS

In re Application of :
Kenneth W. CARPENTER et al. :
Application No. 11/098,891 : DECISION ON PETITION
Filed: April 04, 2005 : TO WITHDRAW
Attorney Docket No. **MEDIV2030-2** : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 14, 2012.

The request is **NOT APPROVED.**

The Office will no longer accept address changes to a new practitioner or law firm filed with a Request, absent the filing of a power of attorney to the new representative. The Office will either change the correspondence address of record to the most current address information provided for the assignee of the entire interest who properly became of record under 37 C.F.R 3.71 or, if no assignee of the entire interest has properly been made of record under 37 CFR 3.71, the most current address information provided for the first named inventor.

Accordingly, the request to withdraw from record cannot be approved because the change of address is not that of: **(1) the first named inventor; or (2) an assignee of the entire interest under C.F.R 3.71, who has properly intervened.** 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.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-4231.

/Michelle R. Eason/
Michelle R. Eason
Paralegal Specialist
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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DIW Jun-11

KAREN B. TRIPP
ATTORNEY AT LAW
P.O. BOX 1301
HOUSTON TX 77251-1301

MAILED
JUN 14 2011
OFFICE OF PETITIONS

In re Application of	:	
Matula et al.	:	
Application Number: 11/099,023	:	ON PETITION
Filing Date: 04/05/2005	:	
Attorney Docket Number:	:	
HALB:055	:	

This is a decision in response to the petition under 37 CFR 1.137(b) filed on May 2, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on August 19, 2010, for failure to timely respond to the final Office action mailed on May 18, 2010, which set a three (3)-month shortened statutory time 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 January 27, 2011.

Receipt of the Request for Continued Examination (RCE) and submission under 37 CFR 1.114 is acknowledged.

The application is referred to Technology Center Art Unit 3676 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

8-2-2010

Patent No. : 7,587,244 B2
Ser. No. : 11/099,064
Inventor(s) : Ralf, et. al.
Issued : September 8, 2009

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
(703) 756-1583 or 1580

James D. Schweikert
Hahn Loeser & Parks, LLP
One Gojo Plaza, Suite 300
Akron, Ohio 44311-1076

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

John J. Cunniff
Hahn Loeser & Parks, LLP
Suite 300
One GOJO Plaza
Akron OH 44311-1076

MAILED

AUG 3 0 2010

OFFICE OF PETITIONS

In re Patent No. 7,587,244 :
Issue Date: September 8, 2009 :
Application No. 11/099,064 : DECISION ON PETITION
Filed: April 5, 2005 :
Attorney Docket No. 117163.00131 :

This is a decision on the Request For Certificate Of Correction Of Patent, filed December 29, 2009, requesting correction on the Title Page of the subject patent to identify the correct assignee's name. The Request is being treated as a Petition Under 37 CFR §3.81(b). A completed Certificate of Correction Form (PTO/SB/44) was submitted with Petition.

The petition under 37 CFR §3.81(b) is **GRANTED**.

Petitioner requests that the present Petition was submitted to correct the assignee's name on the previously submitted PTOL 85B and that such error was Applicant's error. Accordingly, petitioner requests, in effect, that the Title Page of the above-identified patent be corrected, via issuance of Certificate of Correction, to correct the assignee's name identified thereon from:

"Biotronik GmbH & Co. KG (DE)"

to:

--Biotronik CRM Patent AG (CH)--

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter.

The requisite $100.00 fee (Fee Code 1811), as set forth under 37 CFR 1.20(a), has been submitted. However, the $130.00 processing fee (Fee Code 1464), as set forth under 37 CFR 1.17(i), was accompanied deposit account authorization to charge any required fees. As such, the fee has been charged as authorized. Further, Office assignment records are consistent with the requested correction. Accordingly, since the Petition complies with the provisions of 37 CFR 3.81(b), it is appropriate for the Office to issue a Certificate of Correction in accordance with the content of the Form PTO/SB/44 submitted with Petition.

Inquiries related this communication should be directed to the undersigned at (571)272-3213.

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. 7,587,244.

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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INGRASSIA FISHER & LORENZ, P.C. (FS)
7010 E. COCHISE ROAD
SCOTTSDALE, AZ 85253

MAILED

DEC 14 2010

OFFICE OF PETITIONS

In re Application of :
Mahibur Rahman, et al. :
Application No. 11/099,138 : DECISION GRANTING PETITION
Filed: April 4, 2005 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. SC13623ZC (038.0113) :

This is a decision on the petition under 37 CFR 1.313(c)(2), filed December 14, 2010, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on December 8, 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 2618 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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CAMPBELL STEPHENSON LLP
11401 CENTURY OAKS TERRACE
BLDG. H, SUITE 250
AUSTIN TX 78758

MAILED

MAR 21 2011

OFFICE OF PETITIONS

In re Application of	:	
Previdi et al.	:	ON REQUEST FOR
Patent Number: 7,646,739	:	RECONSIDERATION OF
Issue Date: 01/12/2010	:	PATENT TERM ADJUSTMENT
Application No. 11/099245	:	
Filing or 371(c) Date: 04/05/2005	:	
Atty Docket No.:	:	
CIS0244US	:	

This is a decision on the REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH, filed on June 30, 2010, which is being treated as a renewed request recalculation of the patent term adjustment in view of Wyeth under 37 CFR 1.705(d).

The petition requesting recalculation of the patent term adjustment in view of Wyeth is **DISMISSED AS MOOT**.

On March 15, 2010, Patentees 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 1031 days.

A Certificate of Correction correcting the patent term to 1031 days was issued on November 16, 2011.

In view of the foregoing, the renewed request for recalculation of the patent term adjustment in view of Wyeth under 37 CFR 1.705(d) is considered moot.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods
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: TI-38237	Patent Number: 7,668,075
Filing Date (or 371(b) or (f) Date): 04-05-2005	Issue Date: 02/23/2010
First Named Inventor: Srinath Hosur	
Title: VERSATILE SYSTEM FOR DUAL CARRIER TRANSFORMATION IN ORTHOGONAL FREQUENCY DIVISION MULTIPLEXING	

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: 09/07/2010

Applicant	: Srinath Hosur	: DECISION ON REQUEST FOR
Patent Number	: 7668075	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/099,317	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/05/2005	: 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.

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)
7,289,906	2007-10-30	11/099,433	2005-04-04	11694/4:3

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	/Paul S. Angello/	Date (YYYY-MM-DD)	2011-12-02
Name	Paul S. Angello	Registration Number	30991

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. 7289906
Issue Date: October 30,2007
Application No. 11099433
Filed: April 4,2005
Attorney Docket No. 11694/3:2

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed December 2,2011 ,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 2,2011 . 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.:20120216

DATE : February 16, 2012

TO SPE OF : ART UNIT 2816

SUBJECT : Request for Certificate of Correction on Patent No.: 8035421

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:

All corrections are acceptable except corrections for figures 12A and 13A.

SPE: /Lincoln Donovan/ **Art Unit** 2816

UNITED STATES 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 16, 2011

BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH VA 22040-0747

In re Application of	:	
Yio-Wha Shau et al.	:	**DECISION ON PETITION**
Application No. 11099570	:	
Filed: 4/6/2005	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. 2846-0331PUS1	:	***DRAWINGS***

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) April 6, 2005.

The petition is **GRANTED**.

A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

1. The fee set forth under 37 C.F.R. 1.17(h),
2. Three (3) sets of the color drawings in question, or (1) set if filed via EFS, and
3. The specification contains appropriate language referring to the color drawings as the first paragraph in that portion of the specification relating to the brief description of the drawings.

The petition was accompanied by all of the required fees and drawings. The specification contains the appropriate language. Therefore, the petition is GRANTED.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

/Don Fairchild/
Office of Data Management
Publications Branch

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Trellis Intellectual Property Law Group, PC
1900 EMBARCADERO ROAD
SUITE 109
PALO ALTO, CA 94303

Mail Date: 08/05/2010

Applicant	: Lakshmankumar Mukkavilli	: DECISION ON REQUEST FOR
Patent Number	: 7661097	: RECALCULATION of PATENT
Issue Date	: 02/09/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/099,821	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/05/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **795** 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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DORSEY & WHITNEY, LLP
INTELLECTUAL PROPERTY DEPARTMENT
1400 Wewatta Street
Suite 400
DENVER CO 80202-5549

MAILED
AUG 16 2011
OFFICE OF PETITIONS

In re Application of :
Sean Curley, et al. :
Application No. 11/099,869 : ON PETITION
Filed: April 5, 2005 :
Attorney Docket No. 43090.830001.US0 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 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 December 22, 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 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 June 23, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a 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) 27-2991.

This application is being referred to Technology Center AU 2614 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

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-39044	Patent Number: 7,667,525
Filing Date (or 371(b) or (f) Date): 04-06-2005	Issue Date: 02/23/2010
First Named Inventor: Leo J. Grimone III	
Title: BUS SWITCH CIRCUIT WITH BACK-GATE CONTROL DURING POWER DOWN	

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
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TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS, TX 75265

Mail Date: 08/18/2010

Applicant	: Leo J. Grimone III	: DECISION ON REQUEST FOR
Patent Number	: 7667525	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/099,965	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/06/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **173** 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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FEB 11 2011

OFFICE OF PETITIONS

CHOATE, HALL & STEWART LLP
TWO INTERNATIONAL PLACE
BOSTON MA 02110

In re Patent No. 7,225,787	:	
Issued: June 5, 2007	:	
Application No. 11/100,026	:	ON PETITION
Filed: April 6, 2005	:	
Attorney Docket No. 0492611-0617	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed January 10, 2011.

On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989).** Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

The address given on the petition differs from the address of record. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-7751.

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: Daniel O'Brien
Massachusetts Institute of Technology
Technology Licensing Office
Five Cambridge Center, Kendall Square
Cambridge, Massachusetts 02142-1493

Issue Classification	Application/Control No.	Applicant(s)/Patent under Reexamination
	11/100,135	PALANISAMY ET AL.
	Examiner	Art Unit
	FRANK LU	1634

ISSUE CLASSIFICATION

ORIGINAL					CROSS REFERENCE(S)						
CLASS				SUBCLASS	CLASS	SUBCLASS (ONE SUBCLASS PER BLOCK)					
435				6	435	91.1					
INTERNATIONAL CLASSIFICATION					536	23.1	24.3	24.33	25.3	25.32	
C	1	2	Q	1/68							
C	1	2	P	19/34							
C	0	7	H	21/02							
C	0	7	H	21/04							
C	0	7	H	21/00							

(Assistant Examiner) (Date)	/Frank W Lu/ 3/14/2011 (Primary Examiner) (Date)	Total Claims Allowed: 21	
(Legal Instruments Examiner) (Date)		O.G. Print Claim(s): 1	O.G. Print Fig.: None

☐ Claims renumbered in the same order as presented by applicant ☐ CPA ☐ T.D. ☐ R.1.47

Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original
	1		31		61	11	91		121		151		181
	2		32		62	12	92		122		152		182
	3		33		63	13	93		123		153		183
	4		34		64	14	94		124		154		184
	5		35		65	15	95		125		155		185
	6		36		66	16	96		126		156		186
	7		37		67	17	97		127		157		187
	8		38		68	18	98		128		158		188
	9		39	7	69	19	99		129		159		189
	10		40		70	20	100		130		160		190
	11		41		71	21	101		131		161		191
	12		42		72		102		132		162		192
	13	1	43		73		103		133		163		193
	14	2	44		74		104		134		164		194
	15		45		75		105		135		165		195
	16		46		76		106		136		166		196
	17		47		77		107		137		167		197
	18	3	48		78		108		138		168		198
	19		49		79		109		139		169		199
	20		50		80		110		140		170		200
	21		51		81		111		141		171		201
	22		52		82		112		142		172		202
	23	4	53		83		113		143		173		203
	24	5	54		84		114		144		174		204
	25		55		85		115		145		175		205
	26	6	56		86		116		146		176		206
	27		57		87		117		147		177		207
	28		58	8	88		118		148		178		208
	29		59	9	89		119		149		179		209
	30		60	10	90		120		150		180		210

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 3-16-11 **Paper No.:** _____

TO SPE OF : ART UNIT 1743

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/100218 Patent No.: 7390335

CofC mailroom date: 3-8-11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES: Should cofc be approved

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Ennis 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: _____

/Melvin C Mayes/ 1732
SPE **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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K&L GATES LLP
210 SIXTH AVENUE
PITTSBURGH PA 15222-2613

MAILED

DEC 20 2010

OFFICE OF PETITIONS

In re Application of	:	
Mark Anthony Clarke	:	
Application No. 11/100,223	:	DECISION ON PETITION
Filed: April 6, 2005	:	TO WITHDRAW
Attorney Docket No. 050111	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed November 3, 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 Daniel R. Miller. Daniel R. Miller has been withdrawn as attorney or agents of record; all other attorneys remain of record.

The correspondence address of record remains unchanged.

Telephone inquiries concerning this decision should be directed to Terri Johnson at 571-272-2991

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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SYNAGEVA BIOPHARMA CORP.
128 SPRING STREET
SUITE 520
LEXINGTON, MA 02421

MAILED
MAR 29 2011
OFFICE OF PETITIONS

In re Application of :
Robert D. Ivarie, et al. :
Application No. 11/100,255 : ON PETITION
Filed: April 6, 2005 :
Attorney Docket No.: AVI-000CIP2CON2 :

This is a decision on the December 14, 2010 petition, requesting the withdrawal of previously filed terminal disclaimers and entry of concurrently filed terminal disclaimers under the provisions of 37 CFR 1.182. The requisite petition fee has been paid.

The petition is (a) dismissed as to withdrawal of the previously filed terminal disclaimers and (b) granted as to entry of concurrently filed terminal disclaimers once they are approved as to formality (see the informality discussed toward the end of this decision).

Petitioner states that the terminal disclaimers filed February 27, 2009 over Application Nos. 10/696,671, 10/463,980 and 11/099,934 and U.S. Patent No. 6,730,822 should be withdrawn and replaced by the terminal disclaimers filed December 14, 2010. Petitioner explains that the previously filed terminal disclaimers failed to state that ownership of 100% interest in the patent properties was held by more than one assignee. Specifically, petitioner states that the owners of 100% interest in the patent and applications were Synageva BioPharma Corp. and University of Georgia Research Foundation, Inc..

The Office will accept the concurrently filed terminal disclaimers to address the problem, if they are in proper form. The Office will not, however, withdraw the existing terminal disclaimers, since they were properly filed documents and there is no reason to disturb them. To the extent that the existing TDS will not be operative, if not signed by the proper entirety-of-the-assignee entity, they simply will not operate, and no harm to applicant has been shown by their presence.

Unfortunately, the terminal disclaimers filed December 14, 2010 are not acceptable, as they are signed on behalf of the assignees by a person without proper authority. In this regard, a copy of the Declaration and Power of Attorney from the prior application was submitted on filing the present application, along with two (2) Revocation of Power of Attorney With New Power of Attorney and Change of Correspondence Address (POA) documents which are signed by a representative for the University of Georgia Reasearch Foundation, Inc. and AviGenics, Inc., respectively. However, the POA documents filed April 6, 2005, do not comply with MPEP 324, Section III, which states:

> "When an assignee files a continuation or divisional application under 37 CFR 1.53, other than a continued prosecution application (CPA) under 37 CFR 1.53(d), the application papers must:
>
> (A) refer to a statement filed under 37 CFR 3.73(b) in the parent application;
>
> (B) contain a copy of a statement filed under 37 CFR 3.73(b) in the parent application; or
>
> (C) contain a newly executed statement under 37 CFR 3.73(b)."

To be effective, the POA documents filed April 6, 2005, should have contained the certificate required under 37 CFR 3.73(b).

In view of the above, the request to accept the terminal disclaimers filed December 14, 2010 cannot be favorably considered.

If this matter is rectified, new terminal disclaimer documents must be submitted.

Telephone inquiries related to this decision may be directed to Sherry D. Brinkley at (571) 272-3204.

/Kenneth M. Schor/

Kenneth M. Schor
Senior Legal Advisor
Office of Patent Legal Administration

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Mark D. Miller
Kimble, MacMichael & Upton
5260 North Palm Avenue
Suite 221
Fresno, CA 93704

MAILED

MAR 14 2011

OFFICE OF PETITIONS

In re Application of :
Ronn T. Slay et al. :
Application No. 11/100,288 : DECISION ON PETITION
Filed: April 5, 2005 : TO WITHDRAW
Attorney Docket No. 10245.00.USU01 : 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 15, 2011.

The request is **moot because a revocation of power of attorney has been filed.**

A review of the file record indicates that the power of attorney to all attorneys/agents associated with customer number 25265 has been revoked by the assignee of the patent application on February 22, 2011. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

All future communications from the Office will continue to be directed to the below-listed address until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to Kimberly Inabinet at 571-272-4618.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: David Lewis
1250 Aviation Avenue, Suite 200B
San Jose, CA 95110

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P.O. Box 1450
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PATENT DEPARTMENT
CHOATE HALL & STEWART LLP
TWO INTERNATIONAL PLACE
BOSTON MA 02110

MAILED
NOV 04 2011
OFFICE OF PETITIONS

In re
Gardetto
Application No. 11/100,300
Filed: April 6, 2005
Patent No. 7,347,241
Issued: March 25, 2008

DECISION

This is a decision on the fee deficiency submission under 37 CFR 1.28(c), filed October 5, 2011.

The fee deficiency submission under 37 CFR 1.28 of $640 for the 3.5 year maintenance fee is hereby accepted.

The change of status to large entity has been entered.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 09-01-2010

TO SPE OF : ART UNIT 2191

SUBJECT : Request for Certificate of Correction for Appl. No: 11/1003055 Patent No 7739679

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 (Co f C)
Randolph Square – 9D10-A
Palm Location 7580

Discrependency with claims

Eva James
Certificates of Correction Branch
703-756-1583 _____

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.

_____

_____

_____

_____

_____

W. M. CHEN
WEI CHEN
SPE

2191
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)
7170265	2007-01-30	11100381	2005-04-07	027066-003400US

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	/Mark Robert Weir, Reg.#54949/	Date (YYYY-MM-DD)	2011-03-25
Name	Mark Robert Weir	Registration Number	54949

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. 7170265
Issue Date: January 30,2007
Application No. 11100381
Filed: April 7,2005
Attorney Docket No. 027066-003400US

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed March 25,2011 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of March 25,2011 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : August 8, 2011

TO SPE OF : ART UNIT 2128

SUBJECT : Request for Certificate of Correction for Appl. No.: 11100467 Patent No.: 7561992

CofC mailroom date: June 23, 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

Note: _____

_____

_____

Certificates of Correction Branch

703-756-1814 _____

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☑ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

_____

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SPE, AU 2128

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

ATTN: WILLIAM J. DAVIS, ESQ.
INTERNATIONAL SPECIALITY PRODUCTS
LEGAL DEPARTMENT
1361 ALPS ROAD
WAYNE, NJ 07470

MAILED

DEC 13 2010

OFFICE OF PETITIONS

In re Application of	:	
Joseph P. Bartko	:	
Application No. 11/100,655	:	DECISION GRANTING PETITION
Filed: April 7, 2005	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. FDN-2893	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed December 10, 2010, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on October 28, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

The petition is not signed by an attorney of record. Nevertheless, in accordance with 37 CFR 1.34, the signature of Mr. John F. Kane appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts. If Mr. Kane desires to receive future correspondence regarding this file, the appropriate power of attorney documents must be submitted. A courtesy copy of this decision is being mailed to petitioner herein. However, until otherwise instructed, all future correspondence regarding this application file will be directed solely to the above-noted correspondence address of record.

Telephone inquiries regarding this decision should be directed to undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

---

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

This application is being referred to Technology Center AU 1796 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

cc: JOHN F. KANE
THOMPSON HINE, LLP
2000 COURTHOUSE PLAZA NE
10 WEST SECOND STREET
DAYTON, OH 45402-1758

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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TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS TX 75265

MAILED

MAR 15 2011

OFFICE OF PETITIONS

In re Application of :
Shankar, et al. :
Application No. 11/100,689 : ON PETITION
Filed: April 7, 2005 :
Attorney Docket No. TI-38212 :
For: METHODS, APPARATUS AND SYSTEMS WITH LOADABLE KERNEL ARCHITECTURE FOR PROCESSORS

This is a decision on the petition, filed January 31, 2011, under 37 CFR 1.137(b) to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely submit a reply within three (3) months of the mailing of the July 22, 2010 non-final Office action. No response being received and no extensions of time being obtained under the provisions of 37 CFR 1.136(a), this application became abandoned on October 23, 2010.

Applicants have submitted an amendment in reply to the July 22, 2010 non-final Office action, an acceptable statement of the unintentional nature of the delay in responding to the July 22, 2010 non-final Office action, and the $1,620.00 petition fee.

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, practitioner 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, practitioner must notify the Office.

All of the requirements under 37 CFR 1.137(b) being met, the petition is granted.

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.

After the mailing of this decision, the application will be returned to Technology Center AU 2436 for consideration of the amendment filed on January 31, 2011.

Telephone inquiries should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

CC: STEPHEN L. LEVINE
ANDERSON & LEVINVE, L.L.P.
14785 PRESTON ROAD; SUITE 650
DALLAS, TX 75254

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

LATHROP & GAGE LLP
4845 PEARL EAST CIRCLE
SUITE 201
BOULDER CO 80301

MAILED

FEB 16 2011

OFFICE OF PETITIONS

In re Application of :
Hartley et al. :
Application No. 11/100,714 : DECISION ON PETITION
Filed: April 7, 2005 :
Attorney Docket No. 435304 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 12, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, February 17, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on May 18, 2010. A Notice of Abandonment was mailed November 12, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Amendment, (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 Technology Center AU 2435 for appropriate action by the Examiner in the normal course of business on the reply received.

Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MAILED

NOV 21 2011

OFFICE OF PETITIONS

KELLY LOWRY & KELLEY, LLP
6320 CANOGA AVENUE
SUITE 1650
WOODLAND HILLS CA 91367

In re Patent No. 7,374,081 :
Issued : May 20, 2008 : ON PETITION
Application No. 11/100,888
Filed : April 6, 2005
Attorney Docket No. PREDYN-46936

This is a decision on the petition under 37 CFR 1.28 filed on September 30, 2011, to revive the above-cited application.

The petition is **DISMISSED**.

The petition will not be treated on its merits at this juncture because it is not signed by all of the necessary parties. Further to this point, 37 CFR 1.33(b) provides, in pertinent part that:

> 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 patent practitioner of record appointed in compliance with § 1.32(b);
>
> (2) A patent practitioner not of record who acts in a representative capacity under the provisions of § 1.34;
>
> (3) An assignee as provided for under § 3.71(b) of this chapter; or
>
> (4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

The petition, as filed on September 30, 2010, is defective because it is not signed by one of the parties noted above. The renewed petition must be signed by either all the named joint inventors, an attorney of record in the application, or a representative of the assignee that is empowered by 37 CFR 3.73(b).

NO ADDITIONAL PETITION FEES ARE REQUIRED.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

In re Patent No. 7,374,081

By facsimile: (571) 273-8300
Attn: Office of Petitions

Telephone inquiries regarding this decision should be directed to the undersigned (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

cc:
Dennemeyer & Co., Ltd.
Regent House Heaton Lane
Stockport Cheshire
England SK4 1BB

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

KELLY LOWRY & KELLEY, LLP
6320 CANOGA AVENUE
SUITE 1650
WOODLAND HILLS CA 91367

MAILED
JAN 11 2012
OFFICE OF PETITIONS

In re Patent No. 7,374,081 :
Issued: May 20, 2008 :
Application No.: 11/100,888 : NOTICE
Filed: April 6, 2005 :
Attorney Docket No: **PREDYN-46936** :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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.
11/100,957	04/06/2005	Naoki Hirakawa	HOKUSHIN-9	1692

54884 7590 02/16/2012

GOMEZ INTERNATIONAL PATENT OFFICE, LLC
1501 N. RODNEY STREET
SUITE 101
WILMINGTON, DE 19806

EXAMINER	
HAIDER, SAIRA BANO	

ART UNIT	PAPER NUMBER
1765	

NOTIFICATION DATE	DELIVERY MODE
02/16/2012	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

bgomez@gomez-ipo.com
briangomez@mac.com
gomez.brian@gmail.com

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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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February 14, 2012

GOMEZ INTERNATIONAL PATENT OFFICE, LLC
1501 N. RODNEY STREET
SUITE 101
WILMINGTON DE 19806

In re Application of :
HIRAKAWA, NAOKI, et al. : **DECISION ON PETITION**
Application No: **11/100957** :
Filed: **04/06/2005**
Attorney Docket No: **HOKUSHIN-9**

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) April 6, 2005.

The petition is **DISMISSED.**

A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

1. The fee set forth under 37 C.F.R. 1.17(h),
2. Three (3) sets of the color drawings in question, (One (1) set for EFW filings, and
3. The specification containing the following language as the first paragraph in that portion of the specification relating to the brief description of the drawings

"The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee."

The petition did not meet the following requirement(s). 1 ☐ 2 ☐ 3 ☑

A renewed petition filed under 37 C.F.R. 1.84 (a) (2) must be filed within TWO (2) MONTHS of this decision. If a renewed petition is not filed within the TWO (2) Months of this decision the drawings will be printed in black and white.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571- 576-1565.

/Bernadette Queen/
Quality Control Specialist
Office of Data Management
Publications Branch

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/100,957	04/06/2005	Naoki Hirakawa	HOKUSHIN-9	1692

54884 7590 03/08/2012

GOMEZ INTERNATIONAL PATENT OFFICE, LLC
1501 N. RODNEY STREET
SUITE 101
WILMINGTON, DE 19806

EXAMINER	
HAIDER, SAIRA BANO	

ART UNIT	PAPER NUMBER
1765	

NOTIFICATION DATE	DELIVERY MODE
03/08/2012	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

bgomez@gomez-ipo.com
briangomez@mac.com
gomez.brian@gmail.com

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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March 7, 2012

GOMEZ INTERNATIONAL PATENT OFFICE, LLC
1501 N. RODNEY STREET
SUITE 101
WILMINGTON DE 19806

Re Application of
HIRAKAWA, NAOKI, E T Al.
Application: **11/100957** : **DECISION ON PETITION**
Filed: **04/06/2005** : **ACCEPTANCE OF COLOR**
Attorney Docket No: **HOKUSHIN-9** : **DRAWINGS**

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) March 3/1/12.
The petition is **GRANTED**.
A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

1. The fee set forth under 37 C.F.R. 1.17(h),
2. Three (3) sets of the color drawings in question, or (1) set if filed via EFS, and
3. The specification containing the following language as the first paragraph in that portion of the specification relating to the brief description of the drawings.

   "The file of this patent contains at least one drawing executed in color. Copies of this patent with color drawing(s) will be provided by the Patent and Trademark Office upon request and payment of the necessary fee."

The petition was accompanied by all of the required fees and drawings. The specification contains the appropriate language. Therefore, the petition is GRANTED.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

/Bernadette Queen/
Quality Control Specialist
Office of Data Management
Publications Branch

UNITED STATES PATENT AND TRADEMARK OFFICE

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MCNAIR LAW FIRM, PA
P.O. BOX 19827
GREENVILLE SC 29603-0827

MAILED
SEP 06 2011
OFFICE OF PETITIONS

In re Patent No. 7,337,810 :
Issue Date: March 4, 2008 :
Application No. 11/100,989 : NOTICE
Filed: April 7, 2005 :
Attorney Docket No. 032893.00068 :

This is a notice regarding your request, August 22, 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.

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.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

cc: MONAHAN & MOSES, LLC
13-B WEST WASHINGTON STREET
GREENVILLE, SC 29601

UNITED STATES PATENT AND TRADEMARK OFFICE

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WILLIAM H. DIPPERT
ECKERT SEAMANS CHERIN & MELLOTT, LLC
U.S. STEEL TOWER
600 GRANT STREET, 44TH FLOOR
PITTSBURGH PA 15219

MAILED

MAY 12 2011

OFFICE OF PETITIONS

In re Application of :
Benny Rousso, et al. :
Application No. 11/101,069 : DECISION ON PETITION
Filed: April 6, 2005 :
Attorney Docket No.: 298855-00003 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 4, 2011, to revive the above-identified application.

The petition is DISMISSED since it is not signed. It is noted that the petition was intended to be signed by Daniel B. Schatz, an agent registered to practice before the U.S. Patent and Trademark Office.

37 CFR 1.33(b) states that:

Amendments and other papers filed in the application must be signed by:

(1) An attorney or agent of record appointed in compliance with §1.34(b);

(2) A registered attorney or agent not of record who acts in a representative capacity under the provisions of §1.34(a);

(3) The assignee of record of the entire interest, if there is an assignee of record of the entire interest;

(4) An assignee of record of an undivided part interest, and any assignee(s) of the remaining interest and any applicant retaining an interest, if there is an assignee of record of an undivided part interest; or

(5) All of the applicants (§§ 1.42. 1.43 and 1.47) for patent, unless there is an assignee of record of the entire interest and such assignee has taken action in the application in accordance with §§ 3.71 and 3.73.

Further, 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 petition lacks items (2) and (3).

In this regard to item (2) – The petition fee could not be collected, since the paper authorizing payment did not contain a signature.

In regard to item (3) -- The petition is considered not to contain an acceptable statement of unintentional delay because the petition is not signed.

Under the circumstances of this case, a courtesy copy of this decision is being mailed to petitioner; however, all future correspondence regarding this application file will be directed solely to the address of record.

This decision is made without prejudice to reconsideration. However, any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)" and include a ratification of the unsigned petition.

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.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: DANIEL B. SCHATZ
SOROKER-AGMON
ADVOCATE AND PATENT ATTORNEYS
NOLTON HOUSE, 14 SHENKAR STREET
HERZELIYA PITUACH, ISRAEL 46725

[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

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SOROKER-AGMON ADVOCATE AND PATENT ATTORNEYS
NOLTON HOUSE, 14 SHENKAR STREET
HERZELIYA PITUACH 46725 IL ISRAEL

MAILED

JUN 15 2011

OFFICE OF PETITIONS

In re Application of :
Benny Rousso, et al. :
Application No. 11/101,069 : ON PETITION
Filed: April 6, 2005 :
Attorney Docket No.: 4186/88 :

This is a decision in response to the renewed petition, filed May 23, 2011, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed February 12, 2009, which set a shortened statutory period for reply of three (3) months. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on May 13, 2009. A Notice of Abandonment was mailed on August 26, 2009. On April 4, 2011, a petition under the provisions of 37 CFR 1.137(b) was filed; however, the petition was dismissed in a decision mailed May 11, 2011. On May 23, 2011, the present petition was filed.

It is noted that petitioner requests that a three month extension fee and the requisite petition fee be charged to a deposit account. The $810 petition fee has been charged to counsel's deposit account, as authorized. However, extensions of time under 37 CFR 1.136 are available only if asked for prior to or with the response. In no case, however, may an applicant respond later than the maximum time period set by statute. Accordingly, if the question of abandonment arises when the provisions of 37 CFR 1.136 can no longer be used, then the application is abandoned when the unextended time for response has expired. Consequently, no extension of time fees are due on a petition for revival and none have been charged.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that petitioner has supplied (1) a proposed reply in the form of an amendment; (2) the petition fee of $810; and (3) an adequate statement of unintentional delay[1].

[1] 37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. While 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, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

The application is being referred to Technology Center AU 3771 for appropriate action by the Examiner in the normal course of business on the response filed May 23, 2011.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204. Inquiries relating to further prosecution should be directed to the Technology Center.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

MAILED

AUG 22 2011

OFFICE OF PETITIONS

In re Application of :
Yabe :
Application No. 11/101,356 : DECISION
Filed: 6 April, 2005 :
Attorney Docket No. 09812.0365-00000 :

This is a decision on the petition filed on 8 August, 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 **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

Petitioner failed to reply timely and properly to the final Office action mailed on 20 January, 2011, with reply due absent extension of time on or before 20 April, 2011.

On 18 July, 2011, Petitioner submitted a request and fee for extension of time and an after-final amendment, 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 2 August, 2011, the Examiner mailed an Advisory Action.

[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).)

The application went abandoned by operation of law after midnight 20 July, 2011.

It does not appear that the Office mailed the Notice of Abandonment before a petition was filed.

On 8 August, 2011, Petitioner filed, *inter alia*, a petition pursuant to 37 C.F.R. §1.137(b), with fee, 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 a statement of unintentional delay.

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c) as to the showing regarding unintentional delay and a petition pursuant to 37 C.F.R. §1.137(b).

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[2]

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, by definition, are not intentional.[4]))

---

[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] 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.

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 2426 for further processing in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the instant decision to ensure that the revival has been acknowledged by the TC/AU in response to this decision. It is noted that all inquiries with regard to status need be directed to the TC/AU where that change of status must be effected—that does not occur in the Office of Petitions.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however , that all practice before the Office is in writing (see: 37 C.F.R. §1.2[5]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

[5] The regulations at 37 C.F.R. §1.2 provide:

§1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attdance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

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)
7052558	2006-05-30	11101510	2005-04-08	P08111US0

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	/Douglas E. Jackson/	Date (YYYY-MM-DD)	2010-12-21
Name	Douglas E. Jackson	Registration Number	28518

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. 7052558
Issue Date: May 30,2006
Application No. 11101510
Filed: April 8,2005
Attorney Docket No. P08111US00/RFH

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed December 22,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of December 22,2010 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

UNITED STATES PATENT AND TRADEMARK OFFICE

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NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON, VA 22203

MAILED

NOV 26 2010

OFFICE OF PETITIONS

In re Application of :
Memduh Guney et al :
Application No. 11/101,657 : ON PETITION
Filed: April 8, 2005 :
Attorney Docket No. 4398-420

This is a decision on the petition, filed November 24, 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 November 2, 2010 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Irvin Dingle at (571) 272-3210.

This matter is being referred to Technology Center AU 3771 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

/Irvin Dingle/
Irvin Dingle
Petitions Examiner
Office of Petitions

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above. Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

RAM Fee History Query
Revenue Accounting and Management

Name/Number: 11101657
Total Records Found: 25
Start Date: Any Date
End Date: Any Date

Accounting Date	Sequence Num.	Fee Type	Fee Code	Fee Amount	Mailroom Date	Payment Method
11/29/2010	00000004	1	1801	$810.00	11/24/2010	CC
11/29/2010	00000005	1	1464	$130.00	11/24/2010	CC
11/03/2010	00000094	1	1501	$1,510.00	11/02/2010	CC
11/03/2010	00000095	1	1504	$300.00	11/02/2010	CC
11/03/2010	00000096	1	8001	$3.00	11/02/2010	CC
10/18/2010	00000040	1	1464	$130.00	10/15/2010	CC
08/16/2010	00000077	1	8021	$40.00	08/13/2010	CC
07/07/2010	00000025	1	1252	$490.00	07/06/2010	CC
05/27/2010	00000050	1	1806	$180.00	05/26/2010	CC
10/26/2009	00000027	1	1801	$810.00	10/23/2009	CC
10/26/2009	00000028	1	1251	$130.00	10/23/2009	CC
07/24/2009	00000037	1	1401	$540.00	07/23/2009	CC
07/24/2009	00000038	1	1252	$490.00	07/23/2009	CC
01/21/2009	00000078	1	1202	$156.00	01/16/2009	CC
12/21/2007	00000088	1	1806	$180.00	12/20/2007	CK
12/11/2007	00000259	1	1251	$120.00	12/10/2007	CK
07/15/2005	00000020	1	8021	$40.00	07/13/2005	CK
07/15/2005	00000021	1	8021	$40.00	07/13/2005	CK
07/15/2005	00000019	1	8021	$40.00	07/13/2005	CK
07/15/2005	00000018	1	8021	$40.00	07/13/2005	CK
07/14/2005	00000086	1	1011	$300.00	07/13/2005	CC
07/14/2005	00000088	1	1111	$500.00	07/13/2005	CC
07/14/2005	00000087	1	1051	$130.00	07/13/2005	CC
07/14/2005	00000089	1	1311	$200.00	07/13/2005	CC
07/14/2005	00000090	1	1202	$250.00	07/13/2005	CC

11/29/2010 LDIEP1 00000001 11101657

01 FC:1801 810.00 OP
02 FC:1464 130.00 OP

UNITED STATES 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: 03/25/11

Patent No. : 7648948 B2
Ser. No. : 11/101,761
Inventor(s) : **Wu , et al.**
Issued : **January 19, 2010**
Title : Additive system for lubricants
Docket No. : **3799**

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322 and/or 1.323.

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid,* including after issuance of the patent.

In view of the foregoing, your request, in this mater, is hereby denied.

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1.17(i) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail: Mail Stop PETITIONS

Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand:

Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax:

(571) 273-0025
ATTN: Office of Petitions

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, no additional fee is required.

Lamonte M. Newsome
For Mary Diggs, Supervisor
Decisions & Certificates
Of Correction Branch
(571) 272-3421 or (703) 305-8309

The Lubrizol Corporation
29400 Lakeland Blvd.
Wickliffe OH 44092-2298

LMN

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

MAILED

NOV 03 2010

PCT LEGAL ADMINISTRATION

In re Application of :
BURTON et al :
Application No.: 11/101,878 : DECISION ON PETITION
Filing Date: April 8, 2005 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No.: CQ10437 :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed September 10, 2010, to accept an unintentionally delayed claim under 35 U.S.C. 120 for the benefit of priority to the prior-filed international application set forth in the amendment filed concurrently with the instant petition.

The petition is **DISMISSED**.

A petition for acceptance of a late claim for priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in 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 does not satisfy item (1) above.

The reference to add the prior-filed applications on page one before the first sentence of the specification is not acceptable as drafted since it improperly incorporates by reference the prior-filed applications. An incorporation by reference statement added after an application's filing date is not effective because no new matter can be added to an application after its filing date (*see* 35 U.S.C. 132(a)). If an incorporation by reference statement is included in an amendment to the specification to add a benefit claim under 35 U.S.C. 120 after the filing date of the

application, the amendment would not be proper. When a benefit claim under 35 U.S.C. 120 is submitted after the filing of an application, the reference to the prior application cannot include an incorporation by reference statement of the prior application. *See* Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980). *Note* MPEP 201.06(c) and 608.04(b).

Before the petition under 37 CFR 1.78(a)(3) can be granted, a renewed petition and a substitute amendment to correct the above matters are required.

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Bryan Lin

Bryan Lin
Legal Examiner
Office of PCT Legal Administration
(571) 272-3303

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

MAILED
MAY 02 2011
PCT LEGAL ADMINISTRATION

In re Application of
BURTON et al
Application No.: 11/101,878
Filing Date: April 8, 2005
Attorney Docket No.: CQ10437

DECISION ON PETITION
UNDER 37 CFR 1.78(a)(3)
AND (a)(6)

This is a decision on the petitions under 37 CFR 1.78(a)(3) and 1.78(a)(6), filed March 7, 2011, to accept an unintentionally delayed claim under 35 U.S.C. 120, 365(c) and 119(e) for the benefit of the prior-filed applications set forth in the concurrently filed amendment.

The petitions are **GRANTED**.

The present nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii) and 1.78(a)(5)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3) and 1.78(a)(6).

A petition for acceptance of a late claim for priority under 37 CFR 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

(1) the reference required by 35 U.S.C. 120 and 119(e) and 37 CFR 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in 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 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional where there is a question whether the delay was unintentional.

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) and 1.78(a)(6) in that (1) a reference to the prior-filed applications has been included in an amendment to the first sentence of the specification following the title as provided by 37 CFR 1.78(a)(2)(iii) and 1.78(a)(5)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. 120 and 119(e) to the prior-filed applications satisfies the conditions of 37 CFR 1.78(a)(3) and 1.78(a)(6), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) and 1.78(a)(6) should not be construed as meaning that this application is entitled to the benefit of the filing date of the prior-filed applications. In order for this application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. 120 and 365(c) and 1.78(a)(1) and (a)(2) and under 35 U.S.C. 119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether this application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed applications, accompanies this decision on petition.

This matter is being referred to Technology Center Art Unit 3771 for appropriate action on the amendment submitted March 7, 2011, including consideration by the examiner of the claim for benefit of the prior-filed applications.

Bryan Lin
Legal Examiner
Office of PCT Legal Administration
(571) 272-3303

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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WEINGARTEN, SCHURGIN, GAGNEBIN & LEBOVICI LLP
TEN POST OFFICE SQUARE
BOSTON MA 02109

MAILED
MAR 28 2011
OFFICE OF PETITIONS

In re Application of :
Shlomi FRANCO et al. :
Application No. 11/101,887 : NOTICE UNDER 37 CFR. 1.28(c)
Patent No. 7,108,754 :
Filed: April 08, 2005 :
Attorney Docket No. MHEAT-001BX

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 Michelle R. Eason at (571) 272-4231.

Thurman K. Page
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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Alexandria, Virginia 22313-1450
www.uspto.gov

BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, IL 60610

Mail Date: 08/04/2010

Applicant	: Feng Cao	: DECISION ON REQUEST FOR
Patent Number	: 7653048	: RECALCULATION of PATENT
Issue Date	: 01/26/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/102,085	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/07/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1329** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED

OCT 20 2010

OFFICE OF PETITIONS

In re Patent of Ibrahim et al. : DECISION ON REQUEST
Patent No. 7,599,662 : FOR RECONSIDERATION OF
Issue Date: October 6, 2009 : PATENT TERM ADJUSTMENT
Application No. 11/102,123 : and
Filed: April 8, 2005 : NOTICE OF INTENT TO ISSUE
Docket No. 16240US02 : CERTIFICATE OF CORRECTION

This is a decision on the petition filed on June 18, 2010, which is being treated as a petition requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by four hundred sixty-four (464) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by four hundred sixty-four (464) days is **granted to the extent indicated herein.**

Patentees argue the Office miscalculated (1) the period of "B delay" pursuant to 37 CFR 1.702(b), (2) the period of delay pursuant to 37 CFR 1.704(b) associated with the filing of a reply on April 23, 2007, and (3) the period of delay pursuant to 37 CFR 1.704(c)(10) associated with the filing of an Information Disclosure Statement (IDS) on August 13, 2009, after a Notice of Allowance had been mailed.

The Office concurs with patentees' assertion that the maximum B delay period begins on April 9, 2008, which is one day after three years after the filing of the application on April 8, 2005, and ends on October 6, 2009, when the patent issued.

However the Office does not concur with patentees' assertion that the period of B delay includes an excluded appellate period. As stated in 35 U.S.C. 154(b)(1)(B)(ii), B delay does not include "any time consumed by appellate review by the Board of Patent Appeals and Interferences." In this instance the appellate period begins of April 23, 2007, when the Notice of

Appeal was filed, and ends on September 13, 2007, the date the Office mailed an Office action. The entire appellate period occurred prior to the beginning of the period of B delay. As such, the appellate period should not be excluded from the period of B delay because it did not occur during the period of B delay. The period of B delay is 546 days.

Patentees argue that the Office miscalculated the period of delay pursuant to 37 CFR 1.704(b) associated with the filing of a reply on April 23, 2007.

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.

A patentee is not permitted to raise an issue that could have been raised in an application for patent term adjustment under 37 CFR 1.705(b) in any post patent grant petition. If applicants did not agree with the length of the reduction under 37 CFR 1.704(b) in connection with the November 12, 2008 reply, the appropriate time to contest it would have been after the Notice of Allowance was mailed and prior to payment of the issue fee.

Patentees argue the Office miscalculated the period of delay pursuant to 37 CFR 1.704(c)(10) associated with the filing of an Information Disclosure Statement (IDS) on August 13, 2009, after a Notice of Allowance had been mailed.

If applicants did not agree with the length of the period of delay pursuant to 37 CFR 1.704(c)(10) associated with the filing of an Information Disclosure Statement (IDS) on August 13, 2009, the appropriate time to contest it would have been within two months of the date of issuance of the patent via a 37 CFR 1.705(d) petition.

As noted on the form itself, a Request for Recalculation of Patent Term Adjustment in View of Wyeth may be filed if the sole basis for requesting the recalculation is the Office's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A). It is not possible to raise any issue beyond the Three Year Delay calculation per 35 U.S.C. 154(b)(2)(A)on a request for reconsideration of a Request for Recalculation of Patent Term Adjustment in View of Wyeth.

In light thereof, the correct patent term adjustment is 555 days, which is the sum of 84 days of delay under 35 U.S.C. 154(b)(1)(A) and 546 days of B Delay, reduced by 75 days for Applicant delay.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted **by five hundred fifty-five (555)** 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 : 7,599,662 B2

DATED : **October 6, 2009** **DRAFT**

INVENTOR(S) : Ibrahim 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 471 days

Delete the phrase "by 471 days" and insert – by 555 days--

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 2-1-11

TO SPE OF : ART UNIT 2622

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/102,153 Patent No.: 7,411,646

CofC mailroom date: 1-27-11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES: Should CofC be approved

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

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: _____

SPE

2622
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**

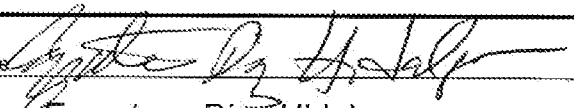
Attorney Docket Number: 040911	Patent Number: 7,664,338
Filing Date (or 371(b) or (f) Date): 04-07-2005	Issue Date: 2-16-2010
First Named Inventor: MENGYAO ZHOU	
Title: PERSPECTIVE TRANSFORMATION OF TWO-DIMENSIONAL IMAGES	

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-*WYETH* INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

**Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Signature: 	Date: 08-02-2010
Name (Print/Typed): Espartaco Diaz Hidalgo	Registration Number: 60586

Note: *Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below**.

☑ *Total of 1 forms are submitted.

The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PTO/SB/131 (01-10)
Approved for use through 02/28/2011. OMB 0651-0020
U.S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

Instruction Sheet for: REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

(Not to be Submitted to the USPTO)

This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A).

This form must be filed within 180 days of the day the patent was granted, with the following exception:

> Patentees who received a decision from the USPTO under the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A) may file a request for reconsideration of that decision if such a request for reconsideration is filed within **two months** of the date of the decision (37 CFR 1.181(f)). If the patentee's sole basis for requesting reconsideration of the decision is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A), the request for reconsideration need only state that reconsideration is being requested in view of Wyeth (this form may be used for this purpose if it is filed within **two months** of the date of the decision from the USPTO).

Do not use this form if the application has been allowed, but not yet issued as a patent.

1. **For patents issued before March 2, 2010:** A request for reconsideration under 37 CFR 1.705(d) and the fee set forth in 37 CFR 1.18(e) are not required, provided that the patentee's sole basis for requesting recalculation of the PTA in the patent is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A) and this form is filed within 180 days of the day the patent was granted.

2. **For patents issued on or after March 2, 2010 (do not use this form):** Patentees seeking a revised PTA in a patent issued on or after March 2, 2010, must file a request for reconsideration under 37 CFR 1.705(d) that complies with the requirements of 37 CFR 1.705(b)(1) and (b)(2) within two months of the day the patent issued.

For more information, see "Notice Concerning Calculation of the Patent Term Adjustment With Respect to the Overlapping Delay Provision of 35 U.S.C. 154(b)(2)(A)" available on the USPTO Web site at http://www.uspto.gov/patents/law/notices/2010.jsp.

**Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
www.uspto.gov

QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO, CA 92121

Mail Date: 08/16/2010

Applicant	: Mengyao Zhou	: DECISION ON REQUEST FOR
Patent Number	: 7664338	: RECALCULATION of PATENT
Issue Date	: 02/16/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/102,211	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/07/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1097** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 4/26/11

TO SPE OF : ART UNIT 2624

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/102,211 Patent No. 7,664,338

CofC mailroom date 4/21/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Ernest C. White, LIE

Certificates of Correction Branch

703-756-1814 _____

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

/Samir Ahmed/ — **SPE**

2624 — **Art Unit**

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

TEXAS INSTRUMENTS INCORPORATED
PO BOX 655474, M/S 3999
DALLAS TX 75265

MAILED

FEB 08 2011

OFFICE OF PETITIONS

In re Application of :
PATEL, et al :
Application No. 11/102,214 : DECISION ON PETITION
Filed: April 7, 2005 :
Attorney Docket No. TI-63031 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 7, 2008, to revive the above-identified application.

The petition is **DISMISSED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of July 31, 2007. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). No extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is November 1, 2007.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item(s) (1).

With respect to item (1): A review of the Office record shows that no reply accompanied the petition dated March 7, 2008. Any questions concerning the reply should be directed to the Examiner at (571) 272-1707.

The petition filed March 7, 2008, does not meet the requirements set out in 37 CFR 1.137(b) and cannot be granted.

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

Genomic Health, Inc.
(Bozicevic, Field & Francis)
c/o Kathleen Determann
301 Penobscot Road
Redwood City CA 94063

MAILED
DEC 13 2010
OFFICE OF PETITIONS

In re Application of :
Baker et al. :
Application No. 11/102,228 :
Filed: April 7, 2005 :
Attorney Dkt. No. 39740-0017 :
For: GENE EXPRESSION MARKERS :
FOR PREDICTING RESPONSE TO :
CHEMOTHERAPY :

ON APPLICATION FOR
PATENT TERM ADJUSTMENT

This is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT PRE-GRANT", filed November 5, 2010. Applicants request that the determination of patent term adjustment be corrected from two hundred thirty (230) days to two hundred seventy-one (271) days.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

The application for patent term adjustment is **GRANTED**.

Applicants dispute the 41 day reduction for the submission of the information disclosure statement (IDS) on March 29, 2010. Applicants contend the March 29, 2010 IDS contained a statement pursuant to 37 CFR 1.704(d) and thus no reduction is required.

A review shows that the 41 day reduction for the submission of the information disclosure statement on March 29, 2010 is not warranted. 37 CFR §1.704(c)(8) provides that a period of reduction is entered for:

> 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 that the supplemental reply or other such paper was filed;

37 CFR 1.704(d) provides:

> 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 this instance, the information disclosure statement submitted on March 29, 2010 contained a statement pursuant to 37 CFR 1.704(d). Thus, the submission of the IDS does not constitute a failure to engage in reasonable efforts to conclude prosecution. Accordingly, the 41 day reduction will be removed.

Applicants' delay prior to the mailing of the Notice of Allowance is 230 (31 + 169 + 30) days. Office delay prior to the mailing of the Notice of Allowance is 501 (393 + 106 + 2) days.

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance is two hundred seventy-one (271) 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 address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record

The 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

Cc: Bozicevic, Field & Francis
1900 University Avenue, Suite 200
East Palo Alto, California 94303

PTA/PTE Information | Patent Term Adjustment | Patent Term Extension

Application Number*: 11102228 Search | Explanation of PTA Calculation | Explanation of PTE Calculation

PTA Calculations for Application: 11102228

Application Filing Date	04/07/2005	Overlapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	501
A Delays	501	PTO Manual Adjustment	41
B Delays	0	Applicant Delay (APPL)	271
C Delays	0	Total PTA (days)	271

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
105	12/12/2010		P020	Adjustment of PTA Calculation by PTO	41		0
96	08/09/2010		MN/=.	Mail Notice of Allowance			0
95	08/09/2010		DVER	Document Verification			0
94	08/09/2010		N/=.	Notice of Allowance Data Verification Completed			0
93	08/04/2010		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
92	08/04/2010		MEX.A	Mail Examiner's Amendment			0
91	08/02/2010		EX.A	Examiner's Amendment Communication			0
90	08/02/2010		CNTA	Notice of Allowability			0
89	07/28/2010		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
82	06/03/2010		MCTNF	Mail Non-Final Rejection			0
81	06/02/2010		CTNF	Non-Final Rejection			0
80	03/29/2010		IDSC	Information Disclosure Statement considered			0
76	03/29/2010	02/16/2010	EIDS.	Electronic Information Disclosure Statement		41	71
75	03/29/2010		WIDS	Information Disclosure Statement (IDS) Filed			0
72	03/20/2010		FWDX	Date Forwarded to Examiner			0
79	02/16/2010		IDSC	Information Disclosure Statement considered			0
78	02/16/2010		IDSC	Information Disclosure Statement considered			0
74	02/16/2010		RCAP	Reference capture on IDS			0
73	02/16/2010		M844	Information Disclosure Statement (IDS) Filed			0
71	02/16/2010		A...	Response after Non-Final Action			0
70	02/16/2010		EIDS.	Electronic Information Disclosure Statement			0
69	02/16/2010		WIDS	Information Disclosure Statement (IDS) Filed			0
68	02/16/2010		WIDS	Information Disclosure Statement (IDS) Filed			0
67	01/06/2010	01/04/2010	MCTNF	Mail Non-Final Rejection	2		61
66	01/04/2010		CTNF	Non-Final Rejection			0
62	10/20/2009		FWDX	Date Forwarded to Examiner			0
61	09/04/2009	08/05/2009	A...	Response after Non-Final Action		30	56
60	09/04/2009		XT/G	Request for Extension of Time - Granted			0
59	09/04/2009		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
58	09/01/2009		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
65	08/05/2009		IDSC	Information Disclosure Statement considered			0
63	08/05/2009		EIDS.	Electronic Information Disclosure Statement			0
57	08/05/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
56	05/05/2009	01/19/2009	MCTNF	Mail Non-Final Rejection	106		50
55	05/04/2009		CTNF	Non-Final Rejection			0
53	04/28/2009		DOCK	Case Docketed to Examiner in GAU			0
52	10/17/2008		PA...	Change in Power of Attorney (May Include Associate POA)			0
51	10/14/2008		FWDX	Date Forwarded to Examiner			0
48	10/09/2008		C.ADB	Correspondence Address Change			0
47	10/06/2008		C.AD	Correspondence Address Change			0
50	09/19/2008	04/03/2008	A...	Response after Non-Final Action		169	43
49	09/19/2008		XT/G	Request for Extension of Time - Granted			0
46	07/25/2008		NINA	Mail Notice of Informal or Non-Responsive Amendment			0
45	05/09/2008		PA..	Change in Power of Attorney (May Include Associate POA)			0
44	05/08/2008		FWDX	Date Forwarded to Examiner			0
41	05/08/2008		C.AD	Correspondence Address Change			0
43.1	04/03/2008		A.I.	Informal or Non-Responsive Amendment after Examiner Action			0
43	04/03/2008	03/03/2008	A...	Response after Non-Final Action		31	40
42	04/03/2008		XT/G	Request for Extension of Time - Granted			0
40	12/03/2007		MCTNF	Mail Non-Final Rejection			0
39	10/15/2007		CTNF	Non-Final Rejection			0
31	09/11/2007		DOCK	Case Docketed to Examiner in GAU			0
26	08/07/2007		FWDX	Date Forwarded to Examiner			0
25	08/06/2007		ELC.	Response to Election / Restriction Filed			0
24	07/05/2007	06/07/2006	MCTRS	Mail Restriction Requirement	393		1
23	06/25/2007		CTRS	Requirement for Restriction / Election			0
22	12/04/2006		DOCK	Case Docketed to Examiner in GAU			0
34	08/10/2006		IDSC	Information Disclosure Statement considered			0
21	08/10/2006		RCAP	Reference capture on IDS			0
20.7	08/10/2006		M844	Information Disclosure Statement (IDS) Filed			0
20	08/10/2006		WIDS	Information Disclosure Statement (IDS) Filed			0
36	02/21/2006		IDSC	Information Disclosure Statement considered			0
35	02/21/2006		IDSC	Information Disclosure Statement considered			0
33	02/21/2006		IDSC	Information Disclosure Statement considered			0
30	02/21/2006		WIDS	Information Disclosure Statement (IDS) Filed			0
29	02/21/2006		WIDS	Information Disclosure Statement (IDS) Filed			0
19	02/21/2006		RCAP	Reference capture on IDS			0
18.7	02/21/2006		M844	Information Disclosure Statement (IDS) Filed			0
18	02/21/2006		WIDS	Information Disclosure Statement (IDS) Filed			0
32	02/03/2006		IDSC	Information Disclosure Statement considered			0
17.7	02/03/2006		M844	Information Disclosure Statement (IDS) Filed			0
17	02/03/2006		WIDS	Information Disclosure Statement (IDS) Filed			0
16	11/08/2005		A.PE	Preliminary Amendment			0
15	10/31/2005		DOCK	Case Docketed to Examiner in GAU			0
14	09/27/2005		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
13	09/27/2005		DOCK	Case Docketed to Examiner in GAU			0
11	08/18/2005		OIPE	Application Dispatched from OIPE			0
10	08/18/2005		COMP	Application Is Now Complete			0
5	08/12/2005		CRFE	CRF Is Good Technically / Entered into Database			0
12	08/01/2005		A.PE	Preliminary Amendment			0
8	08/01/2005		SEQLIST	A set of symbols and procedures, provided to the PTO on a set of computer listings, that describe in			0
7	08/01/2005		OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic			0
6	08/01/2005		CORRDRW	Applicant has submitted new drawings to correct Corrected Papers problems			0
4	05/31/2005		INCD	Notice Mailed--Application Incomplete--Filing Date Assigned			0
3	05/04/2005		L194	Cleared by OIPE CSR			0
2	04/27/2005		SCAN	IFW Scan & PACR Auto Security Review			0
9	04/07/2005		ADDFLFEE	Additional Application Filing Fees			0
1	04/07/2005		IEXX	Initial Exam Team nn			0

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Paper No.

OPPENHEIMER WOLFF & DONNELLY LLP
45 SOUTH SEVENTH STREET, SUITE 3300
MINNEAPOLIS MN 55402

MAILED
NOV 07 2011
OFFICE OF PETITIONS

In re Application of :
Bicer :
Application No. 11/102,345 :
Patent No.: 7,410,499 : DECISION ON PETITION
Filed: April 8, 2005 : PURSUANT TO
Issued: August 12, 2008 : 37 C.F.R. § 1.28(c)
Attorney Docket No.: 22561-7601/US/2 :
Title: VALVE HOLDER :

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.

Petitioner has identified the particular type of fees that were erroneously paid as a small entity, when the small entity fees were actually paid, the small entity fees that were actually paid, the deficiency owed amounts, and the total deficiency payment owed.

The deficiency payment in the amount of $2615.00 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: Kyle E. Conklin
Sterne, Kessler , Goldstein & Fox
1100 New York Avenue NW
Washington, DC 20005-3934

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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THE JACKSON PATENT GROUP
1500 FOREST AVENUE, SUITE 212
RICHMOND VA 23229

MAILED

MAR 14 2011

OFFICE OF PETITIONS

In re Patent No. 7,151,219	:	
Issue Date: December 19, 2006	:	
Application No. 11/102,392	:	DECISION ON PETITION
Filed: April 08, 2005	:	
Attorney Docket No. 1744(ARL)	:	

This is a decision on the petition under 37 CFR 1.378(c), filed February 04, 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 19, 2010 for failure to pay the three and one-half year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The maintenance fee is hereby accepted and the above-identified patent is reinstated as of the mail date of this decision.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-4231.

The patent file is being forwarded to Files Repository.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

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ALEXANDRIA, VA 22313-1450
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Hoffman-LaRoche Inc.
Patent Law Department
340 KingsLand Street
Nutley NJ 07110

MAILED
AUG 25 2011
OFFICE OF PETITIONS

In re Patent No. 7,563,441	:
Graus et al.	: DECISION UPON REMAND AND
Issue Date: July 21, 2009	: RECONSIDERATION OF
Application No. 11/102,403	: PATENT TERM ADJUSTMENT
Filed: April 8, 2005	: AND NOTICE OF INTENT
Attorney Docket No. 22354	: TO ISSUE CERTIFICATE OF
Title: Anti-P selectin	: CORRECTION
Antibodies	:

This is a decision following remand from the District Court for the District of Columbia regarding the patent term adjustment indicated on the above-identified patent. The Court remanded this matter to the U.S. Patent and Trademark Office for recalculation of the patent term adjustment in accordance with the decision in Wyeth & Elan Pharma Int'l Ltd. v. Kappos, 591 F.3d 1364 (Fed. Cir. 2010).

A telephone voice message was left for Joel Benson advising counsel for owner, that the determination of patent term adjustment was one day greater than the amount requested.

The patent term adjustment indicated on the above-identified patent has been recalculated as directed by the Court. The term of the above-identified patent is extended or adjusted by five hundred and fifty-eight(558) 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 and fifty-eight (558) days.

Telephone inquiries specific to this matter should be directed to Senior Legal Advisor, Kery A. Fries at (571) 272-7757.

/Kery A. Fries/

Kery A. Fries
Senior Legal Advisor Attorney
Office of Patent Legal Administration
Office of Associate Commissioner
For Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,563,441

DATED : July 21, 2009 **DRAFT**

INVENTOR(S) : Graus 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 343 days

Delete the phrase "by 343 days" and insert – by 558 days--

PTA/PTE Information | Patent Term Adjustment | Patent Term Extension

Application Number*: 11102403 Search | Explanation of PTA Calculation | Explanation of PTE Calculation

PTA Calculations for Application: 11102403

Application Filing Date	04/08/2005	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent	07/21/2009	Non-Overlapping USPTO Delays:	471
A Delays	471	PTO Manual Adjustment	215
B Delays	0	Applicant Delay (APPL)	128
C Delays	0	Total PTA (days)	558

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
93	08/24/2011		P028	Adjustment of PTA Calculation by PTO	215		0
80	07/21/2009		PTAC	Patent Issue Date Used in PTA Calculation			0
80.5	07/01/2009	04/08/2008	PTA36M	PTA 36 Months	0		0
79	06/25/2009		EFDC	Export to Final Data Capture			0
78	06/24/2009		D1935	Dispatch to FDC			0
77	06/19/2009		PILS	Application Is Considered Ready for Issue			0
76	06/19/2009		MPTDI	Mail-Petition Decision - Dismissed			0
75	06/19/2009		PTDI	Petition Decision - Dismissed			0
74	06/18/2009		N084	Issue Fee Payment Verified			0
73	06/18/2009		IFEE	Issue Fee Payment Received			0
72	05/19/2009		PET.	Petition Entered			0
70	04/30/2009		FIDC	Finished Initial Data Capture			0
69	04/16/2009		QURF	Workflow - Query Request - Finish			0
68	04/15/2009		TCPB	Printer Rush- No mailing			0
67	04/15/2009		MM327	Mail Miscellaneous Communication to Applicant			0
66	04/13/2009		M327	Miscellaneous Communication to Applicant - No Action Count			0
64	04/01/2009		QURI	Workflow - Query Request - Begin			0
65	03/31/2009		PUBTC	Pubs Case Remand to TC			0
63	03/23/2009		EIDC	Export to Initial Data Capture			0
61	03/20/2009	03/10/2009	MN/=.	Mail Notice of Allowance	10		54
60	03/18/2009		IREV	Issue Revision Completed			0
59	03/18/2009		DVER	Document Verification			0
58	03/18/2009		N/=.	Notice of Allowance Data Verification Completed			0
57	03/16/2009		CNTA	Allowability Notice			0
55	01/14/2009		FWDX	Date Forwarded to Examiner			0
53	01/14/2009		ABN9	Disposal for a RCE / CPA / R129			0
56	11/10/2008		IDSC	Information Disclosure Statement considered			0
54	11/10/2008		RCEX	Request for Continued Examination (RCE)			0
52	11/10/2008		M844	Information Disclosure Statement (IDS) Filed			0
49	11/10/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
48	11/10/2008		BRCE	Workflow - Request for RCE - Begin			0
47	11/07/2008		QURI	Workflow - Query Request - Begin			0
50	11/04/2008		PUBTC	Pubs Case Remand to TC			0
46	10/24/2008		CRFT	Sequence Forwarded to Pubs on Tape			0
45	10/13/2008		EIDC	Export to Initial Data Capture			0
44	10/10/2008		MN/=.	Mail Notice of Allowance			0
43	10/10/2008		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
42	10/09/2008		IREV	Issue Revision Completed			0
41	10/09/2008		DVER	Document Verification			0
40	09/29/2008		N/=.	Notice of Allowance Data Verification Completed			0
39	09/29/2008		CNTA	Allowability Notice			0
31	09/29/2008		DOCK	Case Docketed to Examiner in GAU			0
38	09/26/2008		FWDX	Date Forwarded to Examiner			0
37	09/26/2008	08/11/2008	SA..	Supplemental Response		46	27
29	09/17/2008		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
28	09/09/2008		FWDX	Date Forwarded to Examiner			0
27	08/11/2008	05/21/2008	A...	Response after Non-Final Action		82	25
26	08/11/2008		XT/G	Request for Extension of Time - Granted			0
25	02/21/2008		MCTNF	Mail Non-Final Rejection			0
24	02/19/2008		CTNF	Non-Final Rejection			0
22	12/04/2007		FWDX	Date Forwarded to Examiner			0
21	11/15/2007		ELC.	Response to Election / Restriction Filed			0
20	11/15/2007		XT/G	Request for Extension of Time - Granted			0
19	09/12/2007	06/08/2006	MCTRS	Mail Restriction Requirement	461		-1
18	09/10/2007		CTRS	Restriction/Election Requirement			0

17	01/22/2006	TSSCOMP	IFW TSS Processing by Tech Center Complete	0
23	11/28/2005	IDSC	Information Disclosure Statement considered	0
15.7	11/28/2005	M844	Information Disclosure Statement (IDS) Filed	0
15	11/28/2005	WIDS	Information Disclosure Statement (IDS) Filed	0
12	08/11/2005	DOCK	Case Docketed to Examiner in GAU	0
14	07/01/2005	RCAP	Reference capture on IDS	0
13.7	07/01/2005	M844	Information Disclosure Statement (IDS) Filed	0
13	07/01/2005	WIDS	Information Disclosure Statement (IDS) Filed	0
10	06/06/2005	OIPE	Application Dispatched from OIPE	0
9	06/06/2005	COMP	Application Is Now Complete	0
16	05/26/2005	LET.	Miscellaneous Incoming Letter	0
8	05/26/2005	ADDFLFEE	Additional Application Filing Fees	0
7	05/26/2005	OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	0
6	05/13/2005	INCD	Notice Mailed--Application Incomplete--Filing Date Assigned	0
5	05/03/2005	L194	Cleared by OIPE CSR	0
4	04/27/2005	SCAN	IFW Scan & PACR Auto Security Review	0
3	04/26/2005	CRFE	CRF Is Good Technically / Entered into Database	0
2	04/08/2005	CRFL	CRF Disk Has Been Received by Preexam / Group / PCT	0
1	04/08/2005	IEXX	Initial Exam Team nn	0

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NIXON PEABODY LLP - PATENT GROUP
1100 CLINTON SQUARE
ROCHESTER, NY 14604

Mail Date: 08/31/2010

Applicant	: Yung-Fu Chang	: DECISION ON REQUEST FOR
Patent Number	: 7655427	: RECALCULATION of PATENT
Issue Date	: 02/02/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/102,476	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/08/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **294** 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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PERKINS COIE LLP
P.O. BOX 1208
SEATTLE WA 98111-1208

MAILED

AUG 30 2010

OFFICE OF PETITIONS

In re Patent No. 7,680,024	:	
Issue Date: March 16, 2010	:	
Application No. 11/102,567	:	DECISION ON PETITION
Filed: April 08, 2005	:	
Attorney Docket No. 57996-8001.US01	:	

This is a decision on the petition filed May 19, 2010, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

Telephone inquiries concerning this decision may be directed to Michelle R. Eason at (571) 272-4231. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

The Certificates of Correction Branch will be notified of this decision granting the petition under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction.

Thurman K. Page
Petitions Examiner
Office of Petitions

[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 10/26/10

TO SPE OF : ART UNIT 3732

SUBJECT : Request for Certificate of Correction for Appl. No.: 11102600 Patent No.: 7214058

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: _____

Cris L Rodriguez
SPE

3732
Art Unit

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GREENBERG TRAURIG (HOU)
INTELLECTUAL PROPERTY DEPARTMENT
1000 Louisiana Street
Suite 1700
Houston, TX 77002

MAILED
DEC 08 2011
OFFICE OF PETITIONS

In re Reissue Application of	:	
Yasmin Wadia, et. al.	:	
Application No. 11/102,886	:	DECISION ON PETITION
Filed: April 8, 2005	:	
Attorney Docket No. 104588.000003	:	

This is a decision on the petition under 37 CFR 1.182, filed November 7, 2011, to change the order of the names of the inventors.

The petition is **GRANTED**.

Office records have been corrected to reflect the change in the order of the named inventors. A corrected Filing Receipt, which sets forth the desired order of the named inventors, accompanies this decision on petition.

As authorized, the $400 fee for the petition under 37 CFR 1.182 has been assessed to petitioner's deposit account.

This application is being referred to the Office of Data Management for further processing into a patent.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272- 3226.

Andrea Smith
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/102,886	04/08/2005	1636	2580	104588.000003	33	5

CONFIRMATION NO. 8054

CORRECTED FILING RECEIPT

70155
GREENBERG TRAURIG (HOU)
INTELLECTUAL PROPERTY DEPARTMENT
1000 Louisiana Street
Suite 1700
Houston, TX 77002

Date Mailed: 12/07/2011

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)

Yasmin Wadia, Humble, TX;
Scott Alan Prahl, Portland, OR;

Power of Attorney:

Albert Kimball Jr--25689
James Bradley--27536
Ben Tobor--27760
Jeffrey Whittle--36382
Constance Rhebergen--41267
Christopher Northcutt--55908

Domestic Priority data as claimed by applicant

This application is a REI of 09/686,594 10/06/2000 PAT 6,680,063
which claims benefit of 60/158,666 10/08/1999

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: 05/04/2005

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/102,886**

Projected Publication Date: None, application is not eligible for pre-grant publication

Non-Publication Request: No

Early Publication Request: No
**** SMALL ENTITY ****

Title

Biocompatible denatured albumin lamina

Preliminary Class

424

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

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FULWIDER PATTON LLP
HOWARD HUGHES CENTER
6060 CENTER DRIVE, TENTH FLOOR
LOS ANGELES, CA 90045

MAILED
OCT 17 2011
OFFICE OF PETITIONS

In re Application of :
Vajid H. Jafri, et al. :
Application No. 11/103,014 : ON PETITION
Filed: April 11, 2005 :
Attorney Docket No.: CFARE-70678 :

This is a decision in response to the petition, filed August 30, 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 John K. Fitzgerald 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 **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.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item 1.

It is noted that an amendment in response to the final Office action mailed February 3, 2010, was included with the petition filed on August 30, 2011; however, the amendment is considered non-responsive, since it did not place the application in condition for allowance. See the attached Advisory Action. The proposed reply required for consideration of a petition to revive this application must be a Notice of Appeal (and appeal fee required by 37 CFR 1.17(b)), an amendment that *prima facie* places the application in condition for allowance, or the filing of a

submission under 37 CFR 114 (RCE) or a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2).

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.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

Attachment: Advisory Action

[1] www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 11/103,014	**Applicant(s)** JAFRI ET AL.	
	Examiner SHANNON CAMPBELL	**Art Unit** 3628	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 August 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *3* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-6 and 17*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/SHANNON CAMPBELL/
Primary Examiner, Art Unit 3628

Continuation of 11. does NOT place the application in condition for allowance because: The amendments to the claims would require further search and/or consideration..

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FULWIDER PATTON LLP
HOWARD HUGHES CENTER
6060 CENTER DRIVE, TENTH FLOOR
LOS ANGELES, CA 90045

MAILED
NOV 09 2011
OFFICE OF PETITIONS

In re Application of :
Vajid H. Jafri, et al :
Application No. 11/103,014 : ON PETITION
Filed: April 11, 2005 :
Attorney Docket No. CFARE-70678 :

This is a decision on the renewed petition under 37 CFR 1.137(b), filed October 24, 2011, to revive the above-identified application.

The petition is not signed by a registered practitioner of record. However, in accordance with 37 CFR 1.34, the signature of Mr. John K. Fitzgerald appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts.

The petition is **GRANTED**.

A review of the record discloses that this application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed February 3, 2010. A Notice of Abandonment was mailed on August 18, 2010. On August 11, 2011 a petition to revive under 37 CFR 1.137(b) was filed; however, the petition was dismissed in a decision mailed October 17, 2011. In response, on October 24, 2011, the present petition was filed.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) under 37 CFR 1.114 and fee of $465; (2) the petition fee of $810; and (3) an adequate statement of unintentional delay.

This application is being referred to Technology Center AU 3628 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.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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WHITEFORD, TAYLOR & PRESTON LLP
7 ST. PAUL STREET
BALTIMORE MD 21202-1636

MAILED

MAY 02 2011

OFFICE OF PETITIONS

In re Application of :
ARMENTROUT, et al :
Application No. 11/103,170 : ON PETITION
Filed: April 11, 2005 :
Attorney Docket No. 010564/00028 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 22, 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 September 26, 2008. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is November 27, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of 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.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney document must be submitted. While a courtesy copy of

this decision is being mailed to the person signing the petition, all future correspondence will be directed to the address currently of record until appropriate instructions are received.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

This application is being referred to Technology Center AU 2613 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

cc: MARK C. COMTOIS
505 9TH STREET, N.W., SUITE 1000
WASHINGTON, DC 20004

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	11103269
Filing Date	12-Apr-2005
First Named Inventor	Gwendolyn Green
Art Unit	3782
Examiner Name	LESTER VANTERPOOL
Attorney Docket Number	GWNG-0002
Title	Hope walking pouch

◉ Please withdraw me as attorney or agent for the above identified patent application and the practitioners of record associated with Customer Number: 30184

The reason(s) for this request are those described in 37 CFR:

10.40(c)(1)(iv)

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	Mrs. Gwendolyn Norrington Green
Address	P. O. Box 491
City	Oxford
State	GA
Postal Code	30054
Country	US

I am authorized to sign on behalf of myself and all withdrawing practitioners.	
Signature	/Barry E. Kaplan/
Name	Barry E. Kaplan
Registration Number	38934

UNITED STATES 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 : January 26, 2012

In re Application of :

Gwendolyn Green

Application No : 11103269

Filed : 12-Apr-2005

Attorney Docket No : GWNG-0002

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 January 26, 2012

The request is **APPROVED.**

The request was signed by Barry E. Kaplan (registration no. 38934) on behalf of all attorneys/agents associated with Customer Number 30184 . All attorneys/agents associated with Cusotmer Number 30184 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	Mrs. Gwendolyn Norrington Green
Name2	
Address 1	P. O. Box 491
Address 2	
City	Oxford
State	GA
Postal Code	30054
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

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COMMISSIONER FOR PATENTS
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MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C.
P.O. BOX 398
AUSTIN TX 78767-0398

MAILED

MAR 15 2011

OFFICE OF PETITIONS

In re Application of :
Kudukoli, et al. : DECISION ON PETITION
Application No. 11/103,286 :
Filed: April 11, 2005 :
Atty. Dkt. No. 5150-48701 :

This is in response to the petition under 37 CFR 1.47(a), filed March 3, 2011. The instant matter is being treated under 37 CFR 1.183 to waive the requirements of 37 CFR 1.67[1]. The required fee is $400.00. Accordingly, the remaining fee due, $200.00, has been charged to the authorized deposit account.

Petitioners requests waiver of the rule (presumably § 1.67) that requires that all joint inventors sign any supplemental declaration in an application for patent.

BACKGROUND

A supplemental declaration under 37 CFR 1.67 was filed March 3, 2011, along with the present petition under 37 CFR 1.47, requesting acceptance of the supplemental declaration signed by less than all of the joint inventors.

The supplemental declaration is signed by four of the five inventors named in the application. The declaration is not signed by joint inventor L. Darowski. It is for this supplemental declaration that the petition requests acceptance, via suspension or waiver of the regulations.

DECISION

The Office may require, or inventors and applicants may submit, a supplemental oath or declaration meeting the requirements of § 1.63 or § 1.162 to correct any deficiencies or inaccuracies present in the earlier filed oath or declaration.

An oath or declaration submitted pursuant to 37 CFR 1.63 be executed, i.e., signed, in accordance with either § 1.66 or § 1.68. However, 37 CFR 1.183 permits, in an extraordinary situation, waiver of a rule which is not a requirement of the statute, where justice requires such

[1] 37 CFR 1.47 only applies where, in the first instance, the signature of an originally named, or to be added, inventor can not be obtained. As all inventors executed an original declaration and thus "made" the application, 37 CFR 1.47 does not apply in this case. See 37 CFR 1.47; MPEP 201.03. Rather, the remedy lies under 37 CFR 1.183, when a required supplemental declaration is not executed in whole or in part by one or more previously signing inventors. See MPEP 603.

waiver, and applicant has requested a waiver of the requirement that the 37 CFR 1.67 supplemental declaration be signed by all of the inventors.

Petitioners have failed to establish that inventor L. Darowski cannot be reached or located. Where inability to reach or locate a non-signing inventor is alleged, petitioners must establish that diligent effort was made to locate the inventor and provide the non-signing inventor with the supplemental oath or declaration. Petitioners assert that effort to procure a current address/phone number for the inventor was made by contacting the joint inventors, colleagues, and human resources, none of whom were able to assist petitioners. Petitioners have not established that diligent effort has been made to locate the non-signing inventor for presentation of the application papers.

Any renewed petition must be supported by evidence that sufficiently establishes that despite diligent effort, the non-signing inventor cannot be located. A statement of facts should be submitted that fully describes the exact facts that are relied on to establish that a *diligent effort* was made to locate the non-signing inventor. The statement of facts must be signed, where at all possible, by a person having *firsthand knowledge* of the facts recited therein. Statements based on hearsay, will not normally be accepted. At the very least, a search of the internet, telephone directories, etc. should be undertaken in regions where it is suspected the inventor may reside. Petitioner should reference and supply evidence of any such searches in a renewed petition.

CONCLUSION

In view thereof, the petition under 37 CFR 1.183 is DISMISSED.

Any request for reconsideration of this decision must be submitted within TWO MONTHS of the mail date indicated herein. The request for be directed to the Office of Petitions and entitled "Request for Reconsideration under 37 CFR 1.183."

Inquiries concerning this decision may be directed to the undersigned at (571)272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

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Anderson Gorecki & Manaras LLP
33 Nagog Park
Acton, MA 01720

MAILED
APR 29 2011
OFFICE OF PETITIONS

In re Application of Stefani et al. :
Application No. 11/103,401 : Decision on Petition
Filing Date: April 11, 2005 :
Attorney Docket No. 160-092 :

This is a decision on the petition under 37 CFR 1.137(b) filed February 28, 2011, which requests revival of the application.

The petition is **granted**.

The above-identified application became abandoned for failure to reply in a timely manner to the final Office action issued October 29, 2009, which set a shortened statutory period for reply of three (3) months. An extension of time under the provisions of 37 CFR 1.136(a) was not obtained. Accordingly, the above-identified application became abandoned on January 30, 2010. A Notice of Abandonment issued on July 29, 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.

The petition satisfies the requirements of 37 CFR 1.137(b) in so far as petitioner has supplied a reply in the form of a request for continued examination and an amendment, the required petition fee of $810, and the required statement of unintentional delay. Therefore, the petition is granted and the application is revived.

Technology Center Art Unit 2466 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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 03/26/12

TO SPE OF : ART UNIT: 2441 Attn: CHAN WING F (SPE)

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/103450 Patent No.: 8090804

CofC mailroom date: 03/15/2012

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: Please check Claim 12
Should this amended claim 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: _____

/Wing F. Chan/ 2441
SPE **Art Unit**

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Paper No.

MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED

DEC 06 2010

OFFICE OF PETITIONS

In re Application of :
Surendran et al. :
Application No. 11/103,705 : ON APPLICATION FOR
Filed: April 12, 2005 : PATENT TERM ADJUSTMENT
Atty Docket No. 16416US01 :

This is in response to the APPLICATION FOR RECONSIDERATION OF THE DETERMINATION OF PATENT TERM ADJUSTMENT UNDER 35 U.S.C. 154(b) ACCOMPANYING THE NOTICE OF ALLOWANCE (37 CFR § 1.705) filed September 28, 2010. Applicant submits that the correct patent term adjustment to be indicated on the patent is one thousand five hundred eighty-one (1581) days, not eight hundred ninety-two (892) 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.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As

such, the Office cannot make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

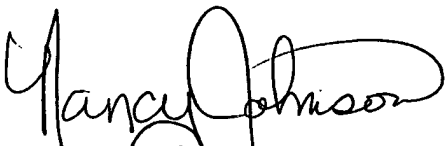
Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months

---

[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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SUITE 3400
CHICAGO, IL 60661

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APR 07 2011

OFFICE OF PETITIONS

In re Application of
Thangaraj et al.
Application No. 11/103,819
Filed: April 12, 2005
Attorney Docket No. 15931US01

: DECISION ON PETITIONS UNDER
: 37 CFR 1.78(a)(3) AND 37 CFR 1.48(a)

This is a decision on the petition under 37 CFR 1.78(a)(3), filed November 19, 2010, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional Application No. 09/951,693, set forth in the amendment filed concurrently with the instant petition. This is also a decision under 37 CFR 1.48(a), filed November 19, 2010, to amend the inventive entity by the addition of inventors Srinivasa Mogathala Prabhakara Reedy and Arun Rao.

The petition under 1.48(a) is **DISMISSED**.

37 CFR 1.48(a) requires that an amendment to the named inventive entity be accompanied by:

(1) A request to correct the inventorship that sets forth the desired inventorship change;
(2) A statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part;
(3) An oath or declaration by the actual inventor or inventors as required by § 1.63 or as permitted by §§ 1.42, 1.43 or § 1.47;
(4) The processing fee set forth in § 1.17(i); and
(5) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b).

The request under 37 CFR 1.48(a) lacks compliance with item (5) above. Although the practitioner signing the petition under 37 CFR 1.48(a) asserts that the petition is accompanied by a written agreement from the assignee of record, Broadcom Corporation, no such consent has been received.

In view of the above, the petition under 1.78(a)(3) is hereby **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application(s), unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant petition does not comply with item (1) above. As the above identified application does not comply with 35 U.S.C. § 120, as there is not at least one common inventor between the instant application and the prior-filed nonprovisional Application No. 09/951,693, therefore petition 37 CFR 1.78(a)3 cannot be granted at this time.

Accordingly, before the petition under 37 CFR 1.78(a)(3) can be granted, a renewed petition under 37 CFR 1.48(a) with a written consent of the assignee (see § 3.73(b), accompanied by a renewed petition under 37 CFR 1.78(a)(3), 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 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 Alicia Kelley at (571) 272-6059.

/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

MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO, IL 60661

MAILED

JUL 06 2011

OFFICE OF PETITIONS

In re Application of
Thangaraj et al.
Application No. 11/103,819
Filed: April 12, 2005
Attorney Docket No. 15931US01

: DECISION ON PETITIONS UNDER
: 37 CFR 1.78(a)(3) AND 37 CFR 1.48(a)

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed June 7, 2011, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional Application No. 09/951,693, set forth in the amendment filed concurrently with the instant petition. This is also a decision on the renewed petition under 37 CFR 1.48(a), filed June 7, 2011, to amend the inventive entity by the addition of inventors Srinivasa Mogathala Prabhakara Reedy and Arun Rao.

The petition under 1.48(a) is **GRANTED**.

37 CFR 1.48(a) requires that an amendment to the named inventive entity be accompanied by:

(1) A request to correct the inventorship that sets forth the desired inventorship change;
(2) A statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part;
(3) An oath or declaration by the actual inventor or inventors as required by § 1.63 or as permitted by §§ 1.42, 1.43 or § 1.47;
(4) The processing fee set forth in § 1.17(i); and
(5) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b)).

The renewed request under 37 CFR 1.48(a) satisfies the above requirements in that the practitioner signing the petition under 37 CFR 1.48(a) submitted a Statement Under 37 CFR 3.73(b) and a written consent on behalf assignee of record, Broadcom Corporation.

In view of the above, the petition under 1.78(a)(3) is hereby **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application(s), unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional application is submitted after expiration of the period specified by 37 CFR 1.78(a)(2)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3).

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) a reference to the above-noted, prior-filed nonprovisional application has been included in an amendment to the first sentence of the specification following the title, as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the above-noted, prior-filed nonprovisional application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which amends the inventive entity to add inventors Srinivasa Mogathala Prabhakara Reedy and Arun Rao, including the priority claim to the prior-filed nonprovisional application, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Alicia Kelley-Collier at (571) 272-6059.

This matter is being referred to Technology Center Art Unit 2466 for appropriate action on the amendment filed November 19, 2010, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional application.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/103,819	04/12/2005	2466	1450	15931US01	25	4

CONFIRMATION NO. 8772

CORRECTED FILING RECEIPT

23446
MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO, IL 60661

Date Mailed: 07/06/2011

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)

Arul Thangaraj, Bangalore, INDIA;
Vijayanand Aralaguppe, Bangalore, INDIA;
Srinivasa Mogathala Prabhakara Reddy, Bangalore, INDIA;
Arun Rao, Bangalore, INDIA;

Power of Attorney: The patent practitioners associated with Customer Number 23446

Domestic Priority data as claimed by applicant

This application is a CIP of 09/951,693 09/12/2001 ABN

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 05/12/2005

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/103,819**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

System, method, and apparatus for embedding personal video recorder functions in transport packets

Preliminary Class

370

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where

the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11/18/2010

TO SPE OF : ART UNIT 1624 James Wilson (SPE)

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/104,041 Patent No.: 7678798

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D40-A
Palm Location 7580

Certificates of Correction Branch

703-756-1571 _____

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☐ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

JAMES O. WILSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

SPE

1624
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Paper No.

MERCK
PATENT DEPARTMENT (K-6-1, 1990)
2000 GALLOPING HILL ROAD
KENILWORTH NJ 07033-0530

MAILED

JAN 25 2011

OFFICE OF PETITIONS

In re Application of :
Kevin Fowler : DECISION ON PETITION
Application No. 11/104,157 :
Filed: April 12, 2005 :
Atty Docket No. SC06196US01 :

This is a decision on the petition filed on December 17, 2010, pursuant to 37 C.F.R. § 1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to file a timely and proper reply to the non-final Office action mailed September 17, 2009. This Office action set a shortened statutory period for reply of three (3) months. No extensions of time to reply under the provisions of 37 C.F.R. §1.136(a) were obtained. No reply having been received, the application became abandoned on December 18, 2009. A Notice of Abandonment was mailed on April 21, 2010.

The provisions of 37 C.F.R. §1.137(b) provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent. A petition filed pursuant to 37 C.F.R. §1.137(b) must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed;

(2) The petition fee as set forth in § 1.17(m);

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and

(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

The above requirements have been met. The petition includes the required reply, the petition fee, and the statement of unintentional delay. No terminal disclaimer is required.

It is noted with respect to requirement (1), petitioner only filed a request for continued examination (RCE), RCE fee and amendment. However, an applicant cannot request continued examination of an application until after prosecution in the application is closed. See 37 CFR 1.114(a). Prosecution in an application is closed if the application is under appeal, or the last Office action is a final action (37 CFR 1.113), a notice of allowance (37 CFR 1.311), or an action that otherwise closes prosecution in the application (e.g., an Office action under Ex parte Quayle, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935)).

The last Office action in this application was a non-final rejection. Prosecution is not closed. Accordingly, applicant cannot request continued examination pursuant to 37 CFR 1.114.

Nonetheless, applicant did file a submission with the RCE that could be used as the reply required to the non-final Office action mailed September 17, 2009. In view thereof, the petition is granted.

Technology Center AU 1611 has been advised of this decision. The application is, thereby, forwarded to the examiner for consideration of the reply, an amendment, submitted on petition filed December 17, 2010.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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ALEXANDRIA, VA 22313-1450
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Paper No.

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SEP 08 2010

OFFICE OF PETITIONS

FISH & RICHARDSON PC
P.O. BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 7,592,170	:	DECISION ON REQUEST
Le Doux et al.	:	FOR
Issue Date: September 22, 2009	:	RECONSIDERATION OF
Application No. 11/104,161	:	PATENT TERM ADJUSTMENT
Filed: April 12, 2005	:	
Atty Docket No. 00786-492002/ MGH 1632.0	:	

This is a decision on the petition filed on June 18, 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 six hundred and ninety-five (695) days.

This renewed petition is **DISMISSED**.

An original petition was submitted on November 20, 2009. The original petition was treated as a petition under 37 CFR 1.705(d), and a decision was mailed on May 18, 2010, which granted the petition to the extent that the patent term adjustment was corrected to indicate that the term of the above-identified patent will be extended or adjusted by six hundred and forty-eight (648) days.

On the second page of this renewed petition, Patentee asserts:

> "...it is not possible that the 47-day period of "A Delay" from April 2, 2009, through May 18, 2009, which falls within (emphasis included) this excluded period, could overlap with "B Delay."

Patentee's argument has been considered, and it has been deemed to be unpersuasive.

Pursuant to 37 C.F.R. § 1.703(a)(2), the Office is required to accord 47 days of examination delay, due to the Office's failure to mail either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151 within four months of the submission of the notice of appeal on December 1, 2008. As these 47 days of "A" delay by the Office overlaps with the "B" delay, the Office is required to reduce any accorded "B" delay by 47 days.

Pursuant to 35 U.S.C. § 154(B)(ii), the Office is required to reduce the three-year application pendency guarantee by "any time consumed by appellate review by the Board of Patent Appeals and Interferences." As such, the Office is required to reduce any accorded "B" delay by the entire 169 days which were consumed by Appellate review.

It follows that the decision to extend or adjust the patent term adjustment by six hundred and forty-eight (648) days is in accordance with Wyeth v. Kappos, 591 F.3d 1364 (Fed. Cir. 2010), as interpreted by the United States Court of Appeals for the Federal Circuit.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **six hundred and forty-eight (648)** 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 : 7,592,170 B2

DATED : **September 22, 2009** **DRAFT**

INVENTOR(S) : Le Doux et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 435 days

Delete the phrase "by 435 days" and insert – by 648 days--

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: CISCP419/522113	
Application Number: 11/104,162	Filing Date (or 371(b) or (f) Date): April 11, 2005
Patent Number: 7,668,111	Issue Date: February 23, 2010
First Named Inventor: Varagur Chandrasekaran	
Title: Determining Traffic Flow Characteristics in a Storage Area Network	

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-*WYETH* INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

**Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Signature /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.

UNITED STATES PATENT AND TRADEMARK OFFICE

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Weaver Austin Villeneuve & Sampson LLP
P.O. BOX 70250
OAKLAND, CA 94612-0250

Mail Date: 08/12/2010

Applicant	: Varagur Chandrasekaran	: DECISION ON REQUEST FOR
Patent Number	: 7668111	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/104,162	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/11/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1337** 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.:20110119

DATE : January 19, 2011

TO SPE OF : ART UNIT 1646

SUBJECT : Request for Certificate of Correction on Patent No.: 7803555

A response is requested with respect to the accompanying request for a certificate of correction.

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - ST (South Tower) 9A22
Palm location **7590** - Tel. No. (703) 305-8309

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Thank You For Your Assistance **Certificates of Correction Branch**

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriated box.

☒ **Approved** All changes apply.

☐ **Approved in Part** Specify below which changes **do not** apply.

☐ **Denied** State the reasons for denial below.

Comments:

/GARY B NICKOL/
Supervisory Patent Examiner.Art Unit 1646

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

June 6, 2011

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA VA 22314

In re Application of	:	
Hyo Sang Lee et al.	:	**DECISION ON PETITION**
Application No. 11104505	:	
Filed: 4/13/2005	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. 270768US99	:	***DRAWINGS***

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) April 13, 2005.

The petition is **GRANTED**.

A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

1. The fee set forth under 37 C.F.R. 1.17(h),
2. Three (3) sets of the color drawings in question, or (1) set if filed via EFS, and
3. The specification contains appropriate language referring to the color drawings as the first paragraph in that portion of the specification relating to the brief description of the drawings.

The petition was accompanied by all of the required fees and drawings. The specification contains the appropriate language. Therefore, the petition is GRANTED.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

/Don Fairchild/
Office of Data Management
Publications Branch

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 20110509

DATE : 4/28/11

TO SPE OF : ART UNIT 2824

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/104,581 Patent No. 7,485,488

CofC mailroom date 4/20/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

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.

X **Approved**	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: /Michael Lulis/ May 07 2011

RICHARD T. ELMS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800

SPE 5/9/11

2824
Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 4/28/11

TO SPE OF : ART UNIT 2824

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/104,581 Patent No. 7,485,488

CofC mailroom date 4/20/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

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.

X **Approved**	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: /Michael Lulis/ May 07 2011

/Richard Elms/ SPE AU 2824 5/9/11

SPE Art Unit

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KRATZ, QUINTOS & HANSON, LLP
1420 K STREET, N.W.
4TH FLOOR
WASHINGTON, DC 20005

MAILED

NOV 24 2010

OFFICE OF PETITIONS

In re Patent No. 7,625,519 :
Issue Date: December 1, 2009 :
Application No. 11/104,647 : ON PETITION
Filed: April 13, 2005 :
Attorney Docket No. 050238 :

This is a decision on the petition, filed October 6, 2010, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the assignee's name on the Fee(s) Transmittal form PTOL-85(b) so that the Letters Patent will issue to the assignee.

The request is **DISMISSED**.

Petitioner states that the correct assignee's name is **KOBAYASHI PHARMACEUTICAL CO., LTD.** and that an incorrect assignee's name was included on the Part B - Fee(s) Transmittal form at the time of payment of the issue fee. Accordingly, petitioner requests that the patent issue to **KOBAYASHI PHARMACEUTICAL CO., LTD.**

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a)) and the processing fee set forth in § 1.17(i) of this chapter.

[1] *See* MPEP 1309, subsection II and Official Gazette of June 22, 2004

The request under 37 CFR 3.81(b) was not accompanied by a request for a certificate of correction (and fee) as required by 3.81(b). *See also* MPEP 1481.01. As petitioner has failed to comply with the provisions of 37 CFR 3.81(b), the request cannot be granted at this time.

A review of Office database assignment records reflects that an assignment to **KOBAYASHI PHARMACEUTICAL CO., LTD.** has been recorded. Therefore, upon submission of the required certificate of correction and fee, it would be appropriate for the Office to issue a certificate of correction to correct the front page of the Letters Patent to reflect that **KOBAYASHI PHARMACEUTICAL CO., LTD**. was the assignee of record at the time of issuance of the application into a patent. *Note also* 35 U.S.C. § 152.

A further review of the record shows that petitioner incorrectly listed the assignee's name as **KOBAYASHI PHARMACEUT ICAL CO., LTD**. on the issue Fee transmittal. Since the error in this case was due to applicant error, the request for Certification of Correction must be presented before the assignee's name can be corrected on the face of the patent.

In view of the above and **after issuance of this application into a patent, the Certificates of Correction Branch is instructed to issue a certificate of correction upon submission by petitioner of a request for a certificate of correction (and fee) which sets forth KOBAYASHI PHARMACEUTICAL CO., LTD., as the assignee**. *No certificate of correction will be issued which sets forth an assignee other than the assignee set forth in this request. A copy of this decision* ***must*** *accompany the request for a Certificate of Correction.*

No further renewed request under 37 CFR 3.81(b) is necessary for consideration by the Office of Petitions for issuance of a certificate of correction in the name of the assignee set forth in this request, since this decision operates as an instruction to the Certificates of Correction Branch to issue the requested certificate of correction.

Telephone inquiries concerning this decision should be directed to April M. Wise at 571-272-1642. All other inquiries concerning issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/104,758	04/13/2005	Beilei Xu	20040185USNP/XER20901US01	1784

62095 7590 01/11/2011

FAY SHARPE / XEROX - ROCHESTER
1228 EUCLID AVENUE, 5TH FLOOR
THE HALLE BUILDING
CLEVELAND, OH 44115

EXAMINER	
MCCOMMAS, BRENDAN N	

ART UNIT	PAPER NUMBER
2625	

MAIL DATE	DELIVERY MODE
01/11/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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FAY SHARPE / XEROX - ROCHESTER
1228 EUCLID AVENUE, 5TH FLOOR
THE HALLE BUILDING
CLEVELAND OH 44115

In re Application of:
XU, BEILEI et al
Application Serial No.: 11/104,758
Filed: April 14, 2005
For: **BLENDED ERROR DIFFUSION AND ADAPTIVE QUANTIZATION**

DECISION
ON PETITION

This is a decision on the petition to withdraw the final action, filed September 28, 2010, pursuant to 37 CFR § 1.181.

Petitioner alleges the Office Action of April 30, 2010 was incomplete. Additionally, due in part to this incompleteness, the clear issues that MPEP §706.07 indicates should be developed between the Examiner and Applicant were not so developed before the final rejection. Accordingly, final rejection is not in order and supervisory review and withdrawal of the finality of the Office Action of September 15, 2010 is requested.

The petitioner further alleges, MPEP §707.07(f) requires that "in order to provide a complete application file history and to enhance the clarity of the prosecution history record, an Examiner **must** provide clear explanations of all actions taken by the Examiner during prosecution of an application." "Where the Applicant traverses any rejection, the Examiner should, if he or she repeats the rejection, **take note of the** Applicant's argument and answer **the substance of it."** Additionally, MPEP §706.07 requires that "before final rejection is in order, a clear issue should be developed between the Examiner and the Applicant.

BACKGROUND

On April 30, 3010, a non-final Office action was mailed rejecting claim 1under 35 USC 103(a) as being obvious over Imafuku et al (US PGPub 2004/0196478) in view of Yamada et al (USPN 7,312,901). Claims 2-40 were rejected under 35 USC 103(a) as being obvious over Imafuku et al in view Yamada et al and further in view of Illberry (US PGPub 2002/0122210). Claim 41 was rejected under 35 USC 103(a) as being obvious over Imafuku et al in view of Yamada et al and further in view of Illberry and Chang (USPN 6,753,978).

On June 29, 2010, applicant filed a response to the non-final office action. In the response applicant alleged while the present Office Action responds to some of the arguments presented on pages 2-12 of Applicants' Response C, the present Office Action clearly does not respond to the arguments presented on pages 13-20 and overlooks some of the arguments presented on pages 2-12. Accordingly, the present Office Action is not completely responsive as is required by MPEP §707.07(0 and no clear issue has been developed between the Examiner and the Applicants with regard to at least some of the rejections as is required by MPEP §706.07. Accordingly, it is respectfully submitted that the Office is precluded from making the next Office Action final unless it is a Notice of Allowance or Allowability.

On September 15, 2010, a final Office action was mailed rejecting claim 1under 35 USC 103(a) as being obvious over Imafuku et al (US PGPub 2004/0196478) in view of Yamada et al (USPN 7,312,901). Claims 2-40 were rejected under 35 USC 103(a) as being obvious over Imafuku et al in view Yamada et al and further in view of Illberry (US PGPub 2002/0122210). Claim 41 was rejected under 35 USC 103(a) as being obvious over Imafuku et al in view of Yamada et al and further in view of Illberry and Chang (USPN 6,753,978).

REGULATIONS AND PRACTICE

MPEP §706.07 [R-3] Final Rejection, states in part:

> Before final rejection is in order a clear issue should be developed between the examiner and applicant.

MPEP 706.07(a) [R-6] Final Rejection, When Proper on Second Action states in part:

> Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims, nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

MPEP 707.07 Completeness and Clarity of Examiner's Action states:

> 37 CFR 1.104. Nature of examination.
>
> (b) Completeness of examiner's action. The examiner's action will be complete as to all matters, except that in appropriate circumstances, such as misjoinder of invention, fundamental defects in the application, and the like, the action of the examiner may be limited to such matters before further action is made. However, matters of form need not be raised by the examiner until a claim is found allowable.

MPEP 707.07(f) [R-3] Answer All Material Traversed states in part:

> In order to provide a complete application file history and to enhance the clarity of the prosecution history record, an examiner must provide clear explanations of all actions taken by the examiner during prosecution of an application. ... Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it.

OPINION

In accordance with MPEP 706.07(a) it is clear that all of the actions on the merits made in the final rejection on September 15, 2010 were also made in the non-final rejection on April 30, 2010. Therefore a final rejection is proper. However, a review of the file record shows, as

applicant correctly pointed out in the petition, while the substance of some of the applicant's arguments have been answered by the examiner in the prior office actions, the substance of all of the applicant's arguments have not been answered. Therefore, in accordance with MPEP 707.07 and MPEP 707.07(f) the final office action mailed September 15, 2010 is incomplete.

Accordingly, the petition to withdraw finality is **GRANTED**.

The record shows an Amendment after Final has since been filed on December 13, 2010. As a result of the petition decision, the Examiner's final office action on September 15, 2010 is vacated. Application is being forwarded to examiner in order to mail out a complete office action that answers the substance of all of applicant's arguments in applicant's response filed on June 29, 2010 and also to answer the substance of any additional arguments in applicant's response filed on December 13, 2010.

Wanda L. Walker

Wanda L. Walker, Director
Technology Center 2600
Communications

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 20111121

DATE : 11/1/2010

TO SPE OF : ART UNIT: 2857

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/104,960 Patent No.: 7,693,669

C of C Mailroom date: 04/22/2010

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

Magdalene Talley

Certificates of Correction Branch
703-756-1814

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

☒ **Approved**	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: _____

DREW A. DUNN
SUPERVISORY PATENT EXAMINER
SPE

2857
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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Law Offices of H. Bissell
10616 Almond Avenue
Oak View CA 93022

MAILED

AUG 11 2011

OFFICE OF PETITIONS

In re Application of :
L. Stephen Buchanan :
Application No. 11/104,979 :
Filed: April 12, 2005 :
Attorney Docket No. 1521-PCT-1 :

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 25, 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 properly reply in a timely manner to the non-final Office action mailed March 10, 2010, which set a shortened statutory period for reply of three (3) months. A three month extension of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on September 11, 2010. A Notice of Abandonment was mailed on June 17, 2011.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item (3).

As to item (3) the statement of unintentional delay is presently not acceptable. The registration number provided on the petition for attorney/agent Henry M. Bissell, IV, does not match the number in the Office records. Upon the filing of a renewed petition please include the correct registration number on the signature page of the petition.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See* In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $1,175 extension of time fee submitted with the petition on July 25, 2011 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be refunded to petitioner's credit card account.

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
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Law Offices of H. Bissell
10616 Almond Avenue
Oak View CA 93022

MAILED

SEP 09 2011

OFFICE OF PETITIONS

In re Application of :
L. Stephen Buchanan :
Application No. 11/104,979 :
Filed: April 12, 2005 :
Attorney Docket No. 1521-PCT-1 :

DECISION ON PETITION

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed August 30, 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 non-final Office action mailed March 10, 2010, which set a shortened statutory period for reply of three (3) months. A three month extension of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on September 11, 2010. A Notice of Abandonment was mailed on June 17, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $810, and (3) a proper statement of unintentional delay. Accordingly, the amendment is accepted as being unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

This application is being referred to Technology Center AU 3776 for appropriate action by the Examiner in the normal course of business on the reply received July 25, 2011.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

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ALEXANDRIA, VA 22313-1450
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KATHY SMITH DIAS, ESQ.
HESLIN ROTHENBERG FARLEY & MESITI P.C.
5 COLUMBIA CIRCLE
ALBANY, NY 12203-5160

MAILED

OCT 07 2010

OFFICE OF PETITIONS

In re Application of :
Klaus Pfizenmaier et al :
Application No. 11/105,172 : DECISION GRANTING PETITION
Filed: April 13, 2005 : UNDER 37 CFR 1.313(c)(3)
Attorney Docket No. 1974.015 :

This is a decision on the petition, filed October 6, 2010, which is being treated as a petition under 37 CFR 1.313(c)(3) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

Petitioner requests that the above-identified application be withdrawn from issue for express abandonment. *See* 37 CFR 1.313(c)(3).

The application is hereby withdrawn from issue, and the abandonment is hereby recognized.

Telephone inquiries should be directed to Irvin Dingle at (571) 272-3210.

/Irvin Dingle/
Irvin Dingle
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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IANDIORIO TESKA & COLEMAN
260 BEAR HILL ROAD
WALTHAM, MA 02451

MAILED
OCT 12 2010
OFFICE OF PETITIONS

In re Application of :
Farrell et al. :
Application No. 11/105,635 : DECISION ON PETITION
Filed: April 14, 2005 :
Attorney Docket No. FM327J :

This is a decision on the petition, filed August 2, 2010, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to reply to the Final Office action mailed January 4, 2010, which set a three (3) month statutory period for reply. A Notice of Abandonment was mailed on July 20, 2010.

Petitioner asserts that the Office action dated January 4, 2010 was not received.

A review of the written record indicates no irregularity in the mailing of the Office action and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner at the correspondence address of record;

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 nonreceived Office action would have been entered had it been received and docketed must be attached to and referenced in the practitioner's statement.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition satisfies the above-stated requirements. 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 2823 for re-mailing the Office action of January 4, 2010. The period for reply will run from the mailing date of the Office action.

Telephone inquiries concerning this decision should be directed to Alicia Kelley at (571) 272-6059.

/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
www.uspto.gov

MAILED

NOV 02 2010

OFFICE OF PETITIONS

RICHARD M. SACCORIO, P.A.
780 WEST TROPICAL WAY
PLANTATION FL 33317

In re Application of	:	
Paul R. BEDARD	:	
Application No. 11/105,870	:	DECISION ON PETITION
Filed: April 14, 2005	:	
Attorney Docket No. 2.151.3	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 4, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely pay the issue and publication fees as required by the Notice of Allowance and Fee(s) Due, mailed June 11, 2010, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on September 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 $755 and publication fee of $300; (2) the petition fee of $810; and (3) and the required statement of unintentional delay.

A review of the Office record shows an over payment of the petition fee by $10, the current petition fee is $810. Since the $10 is in excess of the amount required, petitioner may request a refund of this fee by writing to the following address: Mail Stop 16, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany petitioner's request.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

The application is being referred to the Office of Data Management for processing into a patent.

/DCG/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

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)
7286929	2007-10-23	11105931	2005-04-13	081221-010301

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	/charles berman/	Date (YYYY-MM-DD)	2011-12-07
Name	Charles Berman	Registration Number	29249

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. 7286929
Issue Date: October 23,2007
Application No. 11105931
Filed: April 13,2005
Attorney Docket No. 81221-010301

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed December 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 December 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

Date Mailed : July 29, 2011

Patent No. : 7787552
Inventor : Chen et al.
Patent Issued : August 31, 2010
Title : DISTRIBUTED TRANSMIT DIVERSITY IN A WIRELESS COMMUNICATION
:NETWORK
:

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 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) 272-9005

6300 Legacy, MS EVR 1-C-11
Plana, TX 75024
972-583-8656

/arg

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

CANDY K. NEWCOMB
1516 LEE STREET
MIDLAND, MI 48642

MAILED

JAN 27 2011

OFFICE OF PETITIONS

In re Application of :
John C. NEWCOMB :
Application No. 11/106,107 : DECISION ON PETITION
Filed: April 14, 2005 : UNDER 37 CFR 1.137(b)
Attorney Docket No. **MSH-354** :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 12, 2010, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is not a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed December 8, 2009, which set a shortened statutory period for reply of three (3) months. A one (1) month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on April 9, 2010.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (**1**) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D).

The instant petition lacks item (**1**) the required reply. Petitioner states that a Request for Continued Examination is being concurrently filed, however, neither the RCE nor fee of $810 has been provided.

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 Monica A. Graves at (571) 272-7253.

Thurman K. Page
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

CANDY K. NEWCOMB
1516 LEE STREET
MIDLAND, MI 48642

MAILED
JUL 07 2011
OFFICE OF PETITIONS

In re Application of :
John C. NEWCOMB :
Application No. 11/106,107 : DECISION ON PETITION
Filed: April 14, 2005 : UNDER 37 CFR 1.137(b)
Attorney Docket No. **MSH-354** :

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed March 24, 2011 and re-submitted 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 December 8, 2009, which set a shortened statutory period for reply of three (3) months. A one (1) month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on April 9, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $810; and (3) an adequate statement of unintentional delay.

Telephone inquiries concerning the status or examination of this application should be directed to the technology center at (571) 272-3700. Telephone inquiries concerning this decision should be directed to Monica A. Graves at (571) 272-7253.

This application is being referred to Technology Center AU 3782 for appropriate action by the Examiner in the normal course of business on the reply received.

Thurman K. Page
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JONES DAY
222 E. 41ST. STREET
NEW YORK NY 10017

MAILED

JUN 14 2011

OFFICE OF PETITIONS

In re Patent No. 7,427,638	: DECISION ON REQUEST
Muller et al.	: FOR
Issue Date: 09/23/2008	: RECONSIDERATION OF
Application No. 11/106,142	: PATENT TERM ADJUSTMENT
Filing or 371(c) Date: 04/13/2005	: and
Atty Docket No.	: NOTICE OF INTENT TO ISSUE
9516-383-999	: CERTIFICATE OF CORRECTION

This is a decision on the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d), filed on October 30, 2008, which is being treated as a petition requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by six hundred nine (609) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by six hundred nine (609) 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 **six hundred nine (609)** 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 : 7,427,638 B2

DATED : **Sep. 23, 2008** **DRAFT**

INVENTOR(S) : Muller et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 446 days.

Delete the phrase "by 446 days" and insert – by 609 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

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ELMORE PATENT LAW GROUP, PC
484 GROTON ROAD
WESTFORD MA 01886

MAILED

FEB 22 2011

OFFICE OF PETITIONS

ON PETITION

In re Application of
Bernadene Ann Magnuson et al.
Application No. 11/106,240
Filed: April 14, 2005
Attorney Docket No: **4010.3001 US1**

This is a decision on the petition to withdraw the holding of abandonment, filed December 22, 2010, which is being treated under 37 CFR 1.181, in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513.

The petition is **GRANTED**.

This application became abandoned for failure to file a timely response to the decision by the Board of Patent Appeals and Interference, rendered October 23, 2010. Accordingly, a Notice of Abandonment was mailed November 1, 2010. Petitioner asserts that the decision was never received.

The file record discloses that the decision was mailed to the address of record which is the same address used on all correspondences from the USPTO including the Notice of Abandonment. Petitioner has provided a copy of the docket report, wherein receipt of the decision rendered August 23, 2010 would have been filed, had it been received. To further show that the decision rendered August 23, 2010 was not received, petitioner explains that after searching the file jacket it was concluded that no correspondence was received for this matter from the USPTO,

In that the statement from the petitioner and the exhibit from the docket record for the instant matter show no entry indicating receipt of the decision mailed August 23, 2010, it is apparent that it was not received. The evidence submitted corroborates non-receipt of the decision.

In view of the facts set forth in the petition, it is concluded that the decision was never received at the address of record. Accordingly, the holding of abandonment is withdrawn and no petition fee is due.

This matter is being referred to Technology Center 1655 for a re-mailing of the decision by the Board of Patent Appeals and Interference rendered October 23, 2010 and for a re-setting of the period for reply.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAILED

SEP 27 2011

OFFICE OF PETITIONS

STEPHEN B. SALAI, ESQ.
HARTER SECREST & EMERY LLP
1600 BAUSCH & LOMB PLACE
ROCHESTER NY 14604-2711

In re Patent No. 7,235,025 :
Issue Date: June 26, 2007 :
Application No. 11/106,250 : NOTICE
Filed: April 14, 2005 :
Attorney Docket No. 91178.000007 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 on August 17, 2011.

The Office no longer investigates or rejects original or reissue patent under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/106,503	04/15/2005	George Patrick Crampton	11673-1	3952

25277 7590 08/08/2011

National Research Council of Canada
1200 Montreal RD., Bldg. m-55, Room 29
OTTAWA, ON K1A 0R6
CANADA

EXAMINER	
BOECKMANN, JASON J	

ART UNIT	PAPER NUMBER
3752	

NOTIFICATION DATE	DELIVERY MODE
08/08/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

nrcippm.general@nrc-cnrc.gc.ca

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

National Research Council of Canada
1200 Montreal RD., Bldg. m-55, Room 29
OTTAWA ON K1A 0R6 CA CANADA

In re Application of:
CRAMPTON, GEORGE PATRICK
Appl. No.: 11/106,503
Filed: April 15, 2005
Attorney Docket No. 11673-1
For: ROTARY FOAM DISTRIBUTOR

: DECISION ON PETITION

This is a decision on the petition filed on June 14, 2011 by which petitioners request supervisory review and withdrawal of the finality of the Office action dated June 1, 2011. The petition is considered pursuant to 37 CFR § 1.181, and no fee is required.

The petition is dismissed.

A review of the relevant prosecution history shows that the applicant filed a RCE on April 8, 2011 with amendment to claims 1 and 11. The RCE was properly filed in accordance with the 37 CFR § 1.114 and MPEP § 706.07(h). On June 1, 2011, the examiner issued a first Office action final rejection to the RCE. The examiner finally rejected claims 1, 2, 4, 7-9, 11, 13, 15, 16, 18, 21, 22 under 35 U.S.C. 102(b) as being anticipated by Aronson (4,613,077). In the final Office action of June 1, 2011, claims 1,2, 4, 6, 11, 13, 15, 16, 20 and 23 were rejected under 35 U.S.C. 102(b) as being anticipated by Su (5,772,117). Claim 19 was rejected under 35 U.S.C. 103(a) as being unpatentable over Su (5,772,117). Claim 19 also was rejected under 35 U.S.C. 103(a) as being unpatentable over Aronson (4,613,077).

On June 14, 2011, petitioner filed the current petition requesting supervisory review of the propriety of the final rejection and withdrawal of the finality of the office action dated June 1, 2011 pursuant to MPEP § 706.07(b). The petitioner is of the opinion that the first Office action final rejection of June 1, 2011 was improper under MPEP § 706.07(b) because the amended claims of April 8, 2011 is not drawn to the same invention. Therefore, petitioner opines that the amended claims could not be rejected on the same grounds in the next Office action. Petitioner also questions the propriety of the rejection because the applicant does not believe where the cross-sectional area of the foam flow between the supply and impingement surfaces is found to

be narrowest according to the respective teachings of Aronson and Su patents and how the examiner determined that this area was greater than the surface area of the impingement surfaces, or alternatively an explanation of how the words of the claims are being interpreted so that this is not necessary.

It is noted that the amended claims 1 and 11 of April 8, 2011 include the amended features as to "between the compressed foam supply and the radial impingement surfaces" in claim 1 and the amended features as to "between the compressed foam supply and the vanes" in claim 11. On June 1, 2011, the examiner issued a first Office action that was made final. On pages 3-4 of the final rejection of June 1, 2011, the examiner provided detailed explanation as how the claims are anticipated by the prior art references.

Analysis of Application Record

In the earlier final rejection of February 24, 2011, the examiner finally rejected claims 1, 2, 4, 7-9, 11, 13, 15, 16, 18, 21,22 under 35 U.S.C. 102(b) as being anticipated by Aronson (4,613,077). In the final Office action of February 24, 2011, claims 1, 2, 4, 6, 11, 13, 15, 16, 20 and 23 were rejected under 35 U.S.C. 102(b) as being anticipated by Su (5,772,117). Claim 19 was rejected under 35 U.S.C. 103(a) as being unpatentable over Su (5,772,117). Claim 19 also was rejected under 35 U.S.C. 103(a) as being unpatentable over Aronson (4,613,077). In response to the final rejection of February 24, 2011, on April 8, 2011 the applicant filed the current RCE with an amendment to amend independent claims 1 and 11. Apparently, the claims as amended in the amendment of April 8, 2011 fail to structurally define over the prior art references. The first Office action final rejection was issued on June 1, 2011. This final rejection is based on the same prior art references under the same applicable statutes of 35 USC § 102 and §103 with the contents substantially the same as the previous final rejection mailed February 24, 2011.

Petitioner opines that the amendment would not have been properly finally rejected on the grounds and art of record in the next Office action because the applicant believes that the amended claims are not directed to the same invention. Therefore, the claims cannot be rejected on the same grounds. Petitioner also questions the propriety of the rejection of the claims because the applicant does not agree with the examiner's interpretation of the prior art patents to Aronson and Su. The amended claims are not anticipated by the prior art references. The record shows that the examiner has determined that the April 8, 2011 amendment did not add any limitations which directed to a new invention but merely changed the scope of what was previously claimed. In the final Office action of June 1, 2011, the examiner also considered the limitations of amended claims of April 8, 2011 and determined that the amended claims remain unpatentable for the same grounds of rejection under 35 USC § 102 and §103 over the same prior art references. In particular, in the June 1, 2011 final rejection, the examiner stated the claims of the amendment of April 8, 2011 that were filed in connection with the RCE were drawn to the same invention as previously claimed and could have been finally rejected on the same grounds and art of record of the next Office action if they had been entered in the earlier application. A comparison of the claims filed on December 15, 2010 and the amended claims of April 8, 2011 clearly shows the amendments to the claims are drawn to the same invention. The only substantial difference is that the amendment of April 8, 2011 slightly varies the scope of claims 1 and 11. The added limitations in claims 1 and 11 are merely further define the location

of the surface area. Thus, the examiner issued a final rejection after RCE based on the same grounds of rejection over the prior art references of record pursuant to MPEP 706.07(b)[1]. The first action final rejection is proper.

Petitioner questions the propriety of the examiner's rejection of the claims regarding the added limitations. The disagreement with the examiner's position and the interpretation of the claim limitations as set forth in the petition is clearly appealable and not petitionable matters. As such, the petition will not be decided by this decision under 37 CFR § 1.181(a) (1)[2]. The issue presented here by petitioner is clearly directed to the propriety of the examiner's rejection of the claims under 35 U.S.C. § 102 and s 103. The question of whether claims should be rejected under 35 U.S.C. § 102 and § 103 or not is an appealable issue under 37 CFR 41.31(a) (1). After the review of the final Office action of June 1, 2011, the examiner's Office action does comply with the USPTO rules and regulations. The Office action of June 1, 2011 stands. Petitioner is reminded that the period to respond to the outstanding final Office action remains unchanged.

Decision

Based on the analysis of record, when the examiner promulgated the first Office action final rejection of June 1, 2011, the conditions set forth in MPEP § 706.07(b) were met. In particular, the amended claims in the amendment of April 8, 2011, in fact, are directed to the same invention as the claims in the earlier amendment filed on December 15, 2010 as indicated by the scope of the claims and the contents of the rejections. The claims in the amendment of April 8, 2011 would have been properly finally rejected on the same grounds and art of record in the next Office action if they had been filed earlier. Therefore, under MPEP § 706.07(b) the first action final rejection of June 1, 2011 is proper.

For the foregoing reasons it appears that the examiner did not abuse his discretion, or act in an arbitrary or capricious manner, in making the June 1, 2011 Office action final. Therefore, there is no basis for granting any of the relief requested.

The application is being forwarded to the examiner via the Supervisory Patent Examiner of Art Unit 3752 for consideration of the Rule 116 amendment filed on July 29, 2011. Petitioner may file a request for reconsideration of this decision, without fee. However, such request must be filed within two months of the date of this decision. See 37 CFR § 1.181(f). The mere filing of a

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[1] MPEP 706.07(b), paragraph 2 states: >The claims of an application for which a request for continued examination (RCE) has been filed may be finally rejected in the action immediately subsequent to the filing of the RCE (with a submission and fee under 37 CFR 1.114) where all the claims in the application after the entry of the submission under 37 CFR 1.114 (A) are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114, and (B) would have been properly finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to the filing of the RCE under 37 CFR 1.114.<

[2] 37 CFR § 1.181 Petition to the Director. (a) Petition may be taken to the Director: (1)From any action or requirement of any examiner in the ex parte prosecution of an application, or in ex parte or inter partes prosecution of a reexamination proceeding which is not subject to appeal to the Board of Patent Appeals and Interferences or to the court;

petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. No extension of time under 37 CFR 1.136(a) is permitted.

Should petitioner have any further questions, he is invited to contact Henry Yuen, TC 3700 SPRE, at 571-272-4856.

PETITION DISMISSED

Angela D. Sykes for
Donald T. Hajec, Director
Technology Center 3700

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BACON & THOMAS, PLLC
625 SLATERS LANE
FOURTH FLOOR
ALEXANDRIA, VA 22314-1176

Mail Date: 08/05/2010

Applicant	: Munchurl Kim	: DECISION ON REQUEST FOR
Patent Number	: 7657563	: RECALCULATION of PATENT
Issue Date	: 02/02/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/106,628	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/15/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1298** 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.
11/106,644	04/15/2005	Fumitsugu Fukuyo	46884-5202-04 (210672)	3820

55694 7590 08/31/2011

DRINKER BIDDLE & REATH (DC)
1500 K STREET, N.W.
SUITE 1100
WASHINGTON, DC 20005-1209

EXAMINER	
HEINRICH, SAMUEL M	

ART UNIT	PAPER NUMBER
3742	

NOTIFICATION DATE	DELIVERY MODE
08/31/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DBRIPDocket@dbr.com
penelope.mongelluzzo@dbr.com

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DRINKER BIDDLE & REATH (DC)
1500 K STREET, N.W.
SUITE 1100
WASHINGTON DC 20005-1209

In re Patent No. FUKUYO et al.	:	
Issue Date: December 1, 2009	:	**DECISION GRANTING**
Appl No.: 11/106,644	:	**PETITION**
Filed: April 15, 2005	:	*37 CFR 1.324*
For: LASER CUTTING BY FORMING A MODIFIED REGION WITHIN AN OBJECT AND GENERATING FRACTURES	:	

This is a decision on the petition July 22, 2011 to correct inventorship under 37 CFR 1.324.

The petition is granted.

The patented file is being forwarded to Certificate of Corrections Branch for issuance of a certificate naming only the actual inventor or inventors.

/Yuen Henry/
Yuen Henry
Supervisory Patent Examiner
Art Unit 3742
Technology Center 3700

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

DATE: August 15, 2011
TO: Certificates of Correction Branch
FROM: Henry Yuen
SPE, Art Unit 3742
SUBJECT: REQUEST FOR CERTIFICATE OF CORRECTION

Please issue a Certificate of Correction in U. S. Letters Patent No. 7,626,137 as specified on the attached Certificate.

/Yuen Henry/
Yuen Henry
Supervisory Patent Examiner
Art Unit 3742

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE

Patent No. 7,626,137
Patented: December 1, 2009

On petition requesting issuance of a certificate for correction of inventorship pursuant to 35 U.S.C. 256, it has been found that the above identified patent, through error and without deceptive intent, improperly sets forth the inventorship. Accordingly, it is hereby certified that the correct inventorship of this patent is:

Fumitsugu FUKUYO (JP), Kenshi FUKUMITSU (JP), Naoki UCHIYAMA (JP), and Toshimitsu WAKUDA (JP)

/Yuen Henry/
Yuen Henry
Supervisory Patent Examiner
Art Unit 3742

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Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/106,648	04/15/2005	Fumitsugu Fukuyo	46884-5202-03 (210675)	4660

55694 7590 08/31/2011
DRINKER BIDDLE & REATH (DC)
1500 K STREET, N.W.
SUITE 1100
WASHINGTON, DC 20005-1209

EXAMINER	
HEINRICH, SAMUEL M	

ART UNIT	PAPER NUMBER
3742	

NOTIFICATION DATE	DELIVERY MODE
08/31/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DBRIPDocket@dbr.com
penelope.mongelluzzo@dbr.com

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DRINKER BIDDLE & REATH (DC)
1500 K STREET, N.W.
SUITE 1100
WASHINGTON DC 20005-1209

In re Patent No. FUKUYO et al.
Issue Date: September 22, 2009
Appl No.: 11/106,648
Filed: April 15, 2005
For: LASER PROCESSING METHOD AND LASER PROCESSING APPARATUS

DECISION GRANTING PETITION
37 CFR 1.324

This is a decision on the petition July 22, 2011 to correct inventorship under 37 CFR 1.324.

The petition is granted.

The patented file is being forwarded to Certificate of Corrections Branch for issuance of a certificate naming only the actual inventor or inventors.

/Yuen Henry/
Yuen Henry
Supervisory Patent Examiner
Art Unit 3742
Technology Center 3700

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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DATE: August 15, 2011
TO: Certificates of Correction Branch
FROM: Henry Yuen
SPE, Art Unit 3742
SUBJECT: REQUEST FOR CERTIFICATE OF CORRECTION

Please issue a Certificate of Correction in U. S. Letters Patent No. 7,592,238 as specified on the attached Certificate.

/Yuen Henry/
Yuen Henry
Supervisory Patent Examiner
Art Unit 3742

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE

Patent No. 7,592,238
Patented: September 22, 2009

On petition requesting issuance of a certificate for correction of inventorship pursuant to 35 U.S.C. 256, it has been found that the above identified patent, through error and without deceptive intent, improperly sets forth the inventorship. Accordingly, it is hereby certified that the correct inventorship of this patent is:

Fumitsugu FUKUYO (JP), Kenshi FUKUMITSU (JP), Naoki UCHIYAMA (JP), and Toshimitsu WAKUDA (JP)

/Yuen Henry/
Yuen Henry
Supervisory Patent Examiner
Art Unit 3742

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ALEXANDRIA, VA 22313-1450
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DATE: April 4, 2012
TO: Certificates of Correction Branch
FROM: Matthew C. Landau
SPE, Art Unit 2813
SUBJECT: REQUEST FOR CERTIFICATE OF CORRECTION

Please issue a Certificate of Correction in U. S. Letters Patent No. 7,547,613 as specified on the attached Certificate.

/Matthew C. Landau/
Matthew C. Landau, SPE
Art Unit 2813

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE

Patent No. 7,547,613
Patented: June 16, 2009

On petition requesting issuance of a certificate for correction of inventorship pursuant to 35 U.S.C. 256, it has been found that the above identified patent, through error and without deceptive intent, improperly sets forth the inventorship. Accordingly, it is hereby certified that the correct inventorship of this patent is:

Fukuyo, Fumitsugu
Fukumitsu, Kenshi
Uchiyama, Naoki,
Wakuda, Toshimitsu

/Matthew C. Landau/
Matthew C. Landau
Supervisory Patent Examiner
Art Unit 2813

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/106,657	04/15/2005	Fumitsugu Fukuyo	46884-5202-05 (210671)	4659

55694 7590 04/05/2012

DRINKER BIDDLE & REATH (DC)
1500 K STREET, N.W.
SUITE 1100
WASHINGTON, DC 20005-1209

EXAMINER	
BLUM, DAVID S	

ART UNIT	PAPER NUMBER
2813	

NOTIFICATION DATE	DELIVERY MODE
04/05/2012	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DBRIPDocket@dbr.com
penelope.mongelluzzo@dbr.com

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DRINKER BIDDLE & REATH (DC)
1500 K STREET, N.W.
SUITE 1100
WASHINGTON, DC 20005-1209

Applicant : Fukuyo, Fumitsugu et al.
Appl No.: 11/106657
Filed: April 15, 2005

DECISION GRANTING PETITION UNDER *37 CFR 1.324*

This decision is in response to the petition filed July 22, 2011 in the above-identified application. Petitioner requests that inventorship be corrected in accordance with 37 C.F.R. 1.324.

Specifically, the petition requests that Kazuhiro Atsumi and Kenichi Muramatsu be deleted as inventors.

A grantable petition under 37 C.F.R. 1.324 to add a co-inventor requires the following submissions: (1) a statement from each person who is being added as an inventor that the inventorship error occurred without any deceptive intention on their part; (2) a statement from all current inventors, either agreeing to the change of inventorship, or stating that they have no disagreement with regard to the requested change; (3) a statement from the assignee(s) of the patent agreeing to the change of inventorship in the patent, accompanied by a proper statement under 37 CFR 3.73(b) establishing ownership, unless a proper 37 CFR 3.73(b) statement is already in the file; and (4) the fee set forth in 37 CFR 1.20(b).

The papers filed on July 22, 2011 thus fulfill the requirements set forth in 37 C.F.R. 1.324, and the petition is **GRANTED**.

Telephone inquiries should be directed to Matthew Landau, Supervisory Patent Examiner, at (571)-272-1731.

The patented file is being forwarded to Certificate of Corrections Branch for issuance of a certificate naming only the actual inventor or inventors.

Matthew Landau
Supervisory Patent Examiner, Art Unit 2813
Technology Center 2800

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Kilpatrick Townsend & Stockton/Qualcomm
Two Embarcadero Center
8th Floor
San Francisco CA 94111-3834

MAILED
JAN 04 2012
OFFICE OF PETITIONS

In re Patent No. 7,379,563
Issue Date: May 27, 2008
Application No. 11/106,729
Filed: April 15, 2005
Attorney Docket No. 112974 (819440)

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed December 1, 2011.

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3215.

Charlema Grant
Attorney Advisor
Office of Petitions

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Paper No.

AFS / ANGIODYNAMICS
666 THIRD AVENUE
FLOOR 10
NEW YORK NY 10017

MAILED
JAN 28 2011
OFFICE OF PETITIONS

In re Application of :
Chornenky et al. :
Application No. 11/106,835 : DECISION ON RENEWED PETITION
Filing Date: April 15, 2005 : PURSUANT TO 37 C.F.R.
Attorney Docket Number: : §§ 1.78(a)(3) and (a)(6)
M-001 CON1/309819 :
Title: APPARATUS AND METHOD FOR :
REDUCING SUBCUTANEOUS FAT :
DEPOSITS, VIRTUAL FACE LIFT AND :
BODY SCULPTURING BY :
ELECTROPORATION :

This is a decision on the renewed petition under 37 C.F.R. §§ 1.78(a)(3) and 1.78(a)(6), filed on January 25, 2011, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 119(e) for the benefit of priority to two prior-filed provisional applications and a prior-filed non-provisional application, set forth in an amendment to the specification submitted on November 13, 2009.

The renewed petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000 and after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

(1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;

(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional where there is a question whether the delay was unintentional.

An original petition pursuant to 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) was filed on November 13, 2009, and was dismissed as premature via the mailing of a decision on May 4, 2010.

37 C.F.R. § 1.78(a)(3)(iii) requires a statement that the entire delay between the date the claim was due under paragraph (a)(2)(ii) of 37 C.F.R. § 1.78 and the date the claim was filed was unintentional. 37 C.F.R. § 1.78(a)(6)(iii) requires a statement that the entire delay between the date the claim was due under paragraph (a)(5)(ii) of this section and the date the claim was filed was unintentional. Since the statement contained in this renewed petition varies from the language required by 37 C.F.R. §§ 1.78(a)(3)(iii) and 1.78(a)(6)(iii), the statement contained in this renewed petition is being construed as the statement required by 37 C.F.R. §§ 1.78(a)(3)(iii) and 1.78(a)(6)(iii), and Petitioner must notify the Office if this is not a correct interpretation of the statement contained in this renewed petition.

All the above requirements having been satisfied, the late claim for benefit of priority under 35 U.S.C. §§ 120 and 119(e) is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) should not be construed as meaning that this application is entitled to the benefit of the filing date of the prior-filed applications. In order for this application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §§ 120 and 1.78(a)(1) and (a)(2) and under 35 U.S.C. § 119(e) and 37 CFR §§ 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that Applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed applications, accompanies this decision on petition.

Any questions concerning this matter may be directed to Senior Attorney Paul Shanoski at (571) 272-3225. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to Technology Center Art Unit 3739 for consideration by the Examiner of the claim under 35 U.S.C. §§ 120 and 119(e) of the prior-filed nonprovisional and provisional applications.

Chris Bottorff
Supervisor
Office of Petitions

ATTACHMENT : Corrected Filing Receipt

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United States Patent and Trademark Office
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/106,835	04/15/2005	3739	500	M-001 CON1/309819	11	3

CONFIRMATION NO. 4515

CORRECTED FILING RECEIPT

76147
AFS / ANGIODYNAMICS
666 THIRD AVENUE
FLOOR 10
NEW YORK, NY 10017

OC000000045737307

Date Mailed: 01/28/2011

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)

Victor I. Chornenky, Minnetonka, MN;
Ali Jaafar, Eden Prairie, MN;

Power of Attorney: The patent practitioners associated with Customer Number 76147

Domestic Priority data as claimed by applicant

This application is a CON of 09/931,672 08/17/2001 PAT 6,892,099
which claims benefit of 60/267,106 02/08/2001
and claims benefit of 60/225,775 08/17/2000

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 05/12/2005

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/106,835**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No
**** SMALL ENTITY ****

Title

Apparatus and method for reducing subcutaneous fat deposits, virtual face lift and body sculpturing by electroporation

Preliminary Class

606

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

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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TUROCY & WATSON, LLP
127 Public Square
57th Floor, Key Tower
CLEVELAND, OH 44114

MAILED
OCT 04 2011
OFFICE OF PETITIONS

In re Application of :
David J. Akers, et. al. :
Application No. 11/106,871 : ON PETITION
Filed: April 15, 2005 :
Attorney Docket No. AKEP102USB :

This is a decision on the petition under 37 CFR 1.137(b), filed September 27, 2011, to revive the above-identified application.

This application became abandoned as a result of petitioner's failure to take appropriate action in a timely manner after the decision of June 23, 2011, by the Board of Patent Appeals and Interference. A Notice of Abandonment was mailed on August 26, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) along with the submission under 37 CFR 1.114 and $465 fee; (2) the petition fee of $930; and (3) an adequate statement of unintentional delay. Therefore, the petition is **GRANTED**.

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 contained in the instant petition 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) and petitioner must notify the Office if this is **not** a correct interpretation of the statement.

This application file is being referred to Technology Center Art Unit 3663 for processing of the RCE.

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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MAILED Paper No.

AUG 04 2011

OFFICE OF PETITIONS

Foley & Lardner LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON WI 53701-1497

In re Application No. 11/106,915	:	
Webster et al.	:	DECISION ON
Filed: April 15, 2005	:	REQUEST FOR
Attorney Docket No. 088245-2605	:	RECONSIDERATION OF
Title: PACKET GENERATION SYSTEMS AND METHODS	:	PATENT TERM ADJUSTMENT
	:	

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 on July 25, 2011. Applicant submits that the correct patent term adjustment to be indicated on the patent is one thousand and seventeen (1017) days, not five hundred and twenty-six (526) 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.

To the extent that the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As

such, the Office cannot make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, Applicant is advised that he may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, Applicant must timely file an application for patent term adjustment prior to the payment of the issue fee.[1]

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

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[1] For example, if Applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then Applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the § 1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/106,976	04/14/2005	Mark S. Chee	067234-0128	6606

41552 7590 09/03/2010

MCDERMOTT, WILL & EMERY
11682 EL CAMINO REAL
SUITE 400
SAN DIEGO, CA 92130-2047

EXAMINER	
STRZELECKA, TERESA E	

ART UNIT	PAPER NUMBER
1637	

NOTIFICATION DATE	DELIVERY MODE
09/03/2010	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):

SIP_Docket@mwe.com

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SEP 0 3 2010

MCDERMOTT, WILL & EMERY
11682 EL CAMINO REAL
SUITE 400
SAN DIEGO CA 92130-2047

In re Application of:	:
Chee et al.	:
Serial No.: 11/106,976	: PETITION DECISION
Filed: April 14, 2005	:
Attorney Docket No.: **067234-0128**	:

This is in response to the petition under 37 CFR § 1.181, filed July 27, 2010, requesting that the finality of the Office action of July 16, 2010 be withdrawn as premature.

BACKGROUND

Most recently, the examiner mailed a non-final Office action on December 12, 2009 setting a three month statutory limit for reply. At the time of this non-final Office action, claims 50-62, 67-84 and 89-92 were pending. The examiner rejected claims 50-55, 57-61, 67, 68, 71-77, 79-83, 89 and 90 and withdrew claims 56, 62, 69, 70, 78, 84, 91 and 92 from consideration. Claims 50-55, 57-61, 67, 68, 71-77, 79-83, 89 and 90 were rejected under 35 USC 103 (a) as being unpatentable over Rothberg et al. and Walt et al. Claims 50-55, 57-61, 67, 68, 71-77, 79-83, 89 and 90 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 50-53, 55, 56, 58-62, 66, 67, 70, 71, 73-77, 79-83, 90 and 91 of copending application No. 11/107,215.

In reply to the non-final Office action of December 12, 2009, applicants filed a response on May 13, 2010. The response submitted by applicants included remarks, arguments traversing the rejections made in the non-final Office action, and a Declaration filed under 37 CFR 1.131.

On July 16, 2010, the examiner mailed a final Office action setting a three month statutory limit for reply. At the time of this final Office action, claims 50-62, 67-84 and 89-92 were pending. Claims 50-55, 57-61, 67, 68, 71-77, 79-83, 89 and 90 were rejected. Claims 50-55, 57-61, 67, 68, 71-77, 79-83, 89 and 90 were again rejected under 35 USC 103 (a) as being unpatentable over Rothberg et al. and Walt et al. Claims 50-55, 57-61, 67, 68, 71-77, 79-83, 89 and 90 were

again provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 50-53, 55, 56, 58-62, 66, 67, 70, 71, 73-77, 79-83, 90 and 91 of copending application No. 11/107,215. The examiner newly rejected claims 50-55, 57-61, 67, 68, 71-77, 79-83, 89 and 90 under 35 USC 112, first paragraph, as failing to comply with the enablement requirement.

In response thereto, applicants filed a petition on July 27, 2010, requesting that the finality of the Office action of July 16, 2010 be withdrawn.

DISCUSSION

The petition and the file history have been carefully considered.

In the petition filed by applicants on July 27, 2010, applicants request reconsideration of the final Office action mailed by the examiner on July 16, 2010. Specifically, applicants argue that "The rejection in the final Office Action mailed July 16, 2010, of independent claims 50-55, 57-61, 67, 68, 71-77, 79-83, 89 and 90 under 35 U.S.C. §112, first paragraph for alleged lack support by an enabling disclosure, is a new ground of rejection. Applicant neither amended any claims in the Response filed May 13, 2010, attached hereto as Exhibit C, nor filed an IDS with references upon which the new enablement rejection is based between the subject non-final and final Office actions. Accordingly, the conditions required by MPEP § 706.07(a) have not been met."

The following excerpt from the MPEP § 706.07 was also cited in support of applicants' assertions:

> Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

Applicants' argument has been accorded careful consideration but it is not persuasive. While applicants are correct that no amendments were made to the claims after the non-final Office action of December 24, 2009, applicants did, in fact, submit evidence after the non-final Office action which necessitated an action by the examiner, said action being a 35 USC 112, first paragraph rejection. Note specifically, the examiner comments on page 19 of the final Office action "Further, as evidenced by Applicant-provided Exhibits in the declaration of Dr. Mark Chee filed May 13, 2010, as of October 31, 2000, which was over a year after the filing date of the priority application, Applicants were not in possession of a system which could sequence even a single base pair by pyrosequencing on an array, as evidenced by the following statements (page *5,* paragraphs 4-5 and page 6, paragraphs 2-4):.."

Accordingly, the final Office action issued July 16, 2010 is not found to be premature nor in error. Consequently, the finality of the Office action will not be withdrawn in favor of applicants.

DECISION

The petition is **DENIED.**

Any new or renewed petition must be filed within TWO MONTHS of the mail date of this decision.

Should there be any questions about this decision please contact Marianne C. Seidel, by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 571-273-8300.

Jackie Stone
Director, Technology Center 1600

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November 9, 2010

Patent No. : 7,758,886 B2
Appl. No. : 11/106,999
Inventor(s) : Jurgen Jauernig, et al.
Issued : July 20, 2010
Title : **PHARMACEUTICAL AEROSOL COMPOSITION**
Docket No. : **63299(45107)**

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

EDWARDS ANGELL PALMER & DODGE LLP
P.O. BOX 55874
BOSTON MA 02205

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EDWARDS ANGELL PALMER & DODGE LLP
P.O. BOX 55874
BOSTON MA 02205

MAILED

AUG 30 2011

OFFICE OF PETITIONS

In re Patent No. 7,758,886 :
Issue Date: July 20, 2010 :
Application No. 11/106,999 : ON PETITION
Filed: April 14, 2005 :
Attorney Docket No. **63299(45107)** :

This is a decision on the petition filed August 11, 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**.

Petitioner states that the correct assignee's name is "Pari Pharma GmbH, Starnberg, Germany" 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 1.182 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
Petitions Examiner
Office of Petitions

[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/107,107	04/14/2005	Joel A. Ronning	D33-002-03-US	5878

54092 7590 01/30/2012

NORTH OAKS PATENT AGENCY
45 ISLAND ROAD
NORTH OAKS, MN 55127

EXAMINER	
RAVETTI, DANTE	
ART UNIT	**PAPER NUMBER**
3685	

MAIL DATE	DELIVERY MODE
01/30/2012	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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JAN 30 2012

Shawn B. Dempster
45 Island Road
North Oaks, Minnesota 55127

In re Application of	:	
Joel A. Ronning et al.	:	PETITION TO WITHDRAW
Application No. 11/107,107	:	HOLDING OF ABANDONMENT
Filed: April 14, 2005	:	UNDER 37 CFR 1.181(a)
Attorney Docket No.: LH011	:	
For: SOFTWARE LICENSE SERVER WITH GEOGRPAHIC LOCATION VALIDATION		

This is a decision on the petition under 37 CFR 1.181(a) filed on October 9, 2008 requesting that the Notice of Abandonment of September 15, 2008 be withdrawn.

The Petition is **GRANTED.**

The examiner sent a Notice of Abandonment out on September 15, 2008. However, a timely filed response was filed on August 4, 2008 including a petition for extension of time.

In view of the fact that a response to the non-final office action of February 5, 2008 was received within the statutory time for response, the holding of abandonment on September 15, 2008 was improper and premature. Accordingly, the holding of abandonment mailed is hereby **VACATED.**

Wynn W. Coggins, Director
Technology Center 3600
(571) 272-5150

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)
7213923	2007-05-08	11/107,204	2005-04-15	402-0008

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	/EGR, Reg. No. 63,604/	Date (YYYY-MM-DD)	2011-05-10
Name	Edgar G. Rodriguez	Registration Number	63604

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. 7213923
Issue Date: May 8,2007
Application No. 11107204
Filed: April 15,2005
Attorney Docket No. 402-0008

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed May 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 May 10,2011 .
This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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www.uspto.gov

MARGARET ANDERSON
106 E. 6TH STREET, SUITE 900
AUSTIN TX 78701

MAILED
MAR 14 2011
OFFICE OF PETITIONS

In re Application of :
Jung et al. :
Application No. 11/107,343 :
Filed: April 15, 2005 :
Attorney Docket No. QQ1-0093US :

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed January 26, 2011.

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.

According to a review of current USPTO records petitioner has not requested the address be changed to a properly recorded assignee or the first listed inventor. The Customer Number 55922 is neither the first named inventor nor the assignee who properly became of record under 37 CFR 3.71 As such, all future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Further, the address given on the petition differs from the address of record. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Currently, a Board of Patent Appeals and Interferences Docketing Notice was mailed January 24, 2011 in the above-identified application.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-7751.

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: LEE & HAYES, PLLC
601 W RIVERSIDE
SUITE 1400
SPOKANE, WA 99201

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

GATES & COOPER LLP
HOWARD HUGHES CENTER
6701 CENTER DRIVE WEST, SUITE 1050
LOS ANGELES CA 90045

MAIL

OCT 0 6 2010

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

In re Application of:
LEROUX, DOMINIQUE
Application Serial No.: 11/107,432
Filed: April 15, 2005
For: **DYNAMIC RESOLUTION DETERMINATION**

DECISION
ON PETITION

This is a decision on the petition to withdraw finality of office action and to withdraw restriction and species requirement filed May 26, 2010.

The petition is **GRANTED**.

Petitioner requests that the Restriction Requirement mailed October 14, 2008 be withdrawn. Additionally, petitioner requests that the Election of Species Requirement mailed October 13, 2009, be withdrawn. Furthermore, petitioner requests that the Final Office action mailed April 28, 2010 be withdrawn.

BACKGROUND

On March 21, 2008 the examiner mailed a non-final Office action rejecting all pending claims on the merits. In response thereto, applicant filed a response on June 18, 2008. The response includes amendment to both the specification and the claims.

The examiner then made the restriction requirement of October 14, 2008. Applicant subsequently filed an election on June 17, 2009. After this election was filed, the examiner required an election of species within the elected group. The election requirement was mailed on October 13, 2009. In response, applicant elected a species on February 12, 2010.

On April 28, 2010 a final rejection was mailed introducing prior art for the first time in rejecting the elected claims.

DISCUSSION

Restriction/Election Requirements

In order for a restriction or election requirement to be proper the examiner must in addition to establishing independence of distinctness, establish why there would be serious burden in order to examine the additional invention(s)/specie(s). See MPEP § 802.02. Since the examiner provided an examination on the merits for all claims prior to the making of the restriction requirement and subsequent election requirement, the restriction and election requirements are deemed improper and are withdrawn. Discussion of the propriety of whether the groupings are in fact distinct will not be made herein.

Finality of Office Action

In the first Office action mailed March 21, 2008, the examiner made rejections under 35 § U.S.C. 112, second paragraph and 35 § U.S.C 101. There was no prior art rejection included. It is true that applicant did amend the claims in response to the first action. However, the claims at time of first action were not so informal as to preclude an application of available and appropriate prior art. Prior art should of been applied in the first action. Otherwise, rationale for the non-inclusion (e.g. claims are so informal or claims would be allowable over the prior art if 112/101 rejections are overcome, etc.) should be of record in the Office action.

MPEP 706.07(a) [R-6] Final Rejection, When Proper on Second Action states:

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims, nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

The addition of an art rejection in the second Office action was not necessitated by applicant's amendment but rather by examiner's failure to include an art rejection or discussion thereof in the first Office action. Piecemeal examination should be avoided. See MPEP 707.07(g)

SUMMARY: The petition is **GRANTED**. The Restriction and Election requirements are withdrawn. The Final Office action of April 28, 2010 is **VACATED**.

Mark R. Powell

Mark Powell, Director
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

ZACHARY T. WOBENSMITH, III
7746 101st Court
Vero Beach FL 32967-2871

MAILED

AUG 2 6 2010

OFFICE OF PETITIONS

In re Application of :
Joseph B. Kejha :
Application No. 11/107,569 : DECISION ON PETITION
Filed: April 18, 2005 :
Attorney Docket No. **1463P** :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 26, 2010, to revive the above-identified application.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed June 23, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on September 24, 2009.

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $810, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to JoAnne Burke at (571) 272-4584.

This application is being referred to Technology Center AU 1795 for appropriate action by the Examiner in the normal course of business.

JoAnne Burke
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 2-1-11

TO SPE OF : ART UNIT 2614

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/107,635 Patent No.: 7567680

CofC mailroom date: 1-21-11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES: Should CofC be approved

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Chris Yamnitzky
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: _____

_____

_____

_____

_____

_____ 2614
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)
7111347	2006-09-26	11107717	2005-04-18	

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity	Fee	Code	Small Entity	Fee	Code
○	3 ½ year	(1551)	◉	3 ½ year	(2551)
○	7 ½ year	(1552)	○	7 ½ year	(2552)
○	11 ½ year	(1553)	○	11 ½ year	(2553)

SURCHARGE

The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition.

STATEMENT

THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

○ An attorney or agent registered to practice before the Patent and Trademark Office

◉ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

○ A joint patentee; all of whom are signing this e-petition

○ The assignee of record of the entire interest

PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Sole Patentee			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature.			
Signature	/Annette M Cottrell/	Date (YYYY-MM-DD)	2010-11-15
Name	Annette M. Cottrell		

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. 7111347
Issue Date: September 26,2006
Application No. 11107717
Filed: April 18,2005
Attorney Docket No.

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed November 15,2010 ,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 15,2010 . 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

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.
10/107,757	03/26/2002	Allen Geddes	BBD.5564.17	2861

7590 12/23/2010

Ray L. Weber
Renner, Kenner, Greive, Bobak, Taylor & Weber
1610 First National Tower
Akron, OH 44308-1456

EXAMINER	
CLARKE, SARA SACHIE	
ART UNIT	PAPER NUMBER
3993	

MAIL DATE	DELIVERY MODE
12/23/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Copied from 10107757 on 01/19/2011

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE
BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte BO XIA *et al*

Application 10/107,757
Technology Center 1700

DECISION ON PETITION

This is a decision on the "Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 C.F.R. § 1.137(b)," filed Novenber 5, 2010 ("Petition to Revive").

See 75 Fed. Reg. 15,689-90 (Mar. 30, 2010) for authority of the Chief Administrative Patent Judge.

FINDINGS

1. On July 16, 2009, Appellants filed an Appeal Brief.

2. On December 1, 2009, the Primary Examiner issued a Notification of Non-Compliant Appeal Brief (37 CFR 41.37). The Notification granted Appellants a period of one month within which to file a corrected brief, i.e., until January 1, 2010.

3. On August 11, 2010, having received no response to the Notification of Non-Compliant Appeal Brief of December 1, 2009, the Primary Examiner issued a Notice of Abandonment.

Copied from 10107757 on 01/19/2011

4. On November 5, 2010, Appellants filed the present Petition accompanied by:

(a) a corrected Summary of Claimed Subject Matter for the Appeal Brief;

(b) the Petition fee; and

(c) A statement that "The entire delay in filing this Petition and Response To Notification Of Non-Compliant Appeal Brief Pursuant to 37 C.F.R. § 41.37 was unintentional."

5. There are no facts known by the Office that would cause the Office to question whether either the abandonment or delay in filing the Petition to Revive was unintentional.

6. A review of the Appeal Brief as corrected, indicates that it is in compliance with 37 C.F.R. § 41.37.

RELEVANT AUTHORITY

In respect to revival of an unintentionally abandoned application, 37 C.F.R. § 1.137(b) provides that:

(b) *Unintentional.* If the delay in reply by applicant or patent owner was unintentional, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination prosecution terminated under §§ 1.550(d) or 1.957(b) or limited under § 1.957(c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed;

(2) The petition fee as set forth in § 1.17(m);

Copied from 10107757 on 01/19/2011

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and

(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

DISCUSSION

Since the application was filed after June 8, 1995, on May 23, 2005, no terminal disclaimer is required.

As indicated above, Appellants have complied with all of the requirements of a petition under 37 C.F.R. § 1.137(b) for revival of an unintentionally abandoned application.

DECISION

In view of the foregoing, the Petition to Revive is GRANTED and the Appeal Brief as corrected on November 5, 2010 will be returned to the Examiner for preparation of an Examiner's Answer.

James T. Moore
Acting Chief Administrative Patent Judge

Copied from 10107757 on 01/19/2011

Steven C. Bauman
Henkel Corporation
Legal Department
One Henkel Way
Rocky Hill, CT 06067

Copied from 10107757 on 01/19/2011

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Paper No.

MAILED

SEP 27 2010

OFFICE OF PETITIONS

JONES DAY
222 EAST 41ST ST
NEW YORK NY 10017

In re Patent No. 7,767,689	:	DECISION ON REQUEST
Moon et al.	:	FOR
Issue Date: August 3, 2010	:	RECONSIDERATION OF
Application No. 11/107,783	:	PATENT TERM ADJUSTMENT
Filed: April 18, 2005	:	and
Atty Docket No. 10589-100-999	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on September 10, 2010 pursuant to 37 C.F.R. § 1.705(d), requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand, two hundred and seventy-three (1273) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand, two hundred and seventy-three (1273) days is **GRANTED**.

Patentee has indicated that this patent is subject to a terminal disclaimer.[1]

The $200.00 fee set forth in 37 C.F.R. § 1.18(e) will be charged to Deposit Account No. 50-3013 in due course. No additional fees are required.

The patent is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand, two hundred and seventy-three (1273)** days.

[1] Petition, page 6.

Telephone inquiries specific to this matter should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,767,689 B2

DATED : **August 3, 2010** **DRAFT**

INVENTOR(S) : Moon 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 1256 days

Delete the phrase "by 1256 days" and insert – by 1273 days--

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : June 6, 2011

TO SPE OF : ART UNIT 3716 SPE

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/107,818 Patent No.: 7,473,180 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 insertion of the Foreign Application Priority Data be approved as requested by applicant?
See COCIN dated 5-26-2011

Antonio Johnson

Certificates of Correction Branch
(571)272-0483 Fax – (571)270-9846

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

X **Approved**	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: _____

_____

_____ ____ SPE /Dmitry Suhol/ Art Unit 3716

OK TO ENTER: /P.D./

06/07/2011

Docket No.: K6510.0032/P032-D
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Letters Patent of:
Atsunori Himoto et al.

Patent No.: 7,473,180

Issued: January 6, 2009

For: CONTROLLER AND EXPANSION UNIT FOR CONTROLLER

REQUEST FOR CERTIFICATE OF CORRECTION
PURSUANT TO 37 CFR 1.322

Attention: Certificate of Correction Branch
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Upon reviewing the above-identified patent, Patentee noted the following printing error which should be corrected.

Cover Page:

Add the following data:

(30) Foreign Application Priority Data

Mar. 5, 1996 (JP) 8/47691

Mar. 26, 1996 (JP) 8/70769

Apr. 24, 1996 (JP) 8/102413

Patentees note that the foreign priority was appropriately claimed in the application and was acknowledged by the USPTO on the Filing Receipt dated June 22, 2005, and receipt of the

certified copies of the priority documents was acknowledged in the Supplemental Notice of Allowability dated October 28, 2008; accordingly no fee is required.

Transmitted herewith is a proposed Certificate of Correction effecting such amendment. Patentees respectfully solicit the granting of the requested Certificate of Correction.

Dated: May 26, 2011

Respectfully submitted,

By _____

Thomas J. D'Amico
Registration No.: 28,371
Jennifer M. McCue
Registration No.: 55,440
DICKSTEIN SHAPIRO LLP
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Attorneys for Patentees

PTO/SB/44 (09-07)
Approved for use through 08/31/2013. OMB 0651-0033
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(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO.	:	7,473,180
APPLICATION NO.	:	11/107,818
ISSUE DATE	:	January 6, 2009
INVENTOR(S)	:	Atsunori Himoto 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:

Add the following data:

(30) Foreign Application Priority Data

Mar. 5, 1996 (JP) 8/47691

Mar. 26, 1996 (JP) 8/70769

Apr. 24, 1996 (JP) 8/102413

MAILING ADDRESS OF SENDER (Please do not use customer number below):
Thomas J. D'Amico
DICKSTEIN SHAPIRO LLP
1825 Eye Street, NW
Washington, DC 20006-5403

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : June 6, 2011

TO SPE OF : ART UNIT 3716 SPE

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/107,818 Patent No.: 7,473,180 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 insertion of the Foreign Application Priority Data be approved as requested by applicant?
See COCIN dated 5-26-2011

Antonio Johnson

Certificates of Correction Branch
(571)272-0483 Fax – (571)270-9846

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

X Approved	**All** changes apply.
❑ **Approved in Part**	Specify below which changes **do not** apply.
❑ **Denied**	State the reasons for denial below.

Comments: _____

_____

_____

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

SPE_/Dmitry Suhol/_____ Art Unit _3716_____

UNITED STATES PATENT AND TRADEMARK OFFICE

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LANG MICHENER
BROOKFIELD PLACE, P.O. BOX 747
SUITE 2500, 181 BAY STREET
TORONTO ON M5J 2T7 CA CANADA

MAILED

AUG 17 2010

OFFICE OF PETITIONS

In re Application of
Mark Sinclair Krebs
Application No. 11/107,952
Filed: April 18, 2005
Attorney Docket No.

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 8, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Restriction Requirement, mailed April 1, 2009, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on May 2, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Election, (2) the petition fee of $810, and (3) a proper statement of unintentional delay.

The application file indicates that a Power of Attorney was filed on July 15, 2010, and was accepted on July 23, 2010. Accordingly, since the address given on the petition differs from the address of record a courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

Telephone inquiries concerning this decision should be directed to JoAnne Burke at (571)272-4584.

This application is being referred to Technology Center AU 2426 for appropriate action by the Examiner in the normal course of business on the reply received.

JoAnne Burke
Petitions Examiner
Office of Petitions

cc: Mark Krebs
54 Grandview Avenue
Toronto, Ontario Canada M4K 1J2

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)
7,081,136	2006-07-25	11/107,956	2005-04-18	0987D-0046

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity	Fee	Code	Small Entity	Fee	Code
○	3 ½ year	(1551)	◉	3 ½ year	(2551)
○	7 ½ year	(1552)	○	7 ½ year	(2552)
○	11 ½ year	(1553)	○	11 ½ year	(2553)

SURCHARGE

The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition.

STATEMENT

THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

◉ An attorney or agent registered to practice before the Patent and Trademark Office

○ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

○ A joint patentee; all of whom are signing this e-petition

○ The assignee of record of the entire interest

PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/David E. Dougherty/	Date (YYYY-MM-DD)	2010-08-03
Name	David E. Dougherty	Registration Number	19576

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
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In re Patent No. 7081136
Issue Date: July 25,2006
Application No. 11107956
Filed: April 18,2005
Attorney Docket No. 987/46

:
: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.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Decision Date : December 7, 2011

In re Application of :

David Zoller

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11108067

Filed : 15-Apr-2005

Attorney Docket No : MS1-2511US

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed December 7, 2011, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid 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 2173 for processing of the request for continuing examination under 37 CFR 1.114 .

Office of Petitions

Doc Code: PET.AUTO Document Description: Petition automatically granted by EFS-Web	PTO/SB/140 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	**PETITION TO WITHDRAW AN APPLICATION FROM ISSUE AFTER PAYMENT OF THE ISSUE FEE UNDER 37 CFR 1.313(c)**
Application Number	11108067
Filing Date	15-Apr-2005
First Named Inventor	David Zoller
Art Unit	2173
Examiner Name	YONGJIA PAN
Attorney Docket Number	MS1-2511US
Title	REGISTRATION OF APPLICATIONS AND COMPLIMENTARY FEATURES FOR INTERACTIVE USER INTERFACES

An application may be withdrawn from issue for further action upon petition by the applicant. To request that the Office withdraw an application from issue, applicant must file a petition under this section including the fee set forth in § 1.17(h) and a showing of good and sufficient reasons why withdrawal of the application from issue is necessary.

APPLICANT HEREBY PETITIONS TO WITHDRAW THIS APPLICATION FROM ISSUE UNDER 37 CFR 1.313(c).

A grantable petition requires the following items:
(1) Petition fee; and
(2) One of the following reasons:
(a) Unpatentability of one or more claims, which must be accompanied by an unequivocal statement that one or more claims are unpatentable, an amendment to such claim or claims, and an explanation as to how the amendment causes such claim or claims to be patentable;
(b) Consideration of a request for continued examination in compliance with § 1.114 (for a utility or plant application only); or
(c) Express abandonment of the application. Such express abandonment may be in favor of a continuing application, but not a CPA under 37 CFR 1.53(d).

Petition Fee

☐ Applicant claims SMALL ENTITY status. See 37 CFR 1.27.

☐ Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

☐ Applicant(s) status remains as SMALL ENTITY.

☒ Applicant(s) status remains as other than SMALL ENTITY

Reason for withdrawal from issue

◯ One or more claims are unpatentable ◉ Consideration of a request for continued examination (RCE) (List of Required Documents and Fees) ◯ Applicant hereby expressly abandons the instant application (any attorney/agent signing for this reason must have power of attorney pursuant to 37 CFR 1.32(b)).
RCE request,submission, and fee. ☐ I certify, in accordance with 37 CFR 1.4(d)(4) that : The RCE request ,submission, and fee have already been filed in the above-identified application on ☒ Are attached.
THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES I certify, in accordance with 37 CFR 1.4(d)(4) that I am: ◉ An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application. ◯ An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity. ◯ A sole inventor ◯ A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors ◯ A joint inventor; all of whom are signing this e-petition ◯ The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71

Signature	/Robert C. Peck, Reg. No. 56,826/
Name	Robert C. Peck
Registration Number	56826