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Paper No.

BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO IL 60610

MAILED

JAN 19 2011

OFFICE OF PETITIONS

In re Patent No. 7,489,072	: DECISION ON REQUEST
Yang et al.	: FOR
Issue Date: 02/10/2009	: RECONSIDERATION OF
Application No. 11/208,242	: PATENT TERM ADJUSTMENT
Filing or 371(c) Date: 08/18/2005	: and
Atty Docket No.	: NOTICE OF INTENT TO ISSUE
12579-6144	: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on April 3, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by six hundred eighty-four (684) 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 eighty-four (684) 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 eighty-four (684)** 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 : 7,489,072 B2

DATED : **Feb. 10, 2009** **DRAFT**

INVENTOR(S) : Yang et al.

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

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 508 days.

Delete the phrase "by 508 days" and insert – by 684 days--

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FENWICK & WEST LLP
SILICON VALLEY CENTER
801 CALIFORNIA STREET
MOUNTAIN VIEW, CA 94041

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NOV 23 2010

OFFICE OF PETITIONS

In re Patent No. 7,161,816 :
Issue Date: January 9, 2007 :
Application No. 11/208,323 : NOTICE
Filed: August 19, 2005 :
Attorney Docket No. 23516-10711

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

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

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

Inquiries related to this communication should be directed to Irvin Dingle at (571) 272-3210.

Irvin Dingle
Petitions Examiner
Office of Petitions

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Commissioner for Patents
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Law Offices of J.D. Geraigery, P.C.
1133 Broadway, Suite 916
New York, NY 10010

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SEP 03 2010

OFFICE OF PETITIONS

In re Application of	:	
Denise G. Novelli	:	
Application No. 11/208,381	:	DECISION ON PETITION
Filed: August 20, 2005	:	TO WITHDRAW
Attorney Docket No. 287-001	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 11, 2010.

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

A review of the file record indicates that the power of attorney to Janine D. Geraigery and all attorneys/agents associated with customer number 50043 has been revoked by the assignee of the patent application on August 11, 2010. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Denise G. Novelli
Idealistic Ent. Group, Inc.
Apt. East
750 Hallock Avenue
Port Jefferson, NY 11776

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JONATHAN P.O'BIREN, PH.D
HONIGMAN, MILLER, SCHWARTZ & COHN, LLP
350 EAST MICHIGAN AVENUE
SUITE 300
KALAMAZOO, MI 49007

In re Application of	:	
Lewis R. Makings, et al.	:	
Application No. 11/208,386	:	DECISION GRANTING PETITION
Filed: August 19, 2005	:	UNDER 37 CFR 1.313(c)(1)
Attorney Docket No. 223306/04-128	:	

This is a decision on the petition under 37 CFR 1.313(c)(1), filed September 8, 2010, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

37 CFR 1.313(c) provides that:

Once the issue fee has been paid, the application will not be withdrawn from issue upon petition by the applicant for any reason except:

(1) Unpatentability of one of more claims, which petition must be accompanied by an unequivocal statement that one or more claims are unpatentable, an amendment to such claim or claims, and an explanation as to how the amendment causes such claim or claims to be patentable;

(2) Consideration of a request for continued examination in compliance with 37 CFR 1.114; or

(3) Express abandonment of the application. Such express abandonment may be in favor of a continuing application.

The petition complies with the requirements of 37 CFR 1.313(c)(1). Accordingly, the above-identified application is withdrawn from issue.

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

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

The application is being referred to Technology Center AU 1624 for consideration of the amendment submitted with the petition.

/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
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Paper No.

JONATHAN P. O''BRIEN, PH.D.
HONIGMAN MILLER SCHWARTZ & COHN LLP
350 EAST MICHIGAN AVENUE
SUITE 300
KALAMAZOO MI 49007

MAILED

SEP 13 2010

OFFICE OF PETITIONS

In re Application of	:	
Makings et al.	:	
Application No. 11/208386	:	ON APPLICATION FOR
Filed: 08/19/2005	:	PATENT TERM ADJUSTMENT
Atty Docket No.	:	
223306/04-128 US/120285	:	

This is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT (PTA) UNDER 37 C.F.R. § 1.705(b)," filed on May 24, 2010. Applicants submit that the correct patent term adjustment to be indicated on the patent should include an additional 473 days pursuant to 35 U.S.C. § 154(b)(1)(B) in addition to the number of days specified in 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.

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.

It is noted that, prior to a decision on the subject application for patent term adjustment being rendered, on September 8, 2010, applicants filed a petition to withdraw from issue along with an amendment. A review of Office PALM records indicates that the petition to withdraw from issue was granted on September 9, 2010.

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].

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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 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).

Technology Center Art Unit 1624 has been advised of this decision. The application is, therefore, forwarded to the Technology Center for further processing.

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

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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

In re Application
Kenneth L. Levy et al.
Application No. 11/208,441
Filed: August 19, 2005
Attorney Docket No. 098888-1021

: DECISION ON APPLICATION
: FOR 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 September 23, 2011. Applicant requests that the determination of patent term adjustment be corrected from 652 to 1254 days. Applicant requests this correction in part on the basis that the Office will take in excess of three years to issue this patent and is considered in light of the recent court decision in light of the Court of Appeals for the Federal Circuit's decision in *Wyeth v. Kappos*, 2009-1120 (Fed. Cir. 1-7-2010).

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

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

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

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

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

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

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

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

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

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McDonnell Boehnen Hulbert & Berghoff
LLP/Google Inc.
300 South Wacker Drive, Suite 3100
Chicago IL 60606

MAILED
MAR 08 2011
OFFICE OF PETITIONS

In re Patent No. 7,437,023
Issue Date: October 14, 2008
Application No. 11/208,458
Filed: August 18, 2005
Title: METHODS, SYSTEMS AND COMPUTER PROGRAM PRODUCTS FOR DATA GATHERING IN A DIGITAL AND HARD COPY DOCUMENT ENVIRONMENT

DECISION ON PETITION

This is a decision on the petition For Duplicate Letters Patent Under 37 CFR 1.182, filed December 24, 2010, requesting issuance of a duplicate Letters Patent for the above-identified patent.

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).

Petitioner states that the original Letters Patent was lost and has provided the $400.00 petition fee.

The petition is dismissed because the petition was not filed by a party of interest such as an attorney of record, the applicant(s) or assignee. Subsequent to the filing of the instant petition the assignee of record requested entry of a new power of attorney and change of address. As such any duplicate letters patent must be mailed to the current correspondence 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 facsimile: **(571) 273-8300**
Attn: Office of Petitions

By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions

Randolph Building
401 Dulany Street
Alexandria, VA 22314

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

Charlema Grant
Attorney
Office of Petitions

Cc: Steven D. Lawrenz
Perkins Coie LLP
P.O. Box 1247
Seattle, Washington 98111-1247

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McDonnell Boehnen Hulbert & Berghoff
LLP/Google Inc.
300 South Wacker Drive, Suite 3100
Chicago IL 60606

MAILED

JUN 02 2011

OFFICE OF PETITIONS

In re Patent No. 7,437,023 :
Issue Date: October 14, 2008 :
Application No. 11/208,458 : DECISION ON PETITION
Filed: August 18, 2005 :
Attorney Docket No. 11-150-US-CIP :

This is a decision on the renewed petition under 37 CFR 1.182, filed May 9, 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 the undersigned at (571) 272-3215. Inquiries regarding the issuance of a duplicate Letters Patent may be directed to Ms. Niomi Farmer, Office of Data Management, Phone: 703-308-9250 x129.

A copy of this decision is being faxed to Publishing Division for issuance of duplicate Letters Patent.

Charlema Grant
Petitions Attorney
Office of Petitions

cc: Ms. Niomi Farmer, Office of Data Management, Fax: 571-270-9753.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 12-18-10

TO SPE OF : ART UNIT 2718

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/208693 Patent No.: 7810028

CofC mailroom date: 12-06-10

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

Certificates of Correction Branch
Angela Green

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: _____

SPE

2178
Art Unit

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Mr. Christopher John Rourk
Jackson Walker LLP
901 Main Street, Suite 6000
Dallas, TX 75202

MAILED
MAR 23 2011
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In re Patent of Hajimiri et al.	:	
Patent No. 7,157,975	:	
Issue Date: January 2, 2007	:	Letter
Application No. 11/208,833	:	
Filing Date: August 22, 2005	:	
Attorney Docket No. 013641.00090	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28(c) filed November 30, 2010.

The deficiency payment of $490 is hereby accepted.

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

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC
1420 FIFTH AVENUE
SUITE 2800
SEATTLE WA 98101-2347

MAILED
OCT 26 2010
OFFICE OF PETITIONS

In re Application of	:	
Bradley Remin	:	
Application No. 11/209,286	:	DECISION ON PETITION
Filed: August 22, 2005	:	
Atty. Docket No. THAS126202	:	

This is a decision on the petition, filed July 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**.

The application was held abandoned for failure to reply in a timely manner to the Communication mailed, March 26, 2010, which set a shortened statutory period for reply of three (3) months. This three-month period is not extendable. A Notice of Abandonment was mailed July 12, 2010.

The petitioner states that the Communication of March 26, 2010, requiring a substitute oath or declaration was sent by the USPTO in error and the requirement was withdrawn by the Examiner. Petitioner further states, "[i]n the original Declaration For Patent Application (page 1) and Application Data Sheet (page 2) filed with the application on August 22, 2005, it was expressly indicated that priority from earlier-filed Canadian Application No. 2,479,445 was not claimed."

A review of the written record indicates that at the time of filing of the instant application, the applicant did indicate that foreign priority was not being claimed, as also stated in item (5) of the instant petition. However, in the submission from the applicant filed January 25, 2010, there is a signed statement by the attorney stating, "Enclosed is a certified copy of the following application for which a claim of priority under 35 U.S.C. § 119 has been made". As noted in MPEP § 201.13(II)(A), "[a] priority claim need not be in any special form and may be a statement signed by a registered attorney or agent." As the claim to priority listed in this submission effectively superseded that in the Declaration and ADS, the examiner issued a requirement (see the Notice of Allowability dated March 26, 2010) for a substitute oath/declaration, to address this newly stated priority claim. The file record does not indicate that the Examiner withdrew the requirement for a substitute declaration or oath set forth in the Communication mailed on March 26, 2010, that required a response within three (3) months therefrom. Since a reply was not timely filed, the application has gone abandoned by law on June 27, 2010.

In view of the above, the petition requesting withdrawal of the holding of abandonment cannot be granted at this time.

If petitioner cannot supply the evidence necessary to withdraw the holding of abandonment, or simply does not wish to, petitioner should consider filing a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has
been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the $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).

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 Terri Johnson at (571) 272-2991.

/Ramesh Krishnamurthy/
Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC
1420 FIFTH AVENUE
SUITE 2800
SEATTLE WA 98101-2347

MAILED

MAR 10 2011

OFFICE OF PETITIONS

In re Application of	:	
Bradley Remin	:	
Application No. 11/209,286	:	DECISION ON PETITION
Filed: August 22, 2005	:	
Atty. Docket No. THAS126202	:	

This is a decision on the renewed petition, filed November 10, 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**.

The application was held abandoned for failure to reply in a timely manner to the Communication mailed, March 26, 2010, (Communication) which set a non-extendable period for reply of three (3) months from its mailing date. A Notice of Abandonment was mailed July 12, 2010.

Petitioner's arguments in the instant renewed petition have been reviewed, but found not to be persuasive. Petitioner's arguments that the communication "was sent in error in the first place," and that "to the extent that the submission on January 25, 2010, was interpreted as making a new or modified claim of priority that "effectively superseded" the previously filed Declaration and Application Data Sheet, the claim of priority should have simply been denied entry," have been noted. Petitioner should note that the Communication required a response within the non-extendable three-month period set forth therein. Also, the file record does not indicate the Examiner to have withdrawn the requirement for a substitute declaration or oath set forth in the Communication. In view of the reply requirement set forth in the Communication, the applicants were statutorily obligated (see 35 USC 133) to respond timely so as to avoid abandonment of the application. The arguments included in the current petition or in the petition filed earlier on July 20, 2010, were not filed within the non-extendable three-month period set in the Communication. Since a reply to the Communication was not timely filed, the application has gone abandoned, by law, on June 27, 2010.

In view of the above, the petition requesting withdrawal of the holding of abandonment cannot be granted at this time.

If petitioner cannot supply the evidence necessary to withdraw the holding of abandonment, or simply does not wish to, petitioner should consider filing a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark

fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the petition fee set forth in 37 CFR 1.17(m).

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

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

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

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

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

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

/Ramesh Krishnamurthy/
Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC
1420 FIFTH AVENUE
SUITE 2800
SEATTLE WA 98101-2347

MAILED
JUN 02 2011
OFFICE OF PETITIONS

In re Application of	:	
Bradley Remin	:	
Application No. 11/209,286	:	DECISION ON PETITION
Filed: August 22, 2005	:	
Attorney Docket No. THAS126202	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 13, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application was held abandoned for failure to reply in a timely manner to the Communication mailed, March 26, 2010, which set a shortened statutory period for reply of three (3) months. This three-month period is not extendable. A Notice of Abandonment was mailed July 12, 2010.

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

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

This application is being referred to Technology Center AU 3635 for appropriate action by the Examiner in the normal course of business on the reply received.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

BLACK LOWE & GRAHAM, PLLC
701 FIFTH AVENUE
SUITE 4800
SEATTLE WA 98104

MAILED

MAR 02 2011

OFFICE OF PETITIONS

In re Application of	:	
Michael S. KRALIK	:	
Application No. 11/209,449	:	DECISION ON PETITION
Filed: August 23, 2005	:	TO WITHDRAW
Attorney Docket No. **NVIZ-1-1002**	:	FROM RECORD
	:	

This is a decision on the renewed Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed January 21, 2011.

The request is **NOT APPROVED**.

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

37 CFR 3.71(c) states:

An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.

Therefore, as there is currently no statement under 37 CFR 3.73(b) of record in the instant application, the Office cannot change the correspondence address to the address on the Request for Withdrawal.

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

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

Michelle R. Eason
Paralegal Specialist
Office of Petitions

cc: **MR. DAVID WHITE**
WAY OUT WORLD, LLC
19615 ASHWORTH AVENUE N.
SHORELINE, WA 98133

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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BLACK LOWE & GRAHAM, PLLC
701 FIFTH AVENUE
SUITE 4800
SEATTLE WA 98104

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FEB 28 2011

OFFICE OF PETITIONS

In re Application of	:	
Michael S. Kralik	:	DECISION ON PETITION
Application No. 11/209,572	:	TO WITHDRAW
Filed: August 23, 2005	:	FROM RECORD
Attorney Docket No. **NVIZ-1-1003**	:	

This is a decision on the request to withdraw as attorney of record under 37 CFR § 1.36(b), filed January 21, 2011.

The request is **NOT APPROVED**.

The request cannot be approved because it lacks the name of the first inventor or the assignee of record that is associated with the address listed in the request. Therefore, the change of correspondence address is considered improper.

The Office will only accept correspondence address changes to the most current address information provided for the assignee of the entire interest *who properly became of record under 37 CFR 3.71,* or, if no assignee of the entire interest has properly been made of record, the most current address information provided for the first named inventor. 37 CFR 3.71(c) states:

> *An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.*

The assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, the statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (*e.g.*, reel and frame number).

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

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

/JoAnne Burke/
JoAnne Burke
Petitions Examiner
Office of Petitions

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: 8048-1125	Patent Number: 7,661,566
Filing Date (or 371(b) or (f) Date): 24-Aug-2005	Issue Date: 16-Feb-2010
First Named Inventor: YOSHIE, Toshiro	
Title: INFANT CARRIER WITH HOOD	

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
U.S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

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

(Not to be Submitted to the USPTO)

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

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

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

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

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

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

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

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

Privacy Act Statement

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

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

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

YOUNG & THOMPSON
209 Madison Street
Suite 500
Alexandria, VA 22314

Mail Date: 08/16/2010

Applicant	: Toshiro Yoshie	: DECISION ON REQUEST FOR
Patent Number	: 7661566	: RECALCULATION of PATENT
Issue Date	: 02/16/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/209,641	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 08/24/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1211** 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

Date : May 20, 2011

Patent No. :7889758
Ser. No. :11209739
Inventor(s) :Li et al.
Issued :February 15, 2011
Title :METHOD FOR ALLOCATING SUBVHANNEL IN WIRELESS NEWORK
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.

Any inquiry concerning this communication should be directed to Ms. A. Green at 571.272.9005.

For Mary Diggs
Decisions & Certificates
of Correction Branch
(703) 756-1580 or (571) 272- 9005

Paul J. Skwierawski
Antonelli Terry, Stout & Kraus
1300 North 17th Street, Suite 1800
Arlington, VA 22209-3873

/arg

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COMMISSIONER FOR PATENTS
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JUN 15 2011
OFFICE OF PETITIONS

ANTONELLI, TERRY, STOUT & KRAUS, LLP
1300 NORTH SEVENTEENTH STREET
SUITE 1800
ARLINGTON VA 22209-3873

In re Application of :
Li, et al. :
Application No. 11/209,739 : ON PETITION
Filed: August 24, 2005 :
Attorney Docket No. 500.45396X00 :

This is a decision on the request, filed May 10, 2011, 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 GRANTED.

Specific reference is made to Reel/Frame No. 22580/8060, recorded April 22, 2009, prior to the issuance of the patent, wherein support for the desired correction is found in that the assignees of record are Hitachi, Ltd. (owners of 95% of the instant patent) and Tsinghua University (owners of 5% of the instant patent).

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

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

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

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OFFICE OF PETITIONS

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

In re Patent No. of Grech et al.	:	DECISION ON REQUEST
Patent No. 8,009,641	:	FOR RECONSIDERATION OF
Issue Date: August 30, 2011	:	PATENT TERM ADJUSTMENT
Application No. 11/209,836	:	and
Filed: August 24, 2005	:	NOTICE OF INTENT TO ISSUE
Attorney Docket No. 39700-675001US/	:	CERTIFICATE OF CORRECTION
NC40670US	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM INDICATED ON FACE OF PATENT UNDER 37 C.F.R. § 1.705(d)," filed October 28, 2011. Patentees request that the patent term adjustment indicated in the patent be corrected from four hundred thirty-four (434) days to four hundred forty-three (443) days.

The petition under 37 CFR 1.705(d)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 four hundred forty (440) days.

On August 30, 2011, the above-identified application matured into U.S. Patent No. 8,009,641 on August 30, 2011. The instant request for reconsideration, filed October 28, 2011, was timely filed within 2 months of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment of 434 days. Patentees dispute a reduction, pursuant to 37 CFR 1.704(c)(10), of nine (9) days due to an information disclosure statement (IDS) being filed on June 6, 2011. It is noted a Notice of Allowance was mailed prior to June 6, 2011, on March 17, 2011.

The IDS was filed after the Office mailed a Notice of Allowance. Therefore, a reduction was proper under 37 CFR 1.704(c)(10)

unless the IDS included a statement in compliance with 37 CFR 1.704(d).

37 CFR 1.704(d) states,

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

The statement found in the Supplemental Information Disclosure Statement (IDS), filed June 6, 2011, complies with 37 CFR 1.704(d). Therefore, no reduction pursuant to 37 CFR § 1.704(c)(10) is warranted. The 9 day reduction is being removed.

A review of PTA calculations for the application reveals an error in the calculation of the Three Year Delay period. The maximum period of B delay in this case is 322 days. Unless a Request for Continued Examination ("RCE") is filed, the period of B Delay ends of the date the patent issues. In this case, a RCE was filed July 13, 2009. Per 35 U.S.C. § 154(b)(1)(B)(i), B Delay does not include "any time consumed by continued examination of the application requested by the applicant under section 132(b)."

37 CFR 1.703(b)(1) provides:

(b) The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the following periods:

> (1) The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b)

was filed and ending on the date the patent was issued;

As stated above, the date on which a RCE was filed is not included in the B Delay period. The maximum B Delay in this case is 322 days, which is the number of days beginning on August 25, 2008, the day after the date three years after the application's filing date, and ending on July 12, 2009, the day before the date the RCE was filed.

The current determination of the B delay period fails to properly calculate the time excluded from B delay due to appellate review. The period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). An appeal to the Board of Patent Appeals and Interferences commences with the filing of a notice of appeal. See 35 U.S.C. 134(a). Generally, an appeal to the Board of Patent Appeals and Interferences ends with either 1) a Board decision, 2) the examiner reopening prosecution and issuing another Office action, or 3) the applicant filing a request to withdraw the appeal and reopen prosecution (e.g. the filing of a request for continued examination). In this instance the period consumed by appellate review is 103 days, beginning on April 1, 2009, the date of filing of the notice of appeal and ending on July 12, 2009, the day before the date the RCE was filed.

Thus, B delay is 219 (322 - 103) days.

In light thereof, the correct patent term adjustment is 440 days, which is 342 days of delay under 35 U.S.C. 154(b)(1)(A) + 219 days of B delay - 121 days of Applicant delay.

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

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

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

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted **by four hundred forty (440)** 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 : 8,009,641 B2

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

INVENTOR(S) : Grech 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 434 days

Delete the phrase "by 434 days" and insert – by 440 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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BLACK LOWE & GRAHAM, PLLC
701 FIFTH AVENUE
SUITE 4800
SEATTLE WA 98104

MAILED

FEB 28 2011

OFFICE OF PETITIONS

In re Application of	:	
Michael S. Kralik	:	DECISION ON PETITION
Application No. 11/209,882	:	TO WITHDRAW
Filed: August 23, 2005	:	FROM RECORD
Attorney Docket No. **NVIZ-1-1004**	:	

This is a decision on the request to withdraw as attorney of record under 37 CFR § 1.36(b), filed January 21, 2011.

The request is **NOT APPROVED**.

The request cannot be approved because it lacks the name of the first inventor or the assignee of record that is associated with the address listed in the request. Therefore, the change of correspondence address is considered improper.

The Office will only accept correspondence address changes to the most current address information provided for the assignee of the entire interest *who properly became of record under 37 CFR 3.71,* or, if no assignee of the entire interest has properly been made of record, the most current address information provided for the first named inventor. 37 CFR 3.71(c) states:

> *An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.*

The assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, the statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (*e.g.*, reel and frame number).

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

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

/JoAnne Burke/
JoAnne Burke
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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BLACK LOWE & GRAHAM, PLLC
701 FIFTH AVENUE
SUITE 4800
SEATTLE WA 98104

MAILED

MAR 03 2011

OFFICE OF PETITIONS

In re Application of

KRALIK, Michael S.
Application No. 11/210,058
Filed: August 23, 2005
Attorney Docket No. **NVIZ-1-1001**

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 21, 2011.

The request is **NOT APPROVED.**

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

Accordingly, the request to withdraw from record cannot be approved because the request to change the correspondence address is not that of: (1) the first named inventor; or (2) an assignee of the entire interest under 37 C.F.R 3.71 who has properly intervened.

If an assignee has intervened in this application, then an updated Statement under 37 CFR 3.73(b) or a copy of the actual assignment must be submitted with a renewed request.

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

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272- 4618.

/Tredelle D. Jackson/

Tredelle D. Jackson
Paralegal Specialist
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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

MAILED
DEC 28 2010
OFFICE OF PETITIONS

In re Application of	:	
Cassie Odermott, et al.	:	
Application No. 11/210,146	:	DECISION ON PETITION
Filed: August 22, 2005	:	
Attorney Docket No. 3524	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 19 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 1, 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 2, 2009. The Notice of Abandonment was mailed October 28, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $810, 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 Terri Johnson at (571) 272-2991.

This application is being referred to Technology Center AU 3691 for appropriate action by the Examiner in the normal course of business on the reply received.

/Terri Johnson/
Terri Johnson
Office of Petitions

cc: **Pedersen & Company, PLLC**
1410 N. 28th Street
Boise, ID 83703

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 30 2010
OFFICE OF PETITIONS

PAUL A. LEIPOLD
PATENT LEGAL STAFF
EASTMAN KODAK COMPANY
343 STATE STREET
ROCHESTER NY 14650-2201

In re Application of	:	
Thomas M. LANEY et al.	:	
Application No. 11/210,169	:	DECISION ON PETITION
Filed: August 23, 2010	:	
Attorney Docket No. 88850CPK	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 28, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before June 23, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed March 23, 2010, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on June 24, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,510.00 and publication fee of $300.00; (2) the petition fee of $1,620.00; and (3) a proper statement of unintentional delay. Accordingly, the issue and publication fee payments are accepted as being 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.

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

This application is being referred to Office of Data Management.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

DENNIS W. BEECH (LAW OFFICE OF DENNIS W. BEECH)
P.O. BOX 519
MURRIETA, CA 92564-0519

MAILED

AUG 04 2010

OFFICE OF PETITIONS

In re Application of	:	
Benun et al.	:	
Application No. 11/210,195	:	DECISION ON PETITION
Filed: August 22, 2005	:	
Attorney Docket No. None	:	

This is a decision on the petition under 37 CFR 1.137(b), filed April 19, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue fee on or before March 18, 2010, as required by the Notice of Allowance and Fee(s) Due mailed December 18, 2009. Accordingly, the application became abandoned on February 5, 2010.

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

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

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

Carl Friedman
Petitions Examiner
Office of Petitions

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 Mar-11

TOD R NISSLE
PO BOX 55630
PHOENIX AZ 85078

MAILED

MAR 23 2011

OFFICE OF PETITIONS

In re Application of	:	
Roman et al.	:	
Application Number: 11/210,293	:	ON PETITION
Filing Date: 08/24/2005	:	
Attorney Docket Number: 1152-P-1	:	

This is a decision in response to the petition under 37 CFR 1.137(b) filed on February 3, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned on February 27, 2009, for failure to timely submit a reply to the final Office action mailed on November 26, 2008, which set a three (3)-month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on June 9, 2009.

Receipt of the amendment filed on February 3, 2011, is acknowledged.

The application is being forwarded to Technology Center Art Unit 1611 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

PENUMBRA INC. C/O MOFO
425 MARKET STREET
SAN FRANCISCO, CA 94105-2482

MAILED

SEP 27 2010

OFFICE OF PETITIONS

In re Application of	:	
BOSE, Arani et al.	:	
Application No. 11/210,634	:	DECISION ON PETITION
Filed: August 24, 2005	:	TO WITHDRAW
Attorney Docket No. **028414-000320US**	:	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 29, 2010.

The request is **NOT APPROVED** because it is moot.

A review of the file record indicates that the power of attorney to PENUMBRA INC. C/O MOFO has been revoked by the assignee of the patent application on July 29, 2010. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

/Tredelle D. Jackson/
Petitions Examiner
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
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MICHAEL A. STALLMAN
MORRISON & FOERSTER LLP
425 MARKET STREET
SAN FRANSICO, CA 94105-2482

MAILED

SEP 22 2010

OFFICE OF PETITIONS

In re Application of	:	
Arani Bose, et al.	:	
Application No. 11/210,636	:	DECISION ON REQUEST
Filed: August 24, 2005	:	TO WITHDRAW
Attorney Docket No.: 028414-000330US	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 CFR §1.36(b), filed July 26, 2010.

The request is **DISMISSED** as moot.

A review of the file record indicates that the power of attorney to Michael A. Stallman, and all the other attorneys/agents associated with Customer Number 87935, was revoked by the assignee of the patent application on July 29, 2010. Accordingly, the request to withdraw under 37 CFR § 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 the undersigned at (571) 272-3204. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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

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MAILED

SEP 08 2010

OFFICE OF PETITIONS

Mila Shvartsman
P.O. Box 48652
Outremont QC H2V 4T9 CA **CANADA**

In re Application of	:	
Raymond Cyr	:	
Application No. 11/210,821	:	DECISION ON PETITION
Filed: August 25, 2005	:	TO WITHDRAW FROM
Attorney Docket No. N/A	:	RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 CFR §§ 1.36(b) or 10.40 filed June 25, 2010.

The request is **NOT APPROVED**.

The request cannot be approved because practitioner did not make all the required certifications. It is noted that practitioner has not made certifications (1) and (3) on the request, which states, "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 and I/We have notified the client of any responses that may be due and the time frame within which the client must respond".

Petitioner should note USPTO Form Number PTO/SB/83 requires practitioner to "check each box below that is factually correct" and Warns that "If a box is left unchecked, the request will likely not be approved". (*See USPTO Form No. PTO/SB/83*).

Additionally, the request cannot be approved because the requested change in the correspondence address is improper.

The Office will only accept correspondence address changes to the most current address information provided for the assignee of the entire interest, *who properly became of record under 37 CFR 3.71,* or, if no assignee of the entire interest has properly been made of record, the most current address information provided for the first named signing inventor.

37 CFR 3.71(c) states:

> *An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.*

Therefore, as there is currently no Statement under 37 CFR 3.73(b) with the current assignee information of record in the instant application, the Office cannot change the correspondence address to the address on the Request to Withdraw at this present time.

In view of the above, all future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

This application is abandoned by operation of the law for failure to respond to the Office action mailed February 18, 2010.

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

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

Andrea Smith
Petitions Examiner
Office of Petitions

cc: Procaps L.P.
6000 Kieran
Saint-Laurent Quebec H4S 2B5
CANADA

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

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

Mail Date: 08/03/2010

Applicant	: Munehiro Azami	: DECISION ON REQUEST FOR
Patent Number	: 7649516	: RECALCULATION of PATENT
Issue Date	: 01/19/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/211,075	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 08/25/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1127** 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 : 9/2/10 Paper No.: ____

TO SPE OF : ART UNIT 1796

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/811188 Patent No.: 7611772 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: CHANGES ARE APPROVED — JJF

JOHN J. FIGUEROA AU 1796

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.

Perman & Green, LLP
99 Hawley Lane
Stratford CT 06614

MAILED

JAN 25 2011

OFFICE OF PETITIONS

In re Application of :
Bufano et al. : DECISION ON PETITION
Application No. 11/211,236 :
Filed: August 24, 2005 :
Atty Docket No. 390P011936 :
-US(PAR) :

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) filed December 17, 2010.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to file a reply to the non-final Office action sent January 14, 2010. This Office action set a shortened statutory period for reply of three (3) months, with extensions of time obtainable under § 1.136(a). No reply considered timely filed and no extension of time considered obtained, the application became abandoned effective April 15, 2010. A courtesy Notice of Abandonment was sent on August 12, 2010.

The petition includes the required reply in the form of an amendment, the statement of unintentional delay and payment of the petition fee. No terminal disclaimer is required.

Technology Center AU 3617 has been advised of this decision. The application is, thereby, forwarded to the examiner for consideration of the reply 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

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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MOLECULAR IMPRINTS
PO BOX 81536
AUSTIN TX 78708-1536

MAILED
SEP 10 2010
OFFICE OF PETITIONS

In re Patent No. 7,665,981	: DECISION ON REQUEST
Schumaker, et al.	: FOR
Issue Date: February 23, 2010	: RECONSIDERATION OF
Application No. 11/211,766	: PATENT TERM ADJUSTMENT
Filed: August 25, 2005	: and
Atty Docket No. **P221M2D229D230**	: NOTICE OF INTENT TO ISSUE
	: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on April 26, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting reconsideration of the revised patent term adjustment indicated on the above-identified patent .

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand, one hundred and fifty-four (1,154) days is **GRANTED**.

It is noted that entry of a reduction to the patent term adjustment pursuant to 37 CFR 1.704(c)(10)[1] of 11 days is warranted for the filing of an Information Disclosure Statement (IDS) on December 7, 2009, after the mailing of the Notice of Allowance on September 18, 2009.

In this instance, it is undisputed that patentees filed the IDS after the mailing of the notice of allowance. However, a review of the IDS filed on December 7, 2009, reveals that it did include a § 1.704(d) statement. Accordingly, the filing of the IDS on December 7, 2009, is considered a failure to conduct reasonable efforts to conclude prosecution of application warranting a reduction to the patent term adjustment pursuant to 37 CFR 1.704(c)(10). Thus, the period of reduction to the patent adjustment of 11 days is being entered.

---

[1] It is noted that 37 CFR 1.704(c)(10) provides that:

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

Deposit account 50-2650 will be charged $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 Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand, one hundred and fifty-four (1,154)** days.

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,665,981 B2

DATED : Feb. 23, 2010

INVENTOR(S) : Schumaker, 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 (670) days

Delete the phrase "by 670 days" and insert – by 1154 days--

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: —

DATE : 1/6/2011

TO SPE OF : ART UNIT 2187

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/211863 Patent No.: 7779207 B2

CofC mailroom date: 12/31/10

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

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.

/G.W.C./
01/12/2011

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

Comments: _____

/Kevin L Ellis/ — **SPE**

2187 — **Art Unit**

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JUN 14 2011
OFFICE OF PETITIONS

In re Patent No. 7,285,807	:	
Issue Date: October 23, 2007	:	
Application No. 11/211,964	:	NOTICE
Filed: August 25, 2005	:	
Attorney Docket No. CDW-007	:	

This is a notice regarding your request, April 26, 2011, for acceptance of a fee deficiency submission under 37 CFR 1.28.

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

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

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

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

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/211,978	08/25/2005	Roger Stewart	4431	6467

7590 07/06/2011

Floyd B. Carothers
CAROTHERS AND CAROTHERS
Suite 200
445 Fort Pitt Blvd.
Pittsburgh, PA 15219

EXAMINER
STERLING, AMY JO

ART UNIT	PAPER NUMBER
3632	

MAIL DATE	DELIVERY MODE
07/06/2011	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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JUL - 6 2011

Floyd B. Carothers
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Suite 200
445 Fort Pitt Blvd.
Pittsburg, PA 15219

In re Application of Roger Stewart et al. Application No. 11/211,978 Filed: August 25, 2005 For: ERGONOMIC ARM SUPPORT FOR COMPUTER OPERATORS	: : : :	DECISION ON THE PETITION REGARDING REQUEST TO VACATE OFFICE ACTION

Applicant's petition under 37 CFR 1.181, filed June 21, 2011, requests the USPTO Director to reverse the approval of the Technology Center Director in authorizing reopening prosecution under 37 CFR 1.198 for the purpose of entering a new rejection after a Board of Appeals decision, and to direct that the patent application be passed to issuance. This petition is being treated as a petition under 37 CFR 1.181 requesting reconsideration of the above-noted decision by the Technology Center Director.

The petition is **DENIED**.

A review of the file record indicates that a decision was rendered by the Board of Appeals on April 21, 2011 that reversed the rejections of claims 1 and 3-6 made by the examiner using the references of Jennings in view of Jarke et al., and Jennings in view of Jones. In the above-noted Decision on Appeal, the Board found that the claimed "block support" was not adequately taught by the Jennings reference as argued by the examiner. The Board felt that the term "block", in view of applicant's specification, was defined as "any large, solid piece" of material, and due to the fact that the bottom portion of Jennings comprised "a casing filled with a lightweight, flowable, granular material which can be shifted so as to adjust the bottom portion to a regular or irregular base surface", Jennings desk did not comprise "a block support (i.e., a large solid piece of material) dimensioned and contoured to be supported on and to span the lap of a computer operator." This is the single issue discussed by the Board and the lone reason for reversal of the above-noted rejections.

On May 13, 2011 the examiner reopened prosecution with a new Office action that rejected claims 1 and 4-6 under 35 USC 103 over newly discovered art to Drieling. As the examiner points out in the above Office action, Drieling includes a block support beneath a plastic top plate, wherein the block support is composed of a foam block or hollow plastic and created with a shape that is contoured as claimed.

On June 21, 2001, the applicant filed the instant petition. The applicant argues that the Technology Center Director erred in authorizing the reopening of prosecution after the Decision on Appeal because the newly applied reference deals with matters which "were already adjudicated by the Board and sufficient cause has not been shown for reopening prosecution".

Specifically, the applicant indicates that the writing desk of Drieling "is of similar slim dimension or height as the writing desk shown in the Jennings or Jarke et al. references. The applicant goes on to argue that just like Jennings or Jarke et al., Drieling does not show a support of sufficient or specified height to teach a support comprised of "a block support dimensioned and contoured to be supported on and to span the lap of a computer operator while seated and to sufficiently circumvent the stomach portion of the operator to thereby support upper portions of the lower arm portions of the operator adjacent the elbows".

However, as pointed out above, the Board of Appeals, in their Decision on Appeal, never indicated that the height of the of Jennings or Jarke et al. failed to meet the sufficient or specified height as claimed. The decision reversed the examiner for a single issue; that the casing filled with a lightweight, flowable, granular material could not serve as a block of "a large, solid block of material". The newly cited and applied reference to Drieling is purported by the examiner to show a writing desk having a block support that does indeed comprise a large, solid block of material. As such, given that the single element indicated as being lacking in the previous rejection using Jennings or Jarke et al, is arguably present in the Drieling reference, there is deemed to be sufficient cause shown for a reopening of prosecution.

Whether or not the matters of the height and span issues of specific dimension, not specifically mentioned in the Decision on Appeal, were issues considered by the Board, as argued by the applicant, is open to speculation, but does not alter the fact that the newly applied reference by furnishing the structure deemed by the Board to be missing, shows sufficient cause to reopen prosecution.

The petition of June 21, 2011 for Supervisory Review of an Office action reopening prosecution is **DENIED**.

The time period for response continues to run 3 months from the May 13, 2011 date of the non-final Office action.

Any questions or comments with respect to this decision should be forwarded to Quality Assurance Specialist Steven N. Meyers at (571) 272-6611.

Kathy Matecki

Kathy Matecki, Director
Patent Technology Center 3600
(571) 272-5250

snm/snm: 7/3/11

SM

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17th Street Legal, PLLC
Tom Holsten
3 Chesterton Drive
303 Felspar Way
Landenberg PA 19350

MAILED

MAR 17 2011

OFFICE OF PETITIONS

In re Application of	:	
Samuel R. DENMEADE et al.	:	ON PETITION
Application No. 11/212,028	:	
Filed: August 24, 2005	:	
Atty. Docket No: GENS 002PAR	:	

This is a decision on the petition under 37 CFR 1.137(b), filed January 21, 2011, to revive the above-identified application for purposes of continuity.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the nonfinal Office action mailed September 15, 2006, which set a shortened statutory period of three (3) months. No extensions of time under 37 CFR 1.136(a) were obtained. The above-identified application became abandoned on December 16, 2006, with notification mailed May 2, 2007. Application No. 11/725,135 claiming priority to the above-identified application was filed on March 15, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) as (1) a reply in the form of continuing application 11/725,135 filed March 15, 2007, (2) the petition fee of $810, and (3) a proper statement that the delay in replying to the nonfinal Office action mailed September 15, 2006 was unintentional. The above-identified application is thus being revived solely for the purposes of continuity. As continuity has been established by this decision reviving the above-identified application, the above-identified application is again abandoned in favor of continuing application No. 11/725,135.

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. If the statement contained in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement contained in the instant petition 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 contained in the instant petition.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum period for reply. *See* In re Application S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $555 extension of time fee submitted with the petition on January 21, 2011 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be refunded to petitioner via U.S. Treasury check.

Telephone inquiries concerning this decision should be directed to Robert DeWitty at 571-272-8427.

Ramesh Krishnamurthy

for David Bucci
Petitioner Examiner
Office of Petitions

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

Mail Date: 08/03/2010

Applicant	: Wolfgang Wrasidlo	: DECISION ON REQUEST FOR
Patent Number	: 7652051	: RECALCULATION of PATENT
Issue Date	: 01/26/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/212,064	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 08/24/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **865** 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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JAN 11 2011

OFFICE OF PETITIONS

BiPar Sciences Inc. c/o Morrison & Foerster LLP
755 Page Mill Road
Palo Alto CA 94304

In re Patent No. 7,652,051	:	DECISION ON REQUEST
Wrasidlo, et al.	:	FOR
Issue Date: January 26, 2010	:	RECONSIDERATION OF
Application No. 11/212,064	:	PATENT TERM ADJUSTMENT
Filed: August 24, 2005	:	and
Atty Docket No. **686472000400**	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the "Application for Patent Term Adjustment under 37 CFR 1.705", filed on September 3, 2010, which is being treated as a petition under 37 CFR 1.705(d). Patentees request that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by eight hundred and thirty (830) 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 (830) days is **GRANTED**.

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

The 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 (830)** days.

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,652,051 B2

DATED : Jan. 26, 2010

INVENTOR(S) : Wrasidlo 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 (347) days

Delete the phrase "by 347 days" and insert – by 830 days--

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In re Patent No. 7319829
Issue Date: January 15,2008
Application No. 11212218
Filed: August 26,2005
Attorney Docket No. 4670-399 / 2005-0030.02

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

This is a decision on the electronic petition, filed February 13,2012 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of February 13,2012 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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)
7319829	2008-01-15	11212218	2005-08-26	4670-399 / 2005-0030.02

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

SMALL ENTITY
☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

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

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

MAINTENANCE FEE (37 CFR 1.20(e)-(g))
The appropriate maintenance fee must be submitted with this petition.

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

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

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

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

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

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

○ A sole patentee

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

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

○ The assignee of record of the entire interest

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Justin M Tromp/	Date (YYYY-MM-DD)	2012-02-13
Name	Justin M Tromp	Registration Number	62304

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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PFIZER INC
10555 SCIENCE CENTER DRIVE
SAN DIEGO, CA 92121

In re Application of Cui et al.	:	
Application No. 11/212,331	:	On Application For
Filing Date: August 26, 2005	:	Patent Term Adjustment
Attorney Docket No. PC32549A	:	

This is in response to the "Application for Patent Term Adjustment Under 37 CFR § 1.705" filed June 8, 2010. Applicants submit the correct patent term adjustment to be indicated on the patent is one thousand four hundred twenty-three (1,423) days, not eight hundred fifty-nine (859) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

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

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See 37 CFR 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

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

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, an applicant may wait until the time of the issuance of the patent and file a request for reconsideration of the

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

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

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

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

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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

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BAKER BOTTS L.L.P.
30 ROCKEFELLER PLAZA
44th Floor
NEW YORK NY 10112-4498

MAILED
AUG 16 2010
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In re Application of	:	
Blythe, et al.	:	
Application No. 11/212,356	:	ON APPLICATION FOR
Filed: August 26, 2005	:	PATENT TERM ADJUSTMENT
Attorney Docket No.086012-50400-USPT	:	

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT 37 CFR 1.705(b)" filed April 6, 2010. Applicants request that the determination of patent term adjustment be corrected from six hundred and fifty-nine (659) days to one thousand, two hundred and fifty (1,250) days. Applicants request this correction, in part, on the basis that the Office will take in excess of three years to issue this patent.

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

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

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

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

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

To the extent that applicants otherwise requests reconsideration of the patent term adjustment at the time of the mailing of the notice of allowance, the application for patent term adjustment is **dismissed**.

Applicants assert the 3 day reduction to the patent term adjustment for the filing of a response on July 6, 2009, three

---

[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.

months and three days after a non-final Office action was mailed on April 3, 2009, was improper. In summary, applicants state that the date that was three months after the mailing of the non-final Office action was federal holiday, therefore, the filing of the response on Monday July 6, 2009, was timely.

Applicants' argument is not persuasive. Pursuant to 37 CFR 1.704(b), the period of adjustment of the term of the patent should be reduced by 3 days, the number of says in the period beginning on the day after the date that is three months after the date of mailing of the non-final Office action, July 4, 2009, and ending on the date the reply was filed July 6, 2009, 2009. The calculation of 3 days of application delay is based on the date of receipt of the response in the Office. The Office notes that 35 U.S.C. 154(b)(2)(C)(ii) does not require that a reply be filed in the Office within its three month grace period, but simply specifies that there is this three month period. Therefore, the "carry-over" provisions of 35 U.S.C. 21(b) does not apply to the three month periods in 35 U.S.C. 154(b)(2)(C)(ii). Accordingly, the reduction to the patent term adjustment of 3 days was warranted and will not be removed.

In view thereof, the determination of the patent term adjustment at the time of the mailing of the notice of allowance is six hundred and fifty-nine (659) days.

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

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

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

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Edward J. Lynch
Patent Attorney
Four Embarcadero Center
17th Floor
San Francisco CA 94111

MAILED

FEB 13 2012

OFFICE OF PETITIONS

In re Application of

Fields

Application No. 11/212,516

Filed: August 24, 2005

Attorney Docket No. **R0708-00101**

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.181(a) to withdraw the holding of abandonment, filed January 26, 2012.

The petition under 37 CFR 1.181(a) to withdraw the holding of abandonment is **granted**.

This application was held abandoned on July 2, 2009, after it was believed that no response was received to the non-final Office action mailed April 1, 2009. The notice allowed a shortened statutory period for reply of three (3) months from its mailing date. Extensions of the time set for reply were available pursuant to 37 CFR 1.136(a). A Notice of Abandonment was mailed on October 20, 2009, indicating that a reply to the notice was not received.

A review of USPTO records did reveal that a response to the non-final Office action was filed on July 1, 2009, albeit in the wrong application. The facsimile transmittal sheet that accompanied the amendment that petitioner filed on July 1, 2009, cited an incorrect application serial number. It cited application serial number 11/212,156[1]. Thus, the response was scanned into that application. The amendment itself cited the correct application serial number, however. It is apparent that petitioner timely filed the response, but placed cited an incorrect application serial number on the facsimile coversheet. Based on the aforementioned, it appears that the application was improperly held abandoned as a response was received prior to expiration of the statutory period for reply, albeit in the wrong application. The holding of abandonment is withdrawn, accordingly.

The application file is being forwarded Technology Center 3700, GAU 3767, for further processing, including processing of the copy of the response filed July 1, 2009, which was filed January 26, 2012.

[1] Petitioner is advised that the papers filed July 1, 2009, in the incorrect application have been moved to the closed portion of that application file with a notation that said papers were not incorrectly filed in that application.

Further inquires regarding this decision may be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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Commissioner for Patents
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EARLE JENNINGS
8 KENYON AVE
KENSINGTON, CA 94708

MAILED
FEB 07 2011
OFFICE OF PETITIONS

In re Application of :
PARK, et al :
Application No. 11/213,126 : DECISION ON PETITION
Filed: August 26, 2005 :
Attorney Docket No. SPRK-001 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 31, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, March 22, 2007, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on June 23, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $770; and (3) the required statement of unintentional delay.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See* In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $525 extension of time fee submitted with the petition on December 31, 2007, was subsequent to the maximum extendable period for reply, this fee is unnecessary and petitioner may request a refund of this fee by writing to the following address: Mail Stop 16, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany petitioner's request.

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

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

This application is being referred to Technology Center AU 3735 for appropriate action by the Examiner in the normal course of business.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
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MAILED
FEB 22 2012
OFFICE OF PETITIONS

In re Patent No. 7,579,313 Issued: August 25, 2009 Application No. 11/213,173 Filed: August 26, 2005 Attorney Docket No: STAN-258CIP6	: : : : :	ON PETITION

This is a decision regarding your request under 37 CFR 1.28 for acceptance of a fee deficiency submission filed January 18, 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.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 $1945, under 37 CFR 1.28, is hereby accepted and the petition is **GRANTED**.

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

Patricia Faison-Ball

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
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June 8, 2011

Linda Wang
6670 Cobra Way
San Diego, CA 92121

Patent No.	: 7,271,369 B2
Ser. No.	: 11/213,201
Inventor(s)	: Xiang-Ming Li, et al.
Issued	: September 18, 2007
Docket No.	: 386662000300
Title	: **MULTILAYER POSITIVE TEMPERATURE COEFFICIENT DEVICE AND METHOD OF MAKING THE SAME**

Re: Request for Certificate of Correction

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

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

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

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

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

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

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

By mail:	Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450
By hand:	Customer Service Window Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(571) 273-0025 ATTN: Office of Petitions

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

/Virginia Tolbert/
Virginia Tolbert
For Mary Diggs
Decisions & Certificates
of Correction Branch
(571) 272-0460 or (703) 756-1814

vt

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.
11/213,325	08/26/2005	Muriel Y. Ishikawa	1003-002-002K-000000	8748

44765 7590 02/03/2012
THE INVENTION SCIENCE FUND
CLARENCE T. TEGREENE
11235 SE 6TH STREET
SUITE 200
BELLEVUE, WA 98004

EXAMINER
BRUSCA, JOHN S

ART UNIT	PAPER NUMBER
1631	

MAIL DATE	DELIVERY MODE
02/03/2012	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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FEB 03 2012

THE INVENTION SCIENCE FUND
CLARENCE T. TEGREENE
11235 SE 6TH STREET
SUITE 200
BELLEVUE WA 98004

In re Application of:
Ishikawa et al.
Serial No.: 11/213,325
Filed: August 26, 2005
Attorney Docket No.: **1003-002-002K-000000**

: PETITION DECISION

This is in response to the petition filed by appellants under 37 CFR § 1.181(a) on November 15, 2011, requesting the reopening of prosecution of September 16, 2011 to be considered an error.

BACKGROUND

Relevant parts of the prosecution history are summarized below.

On May 11, 2010, an Examiner's Answer was mailed by the examiner. In this Examiner's Answer, the examiner rejected claims 1, 75, 78-80, 82, 85, 87, 90, 91, 93, 95, 99, 100, 102-106, 110, 114, 116, 121, 122, 129, 135, 137, 140, 142, 143, and 151. Claims 1, 75, 78-80, 82, 85, 87, 90, 91, 93, 95, 99, 100, 102-106, 110, 114, 116, 121, 122, 129, 135, 137, 140, 142, 143, and 151 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. Claims 1, 75, and 151 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over numerous applications.

On June 30, 2010, appellants filed a Reply Brief.

On July 13, 2010, the examiner entered and considered the Reply Brief.

On July 26, 2011, the Board of Patent Interferences and Appeals (BPAI) issued a decision on appeal wherein the examiner was reversed.

The examiner mailed to appellants a non-final Office action on September 16, 2011. Claims 1, 75, 78-80, 82, 85, 87, 90, 91, 93, 95, 99, 100, 102-106, 110, 114, 116, 121, 122, 129, 135,137, 140, 142, 143, and 151 were pending and rejected. Claims 1, 75, 78-80, 82, 85, 87, 90, 91, 93, 95, 99, 100, 102-106, 110, 114, 116, 121, 122, 129, 135, 137, 140, 142, 143, and 151 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Claims 1, 75, 78-80, 82, 85, 87, 90, 91, 93, 95, 99, 100, 102-106, 110, 114, 116, 121, 122, 129, 135, 137, 140, 142, 143, and 151 were rejected under 35 U.S.C. 102(b) as being anticipated by Chirino et al. (U.S. Patent Application Publication No. 2003/0022285, cited in the Information Disclosure Statement received 14 June 2007). Claims 75 and 137 were rejected under 35 U.S.C. 103(a) as being unpatentable over Chirino et al. (U.S. Patent Application Publication No. 2003/0022285, cited in the Information Disclosure Statement received 14 June 2007).

In response thereto, appellant filed this petition under 37 CFR § 1.181(a) on November 15, 2011, requesting the reopening of prosecution of September 16, 2011 to be considered an error.

DISCUSSION

The petition and the file history have been carefully considered.

In the petition filed on November 15, 2011, appellants argue "Petitioner respectfully requests further review of the decision of the TC Director to authorize reopening prosecution in the application. The TC Director's decision to authorize the reopening of prosecution is inconsistent with the specific requirements of 37 C.F.R. § 1.198. The TC Director's decision to authorize the reopening of prosecution is also inconsistent with the Patent Rules, the USPTO's guidance in the MPEP, and the USPTO's policy of compact prosecution. For these reasons, Petitioner respectfully requests that the decision to authorize reopening prosecution be vacated and a Notice of Allowance issued for the claims."

Appellants' arguments have been accorded careful consideration but they are not persuasive. Specifically, appellants should note MPEP 1214.04 which applies herein which states:

> If the examiner has specific knowledge of the existence of a particular reference or references which indicate nonpatentability of any of the appealed claims as to which the examiner was reversed, he or she should submit the matter to the Technology Center (TC) Director for authorization to reopen prosecution under 37 CFR 1.198 for the purpose of entering the new rejection. See MPEP § 1002.02(c) and MPEP § 1214.07. The TC Director's approval is placed on the action reopening prosecution.

It is pointed out that the examiner had specific knowledge of the existence of particular prior art references which indicated nonpatentability of the claims. As a result, a non-final Office action of September 16, 2011was issued. It is also pointed out the Office action was authorized by the TC Group Director, Jacqueline Stone and the Supervisory Patent Examiner, Marjorie Moran. Applicants should note that the substance of the Office action is rebuttable and since the Office

action is a non-final action, applicants have an opportunity to respond. If applicants believe that an interview would help clarify the record, applicants are encouraged to contact the examiner.

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.

Wanda L. Walker, Director
Technology Center 1600

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BERKELEY LAW & TECHNOLOGY GROUP, LLP
17933 NW EVERGREEN PARKWAY, SUITE 250
BEAVERTON OR 97006

MAILED
FEB 15 2012
OFFICE OF PETITIONS

In re Patent No. 7,664,984	:	
Issue Date: February 16, 2010	:	
Application No. 11/213,502	:	DECISION DISMISSING PETITION
Filed: August 26, 2005	:	
Attorney Docket No. 125.P051	:	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed February 9, 2012, requesting acceptance of a claim under 35 U.S.C. 120 for benefit of nonprovisional Application No. 10/267,492, filed October 9, 2002 (now U. S. Patent No. 7,024,581), by way of a Certificate of Correction.

The petition is **DISMISSED**.

A review of the file record reveals that petitioners did not make a claim for benefit of the above-noted, prior-filed nonprovisional application within the time period set forth in 37 CFR 1.78(a)(2)(ii). Moreover, petitioners failed to include a proper reference to the prior-filed applications as required by 37 CFR 1.78(a)(2)(i) and (a)(2)(iii). As this application was filed after November 29, 2000, a petition under 37 CFR 1.78(a)(3), accompanied a Certificate of Correction and the required fees, is the appropriate avenue of relief for adding or correcting a claim for benefit of a prior-filed nonprovisional application after issuance of the application into a patent. See MPEP 1481.03.

The Office notes:

> Where priority is based upon 35 U.S.C. 120 to **a national application**, the following conditions must be satisfied:
>
> (A) all requirements set forth in 37 CFR 1.78(a)(1) must have been met in the application which became the patent to be corrected;
>
> (B) it must be clear from the record of the patent and the parent application(s) that priority is appropriate (see MPEP § 201.11); and

> (C) a grantable petition to accept an unintentionally delayed claim for the benefit of a prior application must be filed, including a surcharge as set forth in 37 CFR 1.17(t), as required by 37 CFR 1.78(a)(3).

MPEP 1481.03(II)(B) (emphasis in original).

If all the above-stated conditions are satisfied, a Certificate of Correction can be used to add or correct a claim under 35 U.S.C. 120 for benefit of a prior-filed nonprovisional application.

In this instance, petitioners have not satisfied condition (C) above because they did not submit a grantable petition under 37 CFR 1.78(a)(3).

A petition for acceptance of an unintentionally delayed claim under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. 120 and 37 CFR1.78(a)(2)(i) and (iii) to the prior-filed application (unless previously submitted);

(2) the surcharge set forth in 37 CFR 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition fails to comply with item (1) above.

The petition must be **dismissed** because the reference required by 35 U.S.C. 120 and 37 CFR 1.78(a)(2)(i) has not be properly supplied. Specifically, petitioners did not submit the reference in compliance with 37 CFR 1.78(a) by filing an amendment to the first sentence(s) of the specification or in a supplemental ADS. Pursuant to 37 CFR 1.78(a)(2)(iii), the reference to the prior-filed nonprovisional application must be included in an application data sheet (§ 1.76) or the specification must contain or be amended to contain such reference in the first sentence(s) following the title. Additionally, the Office notes that the Certificate of Correction form submitted on February 9, 2012, only requested correction of the first paragraph of the specification, but not the front page, of the Letters Patent.

Before, the petition under 37 CFR 1.78(a)(3) can be granted, petitioners must file a renewed petition under 37 CFR 1.78(a)(3), accompanied by either a supplemental ADS or an amendment to the specification to add the benefit claim.[1] Additionally, petitioners must submit a completed

[1] The Office notes that 37 CFR 1.33(b) requires that amendments and other papers, except for written assertions pursuant to 37 CFR 1.27(c)(2)(ii), filed in an application must be signed by an appropriate party. Therefore, any supplemental ADS or amendment submitted on renewed petition must be signed in accordance with 37 CFR 1.33(b).

Certificate of Correction form (and fee) correcting the reference to the prior-filed nonprovisional application on both the front page and the first paragraph of the specification of the Letters Patent. The text of the correction, as well as the location of the error in the printed patent should be identified on form PTO/SB/44 by column and line number. No additional petition fee is required for filing a renewed petition.

The Office acknowledges assignee's notice that it no longer claims small entity status in the patent in accordance with 37 CFR 1.27(g)(2). The Office records have been updated to show the change in status. 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.

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

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

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

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

Correspondence may also be submitted electronically via EFS-Web.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3211.

/Christina Tartera Donnell/

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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FEB 24 2012

OFFICE OF PETITIONS

In re Patent No. 7,664,984 :
Issue Date: February 16, 2010 :
Application No. 11/213,502 : DECISION DISMISSING PETITION
Filed: August 26, 2005 :
Attorney Docket No. 125.P051 :

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed February 21, 2012, requesting acceptance of a claim under 35 U.S.C. 120 for benefit of nonprovisional Application No. 10/267,492, filed October 9, 2002 (now U. S. Patent No. 7,024,581), by way of a Certificate of Correction.

The renewed petition under 37 CFR 1.78(a)(3) is **DISMISSED**.

On February 9, 2012, petitioners filed the original petition under 37 CFR 1.78(a)(3) accompanied by a Certificate of Correction. On February 15, 2012, the Office mailed a decision dismissing the petition because petitioners did not submit the reference in compliance with 37 CFR 1.78(a) by filing an amendment to the first sentence(s) of the specification or in a supplemental ADS. Additionally, the decision indicated that the Certificate of Correction form submitted on February 9, 2012, only requested correction of the first paragraph of the specification at Column 1 lines 6-7, but not the front page, of the Letters Patent. The decision advised petitioners that they must file a renewed petition under 37 CFR 1.78(a)(3), accompanied by either a supplemental ADS or an amendment, and a completed Certificate of Correction form (and fee) correcting the reference to the prior-filed nonprovisional application on both the front page and the first paragraph of the specification of the Letters Patent.

On February 21, 2012, petitioners filed the present renewed petition under 37 CFR 1.78(a)(3), an ADS containing a proper reference to the prior filed application, and a completed Certificate of Correction form. However, the Office notes that the Certificate of Correction form submitted on renewed petition again only requests correction of the first paragraph of the specification, but not the front page, of the Letters Patent. In the decision of February 15, 2012, the Office stated that petitioners must submit a completed Certificate of Correction form correcting the reference to the

prior-filed nonprovisional application on both the front page and the first paragraph of the specification of the Letters Patent.

Therefore, petitioners must file a renewed petition under 37 CFR 1.78(a)(3) accompanied by a new completed Certificate of Correction form. In addition to the requested correction of the first paragraph of the specification at Column 1, lines 6-7, the Certificate of Correction form should also correct field code (63) Related US Application Data, on the front page, to identify this application as a Continuation-in-part of application No. 10/267,492, filed on Oct. 9, 2002, now Pat. No. 7,024,581.

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

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

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

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

Correspondence may also be submitted electronically via EFS-Web.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3211.

/Christina Tartera Donnell/

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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17933 NW EVERGREEN PARKWAY, SUITE 250
BEAVERTON OR 97006

MAILED

MAR 06 2012

OFFICE OF PETITIONS

In re Patent No. 7,664,984	: DECISION GRANTING PETITION
Issue Date: February 16, 2010	: UNDER 37 CFR 1.78(a)(3)
Application No. 11/213,502	: AND REQUEST FOR CERTIFICATE
Filed: August 26, 2005	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 125.P051	:

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed March 2, 2012, requesting acceptance of a claim under 35 U.S.C. 120 for benefit of nonprovisional Application No. 10/267,492, filed October 9, 2002, now U. S. Patent No. 7,024,581, by way of a Certificate of Correction.

The petition is **GRANTED.**

A review of the file record reveals that petitioners did not make a claim for benefit of the above-noted, prior-filed nonprovisional application within the time period set forth in 37 CFR 1.78(a)(2)(ii). Moreover, petitioners failed to include a proper reference to the prior-filed application as required by 37 CFR 1.78(a)(2)(i) and (a)(2)(iii). As this application was filed after November 29, 2000, a petition under 37 CFR 1.78(a)(3), accompanied a Certificate of Correction and the required fees, is the appropriate avenue of relief for adding or correcting a claim for benefit of a prior-filed nonprovisional application after issuance of the application into a patent. See MPEP 1481.03.

A petition for acceptance of an unintentionally delayed claim under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. 120 and 37 CFR 1.78(a)(2)(i) and (iii) 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 benefit claim under 35 U.S.C. 120 is accepted as being unintentionally delayed.

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

Petitioners are advised that the granting of this petition and the mailing of a corrected Filing Receipt should not be viewed as an indication that a determination has been made that this application is entitled to claim benefit of the prior-filed application. A determination that petitioners are entitled to claim benefit of the prior-filed application will be made by the Examiner prior to the mailing of a Certificate of Correction.

This application is being referred to the Certificates of Correction Branch for processing the request for a Certificate of Correction in accordance with this decision on the petition under 37 CFR 1.78(a)(3).

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

/Christina Tartera Donnell/

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure

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
11/213,502	08/26/2005	2114	1550	125.P051	33	4

CONFIRMATION NO. 1827

CORRECTED FILING RECEIPT

43831
BERKELEY LAW & TECHNOLOGY GROUP, LLP
17933 NW Evergreen Parkway, Suite 250
BEAVERTON, OR 97006

OC000000052978225

Date Mailed: 03/06/2012

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)

Frank C. Wang, Boca Raton, FL;
Scott D. Aiken, Boca Raton, FL;
Juliano Maldaner, Delray Beach, FL;
Dennis E. Kelly, Boca Raton, FL;
Michael S. Goldflam, Wake Forest, NC;

Assignment For Published Patent Application

Xpoint Technologies, Inc., Boca Raton, FL

Power of Attorney: The patent practitioners associated with Customer Number 43831

Domestic Priority data as claimed by applicant

This application is a CIP of 10/267,492 10/09/2002 PAT 7024581

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: 09/14/2005

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/213,502**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

METHOD AND SYSTEM FOR UPDATING A SOFTWARE IMAGE

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).

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MAILED
MAR 23 2012
OFFICE OF PETITIONS

BERKELEY LAW & TECHNOLOGY GROUP, LLP
17933 NW Evergreen Parkway, Suite 250
BEAVERTON, OR 97006

In re Application of Wang et al.	:	
Application No. 11/213,503	:	DECISION ON PETITION
Filing Date: August 26, 2005	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 125.P051	:	

This is a decision on the petition under 37 CFR 1.78(a)(3) filed February 9, 2012, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to a prior-filed nonprovisional application.

The petition is **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 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 the application is entitled to the claim for benefit of priority to the prior-filed application noted thereon. The

examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

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

This application is being forwarded to Technology Center Art Unit 2114 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed application.

Any inquiries concerning this decision may be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Attachment: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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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
11/213,503	08/26/2005	2191	752	125.P049	24	4

CONFIRMATION NO. 1841

CORRECTED FILING RECEIPT

43831
BERKELEY LAW & TECHNOLOGY GROUP, LLP
17933 NW Evergreen Parkway, Suite 250
BEAVERTON, OR 97006

OC000000053292350

Date Mailed: 03/22/2012

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)

Frank C. Wang, Boca Raton, FL;
Scott D. Aiken, Boca Raton, FL;
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Dennis E. Kelly, Boca Raton, FL;
Michael S. Goldflam, Wake Forest, NC;

Assignment For Published Patent Application

Xpoint Technologies, Inc., Boca Raton, FL

Power of Attorney: The patent practitioners associated with Customer Number 43831

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: 09/14/2005

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/213,503**

Projected Publication Date: Not Applicable.

Non-Publication Request: No

Early Publication Request: No

Title

Method and system for deploying a software image

Preliminary Class

717

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

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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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Paper No.

MAILED

AUG 23 2010

OFFICE OF PETITIONS

SHUMAKER & SIEFFERT, P.A
1625 RADIO DRIVE , SUITE 300
WOODBURY MN 55125

In re Application of	:	
Aggarwal et al.	:	
Application No. 11/213637	:	ON APPLICATION FOR
Filed: 08/26/2005	:	PATENT TERM ADJUSTMENT
Atty Docket No.	:	
1014-096US08/JNP-0496	:	

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH," filed on February 26, 2010. Applicants request reconsideration of the patent term adjustment determination in view of *Wyeth v. Kappos* (No. 2009-1120, Fed. Cir. Jan. 7, 2010).

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

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

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

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

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

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

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

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 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) 272-3231.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

MAILED

AUG 19 2010

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Brian J. Gally, et al. :
Application No.: 11/213,659 :
Filed: August 26, 2005 :
Attorney Docket No.: IRDM.050A :

This is a decision on the petition, filed August 18, 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 July 2, 2010, cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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 2629 for further processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement (IDS).

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Decision Date : May 23,2011

In re Application of :

Osamu Nakamura

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11213911

Filed : 30-Aug-2005

Attorney Docket No : 0756-7524

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed May 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 2879 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	11213911
Filing Date	30-Aug-2005
First Named Inventor	Osamu Nakamura
Art Unit	2879
Examiner Name	MARY ELLEN BOWMAN
Attorney Docket Number	0756-7524
Title	DISPLAY DEVICE, METHOD FOR MANUFACTURING THE SAME AND APPARATUS FOR MANUFACTURING THE SAME

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

In re Patent No. 7132354
Issue Date: November 7,2006
Application No. 11213931
Filed: August 30,2005
Attorney Docket No. 0941-1308PUS1

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

This is a decision on the electronic petition, filed April 3,2012 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of April 3,2012 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7,132,354	2006-11-07	11/213,931	2005-08-30	LKSP0142USA

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

SMALL ENTITY
☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

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

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

MAINTENANCE FEE (37 CFR 1.20(e)-(g))
The appropriate maintenance fee must be submitted with this petition.

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

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

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

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

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

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

○ A sole patentee

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

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

○ The assignee of record of the entire interest

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Winston Hsu/	Date (YYYY-MM-DD)	2012-04-03
Name	Winston Hsu	Registration Number	41526

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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WENDEROTH, LIND & PONACK L.L.P.
1030 15TH STREET, N.W.
SUITE 400 EAST
WASHINGTON DC 20005-1503

MAILED

OCT 15 2010

OFFICE OF PETITIONS

In re Patent No. 7,678,249	:	
Application No. 11/213,961	:	
Filed: August 30, 2005	:	ON PETITION
Issued: March 16, 2010	:	
Attorney Docket No. 2005_1366A	:	

This is a decision on the petition filed September 15, 2010, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name of the city 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.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

GARLICK HARRISON & MARKISON
P.O. BOX 160727
AUSTIN TX 78716-0727

MAILED
MAY 24 2011
OFFICE OF PETITIONS

In re Application of :
William L. Reber :
Application No. 11/214,326 : NOTICE
Filed: August 29, 2005 :
Attorney Docket No. **WLR002CON1** :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 May 05, 2011.

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-2783.

/Tredelle D. Jackson/
Paralegal Specilaist
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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MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP
300 S. WACKER DRIVE
32ND FLOOR
CHICAGO, IL 60606

MAILED

OCT 14 2010

OFFICE OF PETITIONS

In re Application of	:	
Brian Cunningham, et al.	:	
Application No. 11/214,396	:	DECISION GRANTING PETITION
Filed: August 29, 2005	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 00-1123-D2	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed October 13, 2010, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on July 14, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 1641 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

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.
11/214,396	08/29/2005	Brian Cunningham	00-1123-D2	2951

20306 7590 12/19/2011
MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP
300 S. WACKER DRIVE
32ND FLOOR
CHICAGO, IL 60606

EXAMINER
YANG, NELSON C

ART UNIT	PAPER NUMBER
1641	

MAIL DATE	DELIVERY MODE
12/19/2011	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

December 17, 2011

MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP
300 S. WACKER DRIVE
32ND FLOOR
CHICAGO IL 60606

In re Application of	:	
Brian Cunningham et al.	:	**DECISION ON PETITION**
Application No. 11214396	:	
Filed: 08/29/2005	:	
Attorney Docket No. **00-1123-D2**	:	

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 20, 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 571-272-4200.

/Laura L. Feldman/
Quality Control Specialist
Office of Data Management
Publications Branch

UNITED STATES PATENT AND TRADEMARK OFFICE

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

WISCONSIN ALUMNI RESEARCH
FOUNDATION
C/O BOYLE FREDRICKSON S.C
840 North Plankinton Avenue
Milwaukee WI 53203

MAILED
JAN 17 2012
OFFICE OF PETITIONS

In re Application of :
Yegneswaran et al. :
Application No. 11/214399 :
Filing or 371(c) Date: 08/29/2005 :
Patent No. 8015605 :
Issue Date: 09/06/2011 :
Title of Invention: :
SCALABLE MONITOR OF MALICIOUS :
NETWORK TRAFFIC :

ON PETITION

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

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

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

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

Telephone inquiries concerning 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 (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: 13522/101 (563996)	
Application Number: 11/214,521	Filing Date (or 371(b) or (f) Date): August 30, 2005
Patent Number: 7,668,178	Issue Date: February 23, 2010
First Named Inventor: Luca Martini	
Title: Methods and Apparatus for Implementing VPN Services	

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

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

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

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

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

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

☐ *Total of _____ forms are submitted.

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

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

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

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

(Not to be Submitted to the USPTO)

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

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

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

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

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

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

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

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

Privacy Act Statement

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

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

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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UNITED STATES DEPARTMENT OF COMMERCE
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BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, IL 60610

Mail Date: 08/13/2010

Applicant	: Luca Martini	: DECISION ON REQUEST FOR
Patent Number	: 7668178	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/214,521	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 08/30/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1186** 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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E I DU PONT DE NEMOURS AND COMPANY
LEGAL PATENT RECORDS CENTER
BARLEY MILL PLAZA 25/1122B
4417 LANCASTER PIKE
WILMINGTON DE 19805

MAILED
FEB 02 2011
OFFICE OF PETITIONS

In re Application of	:	
Andrew Barnes Anderson	:	
Application No. 11/214,694	:	DECISION ON PETITION
Filed: August 30, 2005	:	
Attorney Docket No. TK4040USNA	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 13, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, July 21, 2008 which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on October 22, 2008. A Notice of Abandonment was mailed March 3, 2009.

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

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

This application is being referred to Technology Center AU 3635 for further appropriate action by the Examiner in the normal course of business on the reply received.

Joan Olszewski
Petitions Examiner
Office of Petitions

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Fujitsu Patent Center
Fujitsu Management Services of America, Inc.
2318 Mill Road, Suite 1010
Alexandria, VA 22314

Mail Date: 01/12/2011

Applicant	: Tomokazu Kawamoto	: DECISION ON REQUEST FOR
Patent Number	: 7615431	: RECALCULATION of PATENT
Issue Date	: 11/10/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 11/214,888	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 08/31/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **827** 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/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: MOST3001H/C/JEK	Patent Number: 7661238
Filing Date (or 371(b) or (f) Date): 2005-08-31	Issue Date: 2010-02-16
First Named Inventor: Stefan Simon Gustaaf Moriau	
Title: FLOOR PANELS WITH EDGE CONNECTORS	

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

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

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

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

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

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

☐ *Total of _____ forms are submitted.

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

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

PTO/SB/131 (01-10)
Approved for use through 02/28/2011. OMB 0651-0020
U.S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

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

(Not to be Submitted to the USPTO)

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

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

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

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

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

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

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

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

Privacy Act Statement

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

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

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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

Mail Date: 08/19/2010

Applicant	: Stefan Simon Gustaaf Moriau	: DECISION ON REQUEST FOR
Patent Number	: 7661238	: RECALCULATION of PATENT
Issue Date	: 02/16/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/215,009	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 08/31/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **370** 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

ELMORE PATENT LAW GROUP, PC
484 Groton Road
Westford MA 01886

In re Patent of Sitkovsky	:	DECISION ON REQUEST
Patent No. 7,718,624	:	FOR RECONSIDERATION OF
Issue Date: May 18, 2010	:	PATENT TERM ADJUSTMENT
Application No. 11/215,224	:	and
Filed: August 29, 2005	:	NOTICE OF INTENT TO ISSUE
Atty Docket No. 4030.3000 US1	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on May 20, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one hundred fifty-two (152) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.** The patent term adjustment is corrected to indicate that the term of the above-identified patent is extended or adjusted by **one hundred fifteen (115)** days.

Patentee argues the Office failed to enter a period of adjustment pursuant to 37 CFR 1.702(a)(2) in connection with the mailing of non-final Office action on October 15, 2008. A notice of appeal and amendment after final were filed on March 25, 2008. On April 14, 2008, the Office mailed an advisory action informing Applicant that the March 25, 2008 amendment failed to place this application in *prima facie* condition for allowance. Applicant filed an appeal brief on July 22, 2008.

Patentee's attention is directed to the October 15, 2008 non-final Office action, which states prosecution was reopened based on the arguments presented in the appeal brief, filed July 22, 2008, <u>not</u> the arguments presented in the March 25, 2008 amendment after final. Accordingly, there was no Office delay

under 37 CFR 1.702(a)(2) in connection with the mailing of the October 15, 2008 non-final Office action.

Patentee does not dispute the final B delay period amount. Nevertheless, the B delay period is incorrect. The maximum B delay period is 627 days, as Patentee asserts. However, the current B delay period calculation fails to properly calculate the appellate exclusion periods. 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 first excluded period is 205 days, beginning on March 25, 2008, the date the notice of appeal was filed, and ending on October 15, 2008, the date a non-final Office action was mailed. The second excluded period is 37 days, beginning on November 23, 2009, the date the notice of appeal was filed, and ending on December 29, 2009, the date a notice of allowance was mailed. Thus, B delay is 385 (627 - 205 - 37) days. (The 387 days accorded at issuance was for B delay. The 387 days is being removed and corrected to 385 days). As such, the patent term adjustment is being decreased to 115 (23 days of A delay + 385 days of B delay -293 days of Applicant delay) days.

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

It is noted that the Office issued a Notice of proposed rulemaking entitled *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review and Information Disclosure Statements*, 76 FR 18990 (April 6, 2011). To the extent that the final rule on *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review* revises the interpretation of appellate review applied in this decision, Patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the date of the final rule to file a request for reconsideration. No extensions of time will be granted under § 1.136.

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

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

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

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one hundred fifteen (115)** 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 : 7,718,624 B2

DATED : **May 18, 2010** **DRAFT**

INVENTOR(S) : Sitkovsky

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 117 days

Delete the phrase "by 117 days" and insert – by 115 days--

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OFFICE OF PETITIONS

KUMAR C. GOPALAKRISHNAN
P.O. BOX 2002
MOUNTAIN VIEW CA 94042

In re Application of	:	
GOPALAKRISHNAN	:	
Application No. 11/215,601	:	DECISION ON PETITION
Filed: August 30, 2005	:	
Attorney Docket No. GOP-001	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 17, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of August 16, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). 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 17, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Notice of Appeal and Pre-Appeal Brief Request for Review; (2) the petition fee of $810; and (3) a proper statement of unintentional delay.

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

This application is being referred to Technology Center AU 2163 to await the appropriate action on the Pre-Appeal Brief Request for Review.

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

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JELLETT LAW, PS
MATTHEW JELLETT, ESQ.
910 HARRIS AVE
SUITE A205
BELLINGHAM WA 98225

MAILED

APR 11 2011

OFFICE OF PETITIONS

In re Application of	:	
Harry B. Platis	:	
Application No. 11/215,633	:	DECISION ON PETITION
Filed: August 29, 2005	:	TO WITHDRAW
Attorney Docket No. P415575	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed March 12, 2011.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office 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 Matthew Jellett, the sole attorney of record. Matthew Jellett has been withdrawn as attorney or agents of record. Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the inventor Harry Platis at the address indicated below.

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

/Tredelle D. Jackson/
Paralegal Specialist
Office of Petitions

cc: **HARRY PLATIS**
CEDAR VALLEY OFFICES
LYNNWOOD WA 98036

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MATHESON KEYS GARSSON & KORDZIK PLLC
7004 BEE CAVE RD.
BLDG. 1, SUITE 110
AUSTIN TX 78746

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In re Application of
Dongsheng Mao et al
Application No. 11/215,696
Filed: August 30, 2005
Attorney Docket No. 21545-142001

DECISION ON REQUEST FOR REFUND AND NOTICE

This is a decision on the Request For Refund filed November 4, 2010. This is also a decision on the request filed November 1, 2010, which is being treated under 37 CFR 1.28(c).

The request for refund is **DISMISSED**.

The request under 37 CFR 1.28(c) is **DISMISSED**.

Applicant files the above request for refund of $665.00 to have been paid on November 1, 2010. However, a review of Office finance records does not show that any fees were paid/charged on November 1, 2010 to be refunded.

As to the request under 37 CFR 1.28(c) submitted on November 1, 2010:

The request is dismissed at this time because the Office is not clear as to which fees are to be paid at the large entity rate in view of the request for refund filed November 4, 2010. Applicant is encouraged to note compliance with 37 CFR 1.28(c)(2)(ii).

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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December 15, 2011

BAKER BOTTS L.L.P.
PATENT DEPARTMENT
98 SAN JACINTO BLVD., SUITE 1500
AUSTIN TX 78701-4039

In re Application of	:	
Seo Hong Yoo	:	**DECISION ON PETITION**
Application No. 11215701	:	
Filed: 8/30/2005	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. 072852.0138	:	***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) August 30, 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

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/215,709	08/30/2005	Rainer Eskuchen	C 2983 COGG	5899

23657 7590 10/15/2010
FOX ROTHSCHILD LLP
997 Lenox Drive, Bldg. #3
Lawrenceville, NJ 08648

EXAMINER
ORWIG, KEVIN S

ART UNIT	PAPER NUMBER
1611	

NOTIFICATION DATE	DELIVERY MODE
10/15/2010	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):

ipdocket@foxrothschild.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

OCT 1 5 2010

FOX ROTHSCHILD LLP
997 Lenox Drive, Bldg. #3
Lawrenceville NJ 08648

In re Application of:	:
Eskuchen et al.	:
Serial No.: 11/215,709	: SUSPENSION OF ACTION
Filed: August 30, 2005	:
Attorney Docket No.: **C 2983 COGG**	:

This is in reply to the petition under 37 CFR 1.103(a) to suspend action in this application at applicants' request for a six month period of time, filed September 30, 2010.

BACKGROUND

Applicants request prosecution in this application be suspended for six months so that applicants can conduct studies to show the subject matter produces unexpected results.

DISCUSSION

§ 1.103 Suspension of action by the Office.

(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.

Applicants have replied to the last Office action by filing an appropriate response. Applicants have shown good and sufficient reason for suspension.

DECISION

In view of the above, the petition for suspension of action is **GRANTED** for a period of six months from the date of mailing of this decision.

Should applicant obtain the requisite data prior to the expiration of the period of suspension, a submission of the results should be promptly forwarded to the Office so that prosecution may be resumed.

Should there be any questions with respect to this action, please contact the examiner or Marianne Seidel, by mail addressed to: Director, Technology Center 1600, P. O. BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at 571-272-0519 or by facsimile transmission at Office general facsimile number, 571-273-8300.

Marianne C. Seidel
Quality Assurance Specialist
Technology Center 1600

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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PEARNE & GORDON LLP
1801 EAST 9TH STREET
SUITE 1200
CLEVELAND OH 44114-3108

MAILED

SEP 13 2010

OFFICE OF PETITIONS

In re Patent No. 7,048,437	:	
Issue Date: May 23, 2006	:	
Application No. 11/215,924	:	DECISION ON PETITION
Filed: August 31, 2005	:	
Attorney Docket No. PONZ-35158US1	:	

This is a decision on the "REQUEST UNDER 37 CFR § 3.81(b) TO CORRECT THE ASSIGNEE" filed December 29, 2009.

The petition is **GRANTED**.

An application may issue in the name of an assignee rather than the applicant if requested prior to issuance of a patent.[1] However, in the event the request is not made prior to issuance, a Certificate of Correction under 37 CFR 1.323 may be requested. A request for a Certificate of Correction under 37 CFR 1.323 to correct the assignee's name will not be granted unless a petition under 37 CFR 3.81(b) is granted. Such request under 37 CFR 3.81(b) should include:

(A) the processing fee required by 37 CFR 1.17(i);

(B) a request for issuance of the application in the name of the assignee, or a request that a patent be corrected to state the name of the assignee;

---

[1] See 37 CFR 3.81.

(C) a statement that the assignment was submitted for recordation as set forth in 37 CFR 3.11 before issuance of the patent; and

(D) a request for a certificate of correction under 37 CFR 1.323 accompanied by the fee set forth in 37 CFR 1.20(a).[2]

Receipt of the $130 processing fee set forth in 37 CFR 1.17(i) and the $100 fee for the Certificate of Correction set forth in 37 CFR 1.20(a) is acknowledged.

The file is being forwarded to the Certificate of Corrections Branch for issuance of the requested Certificate of Correction.

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

Cliff Congo
Petitions Attorney
Office of Petitions

[2] MPEP 307.

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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PEARL, COHEN ZEDEK LATZER, LLP
1500 BROADWAY
12TH FLOOR
NEW YORK, NY 10036

MAILED
FEB 28 2011
OFFICE OF PETITIONS

In re Patent No. 7,646,378 :
Issue Date: January 12, 2010 :
Application No. 11/216,021 : NOTICE
Filed: September 1, 2005 :
Attorney Docket No. P-8198-US :

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

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-1642.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

WORKMAN NYDEGGER/Leica
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City UT 84111

MAILED

DEC 07 2010

OFFICE OF PETITIONS

In re Application of	:	
Heinz Lippuner	:	
Application No. 11/216,217	:	LETTER REGARDING
Filed: September 28, 2010	:	FEE DEFICIENCY PAYMENT
Atty Docket No. 16455.67	:	

This is in response to the PETITION TO EXCUSE ERROR IN SMALL ENTITY STATUS PAYMENT OF DEFICIENCY OWED PURSUANT TO 37 CFR § 1.28 AND NOTIFICATION OF LOSS OF SMALL ENTITY STATUS PURSUANT TO 37 CFR §1.28(d) filed September 28, 2010, notifying the Office of loss of entitlement to small entity status.

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

This letter includes an itemization of the fee deficiencies and payment as required by 37 CFR 1.28(c)(2)(ii).

Your notification of a loss of entitlement to small entity status is made of record and your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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

AUG 3 0 2010

OFFICE OF PETITIONS

In re Application of	:	
Frank et al.	:	ON REQUEST FOR
Patent Number: 7,644,272	:	RECONSIDERATION OF
Issue Date: 01/05/2010	:	PATENT TERM ADJUSTMENT
Application No. 11/216271	:	
Filing or 371(c) Date: 08/30/2005	:	
Attorney Docket Number: 17437US02	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF USPTO RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH," filed June 3, 2010. Patentee requests that the determination of patent term adjustment under 35 U.S.C. 154(b) at the time of mailing of the notice of allowance be corrected from one thousand one hundred sixty (1160) days to one thousand one hundred sixty-three (1163) days. Patentee makes this request on the basis that the Office errantly calculated a reduction of one (1) day pursuant to 37 CFR 1.704(b) in connection with the filing of a reply to a non-final Office action three months and one (1) day after the mail date of the non-final Office action, and on the assertion that the Office errantly calculated a reduction of two (2) days pursuant to 37 CFR 1.704(b) in connection with the filing of the issue fee three months and two (2) days after the mail date of the after the mailing of the Notice of Allowance and Issue Fee Due.

The request for reconsideration of patent term adjustment in connection with the filing of a reply to a non-final Office action three months and one (1) day after the mail date of the non-final Office action is properly treated under § 1.705(b)and is **DISMISSED AS UNTIMELY FILED**.

The request for reconsideration of patent term adjustment in connection with the filing of the issue fee three months and two (2) days after the mail date of the after the mailing of the Notice of Allowance and Issue Fee Due is properly treated under § 1.705(d)and is **DISMISSED**.

On August 28, 2009, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 818 days. This determination was based in part on the period of adjustment of one (1) day associated with the filing of a reply to a non-final Office action three months and one (1) day after the mail date of the non-final Office action. PALM records indicate that the issue fee payment was received in the Office on November 23, 2009. No filing of an application

for patent term adjustment preceded the payment of the issue fee. The period for filing an application for patent term adjustment requesting reconsideration of the initial determination of patent term adjustment at the time of mailing of the notice of allowance ended November 23, 2009. Accordingly, it is appropriate to dismiss this petition as untimely filed under 1.705(b).

Consideration under 1.705(d) is not appropriate. As stated in MPEP 2730, 1.703(d) provides that:

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

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

The application for patent term adjustment in connection with the filing of a reply to a non-final Office action three months and one (1) day after the mail date of the non-final Office action is properly treated under § 1.705(b)and is **DISMISSED AS UNTIMELY FILED**..

On May 4, 2010, this 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. This request for reconsideration of patent term adjustment was timely filed within one month of the mail date of the decision.

Patentees request that the patent term adjustment ("PTA") be adjusted to include two (2) days of adjustment in connection with the filing of the issue fee three months and two (2) days after the mail date of the after the mailing of the Notice of Allowance and Issue Fee Due. Patentees believe that they should not have been assessed two (2) days of delay relative to the payment of the issue fee. Patentees acknowledge that the date three months after the mailing of the Notice of Allowance is November 21, 2009, and that the Issue Fee in response to the Notice of Allowance was filed on November 23, 2009. However, Patentees aver that the issue fee was timely because the time period for reply ended on a Saturday, Sunday or Federal Holiday, in which instance, Patentees provide, the reply is timely if filed on the next succeeding business day. Patentees also cite to 35 U.S.C. § 21(b), which provides in relevant part, that when the last day for paying any fee falls on a Saturday, Sunday or Federal Holiday within the District of Columbia, the fee may be paid on the next succeeding or secular or business day.

Regarding the delay of two (2) days attributed to Applicant under 37 CFR 1.704(b), for filing the issue fee on November 23, 2009, Patentee' attention is directed to 37 CFR 1.703(f), which provides that "[t]he date indicated on any certificate of mailing or transmission under § 1.8 shall not be taken into account in this calculation" of patent term adjustment. That is, while the date

indicated on any certificate of mailing or transmission under § 1.8 will continue to be taken into account in determining timeliness, the date of filing (§ 1.6) will be the date used in a patent term adjustment calculation. Applicant may wish to consider the use of the "Express Mail Post Office to Addressee" service of the United States Postal Service (§ 1.10) or facsimile transmission (§ 1.6(d)) for replies to be accorded the earliest possible filing date for patent term adjustment calculations. (Emphasis supplied). *See also*, Comment 10, *Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term*; *Final Rule*, 65 Fed. Reg. 54366 (September 18, 2000).

In accordance with 37 CFR 1.703(f), the Office properly used November 23, 2009, the filing date of the issue fee, in calculating the patent term adjustment. Accordingly, Patentees' argument on request for reconsideration of patent term adjustment is not found persuasive.

In view of the foregoing, no adjustment to the patent term will be made.

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

Patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

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

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

/DW/

Derek Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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NIXON PEABODY, LLP
401 9TH STREET, NW
SUITE 900
WASHINGTON, DC 20004-2128

MAILED

NOV 10 2010

OFFICE OF PETITIONS

In re Application of
Mark J. Stefik, et al.
Application No. 11/216,275
Filed: September 1, 2005
Attorney Docket No. 111325-027700

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the renewed Request to Withdraw as attorney or agent under 37 C.F.R. § 1.36(b), filed September 10, 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. 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) were 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. Similarly, if practitioner(s) was appointed by a Customer Number, the practitioner(s) should ensure that the correct number is provided in the Request Additionally, as set forth in MPEP 403(I), the addition or deletion of a practitioner from the list of persons associated with a Customer Number should be done by way of a *Request for Customer umber Data Change* (PTO/SB/124) and not a *Request for Withdrawal As Attorney or Agent and Change of Correspondence Address* (PTO/SB/83).

Accordingly, the request cannot be approved because practitioners were not appointed by customer number. Practitioners must withdraw in the same manner that they were appointed.

In order to request or take action in a patent matter, the assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, a Statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (*e.g.*, reel and frame number). The power of attorney filed September 16,

2010 does not include the correct serial number and filing date on the statement filed under 37 CFR 3.73(b).

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. 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: COUNTENTGUARD HOLDINGS INC.
222 N. SEPULVEDA BLVD.
SUITE 1400
EL SEGUNDO, CA 90245

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: Aizenberg 11-21-33-23 (J)-US-NP	Patent Number: 7,666,665
Filing Date (or 371(b) or (f) Date): August 31, 2005	Issue Date: February 23, 2010
First Named Inventor: Joanna Aizenberg	
Title: Low adsorption surface	

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.

UNITED STATES PATENT AND TRADEMARK OFFICE

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HITT GAINES, PC
ALCATEL-LUCENT
PO BOX 832570
RICHARDSON, TX 75083

Mail Date: 08/13/2010

Applicant	: Joanna Aizenberg	: DECISION ON REQUEST FOR
Patent Number	: 7666665	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/216,373	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 08/31/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **161** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11/1/10

TO SPE OF : ART UNIT 2838

SUBJECT : Request for Certificate of Correction for Appl. N 11/216458.-Pt. 7492121

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)

Magdalene Talley
Certificates of Correction Branch
571 272-0423

Thank You For Your Assistance

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

- ☐ **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**

Deleted: /Kenneth Vanderpuye/ . . 2613

PATENT
55647/S1170

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

U.S. Patent No.	: 7,492,121	Confirmation No. 3965
Issued	: February 17, 2009	
Inventor(s)	: Jong Sam Kim, et al.	
Application No.	: 11/216,458	
Filed	: August 30, 2005	
Title	: SMART BATTERY PACK AND METHOD FOR RECOGNIZING BATTERY TYPE USING THE SAME	

ENTER IN PART
See Page 4. /M.D./
02/23/2011

REQUEST FOR CERTIFICATE OF CORRECTION

Office of Certificates of Correction
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Post Office Box 7068
Pasadena, CA 91109-7068
January 21, 2010

Commissioner:

Attached are two copies of a proposed Certificate of Correction to correct errors by the Patent Office appearing in the above-referenced patent. The errors are identified in detail in the proposed certificate, and the corresponding text in the application is located as follows:

Location in Patent	**Location in Application**
On the Title Page	
(54) Title, line 1	Title as Filed Aug. 30, 2005, specification pg. 1
(74) Attorney, Agent or Firm	PTOL-85 filed Jan. 9, 2009, Item 2.
In the Claims	
Column 8, line 42, Claim 1	Amendment dated Jun. 27, 2008, pg. 2, Claim 1, line 5
Column 8, line 44, Claim 1	Amendment dated Jun. 27, 2008, pg. 2, Claim 1, line 6
Column 8, line 49, Claim 1	Amendment dated Jun. 27, 2008, pg. 2, Claim 1, line 9
Column 9, line 1, Claim 4	Amendment dated Jun. 27, 2008, pg. 3, Claim 4, line 2
Column 9, line 26, Claim 10	Amendment dated Jun. 27, 2008, pg. 3, Claim 10, line 2
Column 9, line 28, Claim 10	Amendment dated Jun. 27, 2008, pg. 3, Claim 10, line 4

I hereby certify that this correspondence is being electronically filed with the United States Patent and Trademark Office on January 21, 2010 at or before 11:59 p.m. Pacific Time under the Rules of 37 CFR § 1.8.

Christina L. Malinosky

Patent No. 7,492,121

Column 9, line 31, Claim 10	Amendment dated Jun. 27, 2008, pg. 3, Claim 10, line 6
Column 9, line 56, Claim 13	Amendment dated Jun. 27, 2008, pg. 4, Claim 14, line 3
Column 10, line 17, Claim 14	Amendment dated Jun. 27, 2008, pg. 5, Claim 14, line 9
Column 10, line 19, Claim 14	Amendment dated Jun. 27, 2008, pg. 5, Claim 14, line 10
Column 10, line 50, Claim 18	Amendment dated Jun. 27, 2008, pg. 6, Claim 18, line 6
Column 10, line 56, Claim 18	Amendment dated Jun. 27, 2008, pg. 6, Claim 18, line 11
Column 12, line 7, Claim 20	Amendment dated Jun. 27, 2008, pg. 7, Claim 20, line 4

Approval of this certificate is respectfully requested.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

By _____

Jun-Young E. Jeon
Reg. No. 43,693
626/795-9900

JEJ/clv
Enclosures: Certificate of Correction

CLV PAS884021.1-*-01/19/10 6:23 PM

PTO/SB/44 (09-07)
Approved for use through 08/31/2010. OMB 0651-0033
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,492,121
APPLICATION NO.: 11/216,458
ISSUE DATE : February 17, 2009
INVENTOR(S) : Jong Sam Kim, 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:

On the Title Page

(54) Title, line 1	Delete "SMART BATTERY AND", Insert --SMART BATTERY PACK AND-- ENTER
(74) Attorney, Agent or Firm	Delete "Chrisitie", Insert --Christie-- ENTER

In the Claims

Column 8, line 42, Claim 1	Delete "predetermined" ENTER
Column 8, line 44, Claim 1	Delete "devices", Insert --device-- ENTER
Column 8, line 49, Claim 1	Delete "apply electric", Insert --apply the electric-- ENTER
Column 9, line 1, Claim 4	Delete "coupled", Insert --directly connected-- ENTER
Column 9, line 26, Claim 10	Delete "predetermined" ENTER
Column 9, line 28, Claim 10	Delete "predetermined" ENTER

MAILING ADDRESS OF SENDER (Please do not use customer number below):

Christie, Parker & Hale, LLP.
P.O. Box 7068
Pasadena, California 91109-7068

This collection of information is required by 37 CFR 1.322, 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,492,121
APPLICATION NO.: 11/216,458
ISSUE DATE : February 17, 2009
INVENTOR(S) : Jong Sam Kim, et al.

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

Column 9, line 31, Claim 10	Delete "electronic", Insert --electric--	ENTER
Column 9, line 56, Claim 13	Delete "eletronic", Insert --electric--	DO NOT ENTER
Column 10, line 17, Claim 14	Delete "parellel", Insert --parallel--	ENTER
Column 10, line 19, Claim 14	Delete "parellel", Insert --parallel--	ENTER
Column 10, line 50, Claim 18	Delete "electronic", Insert --electric--	ENTER
Column 10, line 56, Claim 18	Delete "type", Insert --a type--	ENTER
Column 12, line 7, Claim 20	Delete "predetermined"	ENTER

No matching was found in either application or Patent.

MAILING ADDRESS OF SENDER (Please do not use customer number below):
Christie, Parker & Hale, LLP.
P.O. Box 7068
Pasadena, California 91109-7068

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.

PATENT
55647/S1170

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

I hereby certify that this correspondence is being electronically filed with the United States Patent and Trademark Office on February 17, 2011 at or before 11:59 p.m. Pacific Time under the Rules of 37 CFR § 1.8.

Marti Carrillo

U.S. Patent No.	: 7,492,121	Confirmation No. 3965
Issued	: February 17, 2009	ENTER IN PART
Inventor(s)	: Jong Sam Kim, et al.	See pages 1-2, 4-7 /M.D./
Application No.	: 11/216,458	02/23/2011
Filed	: August 30, 2005	
Title	: SMART BATTERY PACK AND METHOD FOR RECOGNIZING BATTERY TYPE USING THE SAME	

REQUEST FOR CERTIFICATE OF CORRECTION

Office of Certificates of Correction
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

P. O. Box 7068
Pasadena, CA 91109-7068
February 17, 2011

Commissioner:

Submitted herewith are two copies of a proposed Certificate of Correction for the above-referenced patent. The errors are identified in detail in the proposed certificate, and the corresponding text in the application is located as follows:

Location in Patent	**Location in Application**
Applicant errors:	
In the Claims	
Column 8, Claim 3, line 59	Amendment dated June 27, 2008, page 2, Claim 3, line 2
Column 9, Claim 6, line 10	Amendment dated June 27, 2008, page 3, Claim 6, line 3
Column 9, Claim 7, line 11	Amendment dated June 27, 2008, page 3, Claim 7, line 1
Column 9, Claim 7, line 12	Amendment dated June 27, 2008, page 3, Claim 7, line 2
Column 9, Claim 7, line 15	Amendment dated June 27, 2008, page 3, Claim 7, line 4

U.S. Patent No. 7,492,121

Column 9, Claim 7, line 16	Amendment dated June 27, 2008, page 3, Claim 7, line 4
Column 9, Claim 8, line 20	Amendment dated June 27, 2008, page 3, Claim 8, line 2
Column 9, Claim 9, line 23	Amendment dated June 27, 2008, page 3, Claim 9, line 3
Column 9, Claim 10, line 25	Amendment dated June 27, 2008, page 3, Claim 10, line 1
Column 9, Claim 10, line 37	Amendment dated June 27, 2008, page 4, Claim 10, line 4
Column 9, Claim 12, line 51	Amendment dated June 27, 2008, page 4, Claim 12, line 5
Column 9, Claim 13, line 56	Certificate of Correction dated January 21, 2010, page 2, Claim 13
Column 9, Claim 13, line 57	Amendment dated June 27, 2008, page 4, Claim 13, line 4
Column 9, Claim 13, line 59	Amendment dated June 27, 2008, page 4, Claim 13, line 5
Column 9, Claim 13, line 59	Amendment dated June 27, 2008, page 4, Claim 13, line 5
Column 10, Claim 14, line 3	Amendment dated June 27, 2008, page 4, Claim 14, line 5
Column 10, Claim 16, line 25	Amendment dated June 27, 2008, page 5, Claim 16, line 2
Column 10, Claim 17, line 30	Amendment dated June 27, 2008, page 5, Claim 17, line 1
Column 10, Claim 17, line 39	Amendment dated June 27, 2008, page 5, Claim 17, line 7
Column 10, Claim 18, line 43	Amendment dated June 27, 2008, page 6, Claim 18, line 2
Column 10, claim 18, line 45	Amendment dated June 27, 2008, page 6, Claim 18, line 3
Column 10, Claim 18, line 55	Amendment dated June 27, 2008, page 6, Claim 18, line 11
Column 10, Claim 18, line 57	Amendment dated June 27, 2008, page 6, Claim 18, line 12
Column 10, Claim 18, line 59	Amendment dated June 27, 2008, page 6, Claim 18, line 14
Column 10, Claim 18, line 64	Amendment dated June 27, 2008, page 6, Claim 18, line 17
Column 11, Claim 18, line 1	Amendment dated June 27, 2008, page 6, Claim 18, line 20
Column 11, Claim 18, line 2	Amendment dated June 27, 2008, page 6, Claim ~~20~~ 18, line 21
Column 12, Claim 20, line 5	Amendment dated June 27, 2008, page 7, Claim 20, line 3
Column 12, Claim 20, line 5	Amendment dated June 27, 2008, page 7, Claim 20, line 3

U.S. Patent No. 7,492,121

Column 12, Claim 20, line 8	Amendment dated June 27, 2008, page 7, Claim 20, line 4
Column 12, Claim 20, line 10	Amendment dated June 27, 2008, page 7, Claim 20, line 6
Column 12, Claim 20, line 12	Amendment dated June 27, 2008, page 7, Claim 20, line 7

Applicant(s) errors were unintentional and inadvertent, and were made in good faith through oversight. Correction is accordingly requested under 35 U.S.C. § 255, the statutory fee of $100.00 is submitted herewith. Any deficiency or overpayment should be charged or credited to Deposit Account No. 03-1728. Please show our docket number with any credit or charge to our Deposit Account.

Correction of applicant(s) errors does not constitute new matter or require reexamination. Approval of this certificate is respectfully requested

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

By _____
Jun-Young E. Jeon
Reg. No. 43,693
626/795-9900

JEJ/mac
Enclosures: Certificate of Correction

MAC PAS939743.1-*-01/20/11 1:46 PM

PTO/SB/44 (09-07)
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UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,492,121

APPLICATION NO.: 11/216,458

ISSUE DATE : February 17, 2009

INVENTOR(S) : Jong Sam Kim, et al.

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

In the Claims

Column 8, Claim 3, line 59	Delete "smart" ENTER
Column 9, Claim 6, line 10	Delete "smart" ENTER
Column 9, Claim 7, line 11	Delete "claim 1" Insert -- claim 6 -- ENTER
Column 9, Claim 7, line 12	Before -- battery -- Delete "smart" ENTER
Column 9, Claim 7, line 15	After "the" Delete "smart" ENTER
Column 9, Claim 7, line 16	After "that" Insert -- the -- ENTER
Column 9, Claim 8, line 20	After "the" Delete "smart" ENTER
Column 9, Claim 9, line 23	After "the Delete "smart" ENTER
Column 9, Claim 10, line 25	Delete "the" ENTER

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Christie, Parker & Hale, LLP
P.O. Box 7068
Pasadena, CA 91109-7068

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UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,492,121

APPLICATION NO.: 11/216,458

ISSUE DATE : February 17, 2009

INVENTOR(S) : Jong Sam Kim, et al.

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

	Insert -- a -- ENTER
Column 9, Claim 10, line 37	After "outputting" Insert -- the -- ENTER
Column 9, Claim 12, line 51	After " that" Insert -- the -- ENTER
Column 9, Claim 13, line 56	Delete "electric" NOT ENTER insert "electronic" There isn't any such limitation
Column 9, Claim 13, line 57	After "off" delete "the" and Insert -- a -- ENTER
Column 9, Claim 13, line 59	Delete "smart battery pack" NOT ENTER Insert -- battery cell -- No matching limitation
Column 9, Claim 13, line 59	After "that" Insert -- the -- ENTER
Column 10, Claim 14, line 3	Before "from" Insert -- is applied -- ENTER
Column 10, Claim 16, line 25	After "the"

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P.O. Box 7068
Pasadena, CA 91109-7068

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PTO/SB/44 (09-07)
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UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,492,121

APPLICATION NO.: 11/216,458

ISSUE DATE : February 17, 2009

INVENTOR(S) : Jong Sam Kim, 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:

	Delete "smart" ENTER
Column 10, Claim 17, line 30	After "recognizing" ENTER Insert -- a --
Column 10, Claim 17, line 39	Before "electric" Insert -- the -- ENTER
Column 10, Claim 18, line 43	Delete "the" Insert -- a -- ENTER
Column 10, claim 18, line 45	Delete "an" Insert -- the -- ENTER
Column 10, Claim 18, line 55	Delete "an" Insert -- the -- ENTER
Column 10, Claim 18, line 57	Delete "an" Insert -- the ENTER
Column 10, Claim 18, line 59	Before "authentication" ENTER Insert -- the --
Column 10, Claim 18, line 64	Insert -- the -- ENTER Before "type"

MAILING ADDRESS OF SENDER (Please do not use customer number below):

Christie, Parker & Hale, LLP
P.O. Box 7068
Pasadena, CA 91109-7068

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UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,492,121

APPLICATION NO.: 11/216,458

ISSUE DATE : February 17, 2009

INVENTOR(S) : Jong Sam Kim, et al.

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

Column 11, Claim 18, line 1	Insert -- the -- ENTER After "receiving
Column 11, Claim 18, line 2	After "preventing" ENTER Insert -- the --
Column 12, Claim 20, line 5	Delete "a" NOT ENTER Insert -- the -- Claim limitation is OK as presented.
Column 12, Claim 20, line 5	Insert -- the -- Before "electric" ENTER
Column 12, Claim 20, line 8	Before "electric" Insert -- the -- ENTER
Column 12, Claim 20, line 10	After output Insert -- the -- ENTER; Also delete "smart" on the same line
Column 12, Claim 20, line 12	Before "electric" Insert -- the -- ENTER

MAILING ADDRESS OF SENDER (Please do not use customer number below):

Christie, Parker & Hale, LLP
P.O. Box 7068
Pasadena, CA 91109-7068

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 5-10-11

TO SPE OF : ART UNIT 1646

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/216,610 Patent No.: 7402657

CofC mailroom date: 5-4-11

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

FOR IFW FILES: Check Sequence listing

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.

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

Comments: _____

PHILLIP GAMBEL ACTING SPE 1646
SPE **Art Unit**

PTOL-306 (REV. 7/03) U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

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WEIDE & MILLER, LTD.
7251 W. LAKE MEAD BLVD.
SUITE 530
LAS VEGAS NV 89128

MAILED
AUG 17 2011
OFFICE OF PETITIONS

In re Application of :
Robert Guinn :
Application No. 11/216,714 : ON PETITION
Filed: August 31, 2005 :
Attorney Docket No. HERBST.0007P :

This is a decision on the petition filed July 25, 2011 under the unintentional provisions of 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to properly reply in a timely manner to the final Office action mailed, July 27, 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 October 28, 2010. A Notice of Abandonment was mailed on February 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 a RCE (Request for Continued Examination, with the required fee of $810, (2) the petition fee of $1,620, and (3) a proper statement of unintentional delay. Accordingly, the RCE is accepted as being unintentionally delayed.

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

This application is being referred to Technology Center AU 3684 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

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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November 4, 2010

Orville R. Cockings
Lerner, David, Litternberg, Krumholz & Mentlik
600 South Avenue West
Westfield, NJ 07090

Patent No: 7,612,296 B2
Application No: 11/216,813
Applicant: Meta Rohde, et al.
Issued: November 3, 2009
Title: **VISUALLY INSPECTABLE SURFACE MOUNT DEVICE PAD**

Request for Certificate Of Correction:

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

The error purported to be in column 5, line 21, cannot be found in the printed patent.

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

Further correspondence concerning this matter should be filed and directed to Decisions & Certificated of Correction Branch.

/Virginia Tolbert/
Virginia Tolbert
For Mary Diggs, Supervisor
Decisions and Certificate of Correction
(571) 272-0460 (voice)
(571) 270-9892 (fax)

vt

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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www.uspto.gov

QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO CA 92121

MAILED

JUN 10 2011

OFFICE OF PETITIONS

In re Application of	:	
Minghui Chen et al.	:	
Application No. 11/216,857	:	DECISION ON PETITION
Filed: August 30, 2005	:	
Attorney Docket No. 050459	:	

This is a decision on the petition under 37 CFR 1.59(b), filed March 21, 2011, to expunge information from the above identified application.

The petition is **dismissed as being moot**.

In view of the Request to Withdraw the Petition to Expunge Request for Continued Examination filed June 8, 2011, the petition to expunge under 37 CFR 1.59(b) filed March 21, 2011 will not be considered and is dismissed as being moot.

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

Carl Friedman
Petitions Examiner
Office of Petitions

Issue Classification	Application/Control No.	Applicant(s)/Patent under Reexamination	
	{ FORMTEXT 11/216,858	KOPRESKI, MICHAEL S.	
	Examiner	Art Unit	
	FRANK W. LU	1634	

ISSUE CLASSIFICATION

ORIGINAL						CROSS REFERENCE(S)							
CLASS				SUBCLASS	CLASS	SUBCLASS (ONE SUBCLASS PER BLOCK)							
435				91.2	435	6	91.1	91.51					
INTERNATIONAL CLASSIFICATION					536	23.1	24.3	24.33	25.3				
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/ 1/14/2011	Total Claims Allowed: 12
(Legal Instruments Examiner) (Date)	(Primary Examiner) (Date)	O.G. Print Claim(s): 1 / O.G. Print Fig.: None

☐ Claims renumbered in the same order as presented by applicant ☐ CPA ☒ T.D. ☐ R.1.47

Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original
1	1		31		61		91		121		151		181
2	2	10	32		62		92		122		152		182
3	3		33		63		93		123		153		183
4	4		34		64		94		124		154		184
5	5		35		65		95		125		155		185
	6		36		66		96		126		156		186
	7		37		67		97		127		157		187
	8		38		68		98		128		158		188
	9		39		69		99		129		159		189
	10		40		70		100		130		160		190
	11		41		71		101		131		161		191
	12		42		72		102		132		162		192
	13		43		73		103		133		163		193
	14		44		74		104		134		164		194
	15		45		75		105		135		165		195
	16		46		76		106		136		166		196
	17	11	47		77		107		137		167		197
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	19		49		79		109		139		169		199
	20		50		80		110		140		170		200
	21		51		81		111		141		171		201
6	22		52		82		112		142		172		202
7	23		53		83		113		143		173		203
8	24		54		84		114		144		174		204
9	25		55		85		115		145		175		205
	26		56		86		116		146		176		206
	27		57		87		117		147		177		207
	28		58		88		118		148		178		208
	29		59		89		119		149		179		209
	30		60		90		120		150		180		210

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JUN 03 2011
OFFICE OF PETITIONS

MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP
300 S. WACKER DRIVE
32ND FLOOR
CHICAGO, IL 60606

In re Application of	:	
Kopreski	:	DECISION ON APPLICATION
Application No. 11/216,858	:	FOR PATENT TERM ADJUSTMENT
Filed: August 31, 2005	:	
Attorney Docket No. 00-1312-R	:	

This is a decision on the "Request for Reconsideration of Patent Term Adjustment Under 37 C.F.R. § 1.705(b)" filed April 11, 2011, which requests the initial determination of patent term adjustment be corrected from eleven (11) days to two hundred sixteen (216) days.

The request for reconsideration of the initial determination of patent term adjustment is **granted to the extent indicated herein**.

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 0 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) on January 20, 2011, advising Applicant of a patent term adjustment to date of 11 days.

Applicant timely filed the instant request for reconsideration of the patent term adjustment determination with the issue fee on April 11, 2011.

Applicant asserts the Office improperly failed to increase the patent term adjustment by 163 days for Office delay under 37 C.F.R. § 1.703(b) and improperly entered a 42-day reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(8).

B Delay

To the extent Applicant requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the request is premature.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. *See* 37 C.F.R. § 1.702(b). (This is true even where a request for continued examination ("RCE") was filed). The computer will not undertake the 37 C.F.R. § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under 37 C.F.R. § 1.702(a)(4) or applicant delay under 37 C.F.R. § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 C.F.R. § 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature.

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

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

Delay Under 37 C.F.R. § 1.704 ("Applicant Delay")

The Office entered a 42-day reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(8) based on an entry in the Office's PALM database indicating an information disclosure statement ("IDS") was filed February 28, 2008. Applicant alleges the entry of the 42-day reduction in patent term adjustment was improper because an IDS was not actually filed on February 28, 2008.

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

A review of Office records confirms an IDS was not filed on February 28, 2008. Therefore, the Office agrees the Office's entry of the 42-day reduction in patent term adjustment was improper.

When calculating the initial patent term adjustment determination mailed with the Notice of Allowance, the Office calculated the total period of Applicant Delay as 320 days. Applicant asserts the correct total period of Applicant Delay is 278 (320 - 42) days. Although the Office agrees entry of the 42-day reduction in patent term adjustment was improper, the Office does not agree the correct period of Applicant Delay is 278 days.

A review of the record indicates the Office should have entered a 70-day reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(8) as a result of an IDS filed April 22, 2009, and should have entered a 53-day reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(8) as a result of the terminal disclaimer filed January 14, 2011.

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.

Applicant filed an IDS on April 22, 2009, which was 70 days after the date a reply was filed in response to the prior Office action. The IDS did not include a statement under 37 C.F.R. § 1.704(d) and the record fails to indicate the examiner expressly requested the submission of the IDS. Therefore, the Office should have entered a 70-day reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(8) as a result of the submission of the April 22, 2009 IDS.

Applicant filed a terminal disclaimer on January 14, 2011, which was 53 days after the date a reply was filed in response to the prior Office action. The record fails to indicate the examiner expressly requested the submission of the terminal disclaimer. Therefore, the Office should have entered a 53-day reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(8) as a result of the submission of the January 14, 2011 terminal disclaimer.

The correct total period of Applicant Delay is 401 days, which is 278 days of delay increased by 70 days of delay based on the submission of the April 22, 2009 IDS and increased by 53 days of delay based on the submission of the January 14, 2011 terminal disclaimer.

<u>37 C.F.R. § 1.705(b)(2)(iii)</u>

Pursuant to 37 C.F.R. § 1.705(b)(2)(iii), an application for patent term adjustment under 37 C.F.R. § 1.705(b) must include a statement which indicates "[w]hether the patent is subject to a terminal disclaimer and any expiration date specified in the terminal disclaimer." The instant application for patent term adjustment does not include such a statement.

Applicant should ensure future applications for patent term adjustment under 37 C.F.R. § 1.705(b) include a statement which indicates whether the patent is subject to a terminal disclaimer and any expiration date specified in the terminal disclaimer.

Conclusion

The period of delay under 37 C.F.R. § 1.703(a) ("A Delay") is 331 days.

As previously discussed, the correct total period of Applicant Delay is 401 days.

Since the amount of Applicant delay is greater than the amount of A Delay, the Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) mailed with the Notice of Allowance should have set forth an initial patent term adjustment determination of 0 days.

Applicant is 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 Applicant will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

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

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PALM screen

Patent Term Adjustments

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

Application Number*: 11216858 Search Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application: 11216858

Application Filing Date	08/31/2005	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	331
A Delays	331	PTO Manual Adjustment	-81
B Delays	0	Applicant Delay (APPL)	320
C Delays	0	Total PTA (days)	0

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
110	06/02/2011		P028	Adjustment of PTA Calculation by PTO		81	0
98	01/20/2011		MN/=.	Mail Notice of Allowance			0
97	01/19/2011		IREV	Issue Revision Completed			0
96	01/19/2011		DVER	Document Verification			0
95	01/19/2011		N/=.	Notice of Allowance Data Verification Completed			0
94	01/19/2011		DOCK	Case Docketed to Examiner in GAU			0
93	01/18/2011		CNTA	Allowability Notice			0
92	01/14/2011		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
90	01/05/2011		P574	Paralegal TD Accepted			0
87	11/23/2010		ABN9	Disposal for a RCE / CPA / R129			0
91	11/22/2010		IDSC	Information Disclosure Statement considered			0
89	11/22/2010	11/22/2010	EIDS.	Electronic Information Disclosure Statement			88
88	11/22/2010	07/21/2010	RCEX	Request for Continued Examination (RCE)			77
86	11/22/2010		XT/G	Request for Extension of Time - Granted			0
85	11/22/2010		BRCE	Workflow - Request for RCE - Begin			0
84	11/22/2010		WIDS	Information Disclosure Statement (IDS) Filed			0
83	10/28/2010		P575	Paralegal TD Not accepted			0
81	10/08/2010		MCTAV	Mail Advisory Action (PTOL - 303)			0
80	10/06/2010		CTAV	Advisory Action (PTOL-303)			0
82	10/04/2010		DIST	Terminal Disclaimer Filed			0
79	08/04/2010		FWDX	Date Forwarded to Examiner			0
78	07/26/2010		AP/A	Amendment/Argument after Notice of Appeal			0
77	07/21/2010	04/21/2010	N/AP	Notice of Appeal Filed		91	68
76	07/21/2010		XT/G	Request for Extension of Time - Granted			0
74	04/30/2010		MCTAV	Mail Advisory Action (PTOL - 303)			0
73	04/28/2010		CTAV	Advisory Action (PTOL-303)			0
72	04/24/2010		P575	Paralegal TD Not accepted			0
70	04/02/2010		FWDX	Date Forwarded to Examiner			0
71	03/22/2010		DIST	Terminal Disclaimer Filed			0
69	03/22/2010		A.NE	Amendment after Final Rejection			0
68	01/21/2010		MCTFR	Mail Final Rejection (PTOL - 326)			0
67	01/19/2010		CTFR	Final Rejection			0
66	11/06/2009		FWDX	Date Forwarded to Examiner			0
65	11/05/2009	08/07/2009	A...	Response after Non-Final Action		90	62
64	11/05/2009		XT/G	Request for Extension of Time - Granted			0
62	05/07/2009		MCTNF	Mail Non-Final Rejection			0
61	05/06/2009		CTNF	Non-Final Rejection			0
63	04/22/2009		EIDS.	Electronic Information Disclosure Statement			0
59	04/22/2009		IDSC	Information Disclosure Statement considered			0
58	04/22/2009		IDSC	Information Disclosure Statement considered			0
57	04/22/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
56	04/22/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
60	03/05/2009		IDSC	Information Disclosure Statement considered			0
55	03/05/2009		EIDS.	Electronic Information Disclosure Statement			0
54	03/05/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
53	02/28/2009		P574	Paralegal TD Accepted			0
51	02/27/2009		FWDX	Date Forwarded to Examiner			0
49	02/27/2009		FWDX	Date Forwarded to Examiner			0
47	02/27/2009		ABN9	Disposal for a RCE / CPA / R129			0
52	02/11/2009		DIST	Terminal Disclaimer Filed			0
50	02/11/2009		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
48	02/11/2009		RCEX	Request for Continued Examination (RCE)			0
46	02/11/2009		BRCE	Workflow - Request for RCE - Begin			0
45	11/14/2008		MCTFR	Mail Final Rejection (PTOL - 326)			0
44	11/10/2008		CTFR	Final Rejection			0

39	09/02/2008		FWDX	Date Forwarded to Examiner			0
37	08/31/2008		XT/G	Request for Extension of Time - Granted			0
43	08/02/2008		IDSC	Information Disclosure Statement considered			0
42	08/02/2008		IDSC	Information Disclosure Statement considered			0
41	08/02/2008	08/01/2008	M844	Information Disclosure Statement (IDS) Filed		1	38
35	08/02/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
38	08/01/2008	07/02/2008	A...	Response after Non-Final Action		30	34
34	04/02/2008		MCTNF	Mail Non-Final Rejection			0
33	03/31/2008		CTNF	Non-Final Rejection			0
40	02/08/2008	12/28/2007	M844	Information Disclosure Statement (IDS) Filed		42	29
30	01/17/2008		FWDX	Date Forwarded to Examiner			0
29	12/28/2007	12/27/2007	ELC.	Response to Election / Restriction Filed		1	27
28	12/28/2007		XT/G	Request for Extension of Time - Granted			0
27	09/27/2007	10/31/2006	MCTRS	Mail Restriction Requirement	331		0.5
26	09/26/2007		CTRS	Restriction/Election Requirement			0
32	11/06/2006		IDSC	Information Disclosure Statement considered			0
25.7	11/06/2006		EIDS.	Electronic Information Disclosure Statement			0
25	11/06/2006		WIDS	Information Disclosure Statement (IDS) Filed			0
31	09/11/2006		IDSC	Information Disclosure Statement considered			0
24	09/11/2006		RCAP	Reference capture on IDS			0
23.7	09/11/2006		M844	Information Disclosure Statement (IDS) Filed			0
23	09/11/2006		WIDS	Information Disclosure Statement (IDS) Filed			0
22	05/31/2006		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
18	05/31/2006		DOCK	Case Docketed to Examiner in GAU			0
16	04/18/2006		COMP	Application Is Now Complete			0
17	04/17/2006		WROIPE	Application Return from OIPE			0
15	04/17/2006		ROIPE	Application Return TO OIPE			0
14	04/17/2006		OIPE	Application Dispatched from OIPE			0
13	04/17/2006		COMP	Application Is Now Complete			0
8	04/12/2006		CRFE	CRF Is Good Technically / Entered Into Database			0
21	03/20/2006		LET.	Miscellaneous Incoming Letter			0
20	03/20/2006		A.PE	Preliminary Amendment			0
12	03/20/2006	01/14/2006	FLFEE	Payment of additional filing fee/Preexam		65	7
10	03/20/2006		SEQLIST	A set of symbols and procedures, provided to the PTO on a set of computer listings, that describe in			0
9	03/20/2006		CORRSPEC	Applicant has submitted a new specification to correct Corrected Papers problems			0
7	10/14/2005		INCD	Notice Mailed--Application Incomplete--Filing Date Assigned			0
5	09/25/2005		L128	Cleared by L&R (LARS)			0
4	09/15/2005		L198	Referred to Level 2 (LARS) by OIPE CSR			0
3	09/15/2005		CLSS	CASE CLASSIFIED BY OIPE			0
2	09/10/2005		SCAN	IFW Scan & PACR Auto Security Review			0
19	08/31/2005		A.PE	Preliminary Amendment			0
11	08/31/2005		CLAIM	Claim Preliminary Amendment			0
1	08/31/2005		IEXX	Initial Exam Team nn			0
0.5	08/31/2005		EFILE	Filing date			0

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QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO, CA 92121

MAILED
AUG 29 2011
OFFICE OF PETITIONS

In re Application of
Frank A. Lane, et al.
Application No. 11/216,973
Filed: August 31, 2005
Attorney Docket No. 060629U1

DECISION ON PETITION

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

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, December 27, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on March 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 an amendment, (2) the petition fee of $1620, and (3) a proper statement of unintentional delay.

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

This application is being referred to Technology Center AU 2617 for appropriate action by the Examiner in the normal course of business on the reply received August 15, 2011.

April M. Wise
Petitions Examiner
Office of Petitions

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MADISON, WI 53701-1497

MAILED
MAR 31 2011
OFFICE OF PETITIONS

In re Application of Roenneburg et al.	:	
Application No. 11/217,084	:	On Application For
Filing Date: August 31, 2005	:	Patent Term Adjustment
Attorney Docket No. 052546-0468	:	

This is in response to the application for patent term adjustment filed under 37 CFR 1.705(b) on January 26, 2011. Applicants submit the correct patent term adjustment to be indicated on the patent is one thousand three hundred ninety-one (1391) days, not four hundred nine (409) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

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

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See 37 CFR 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

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

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, an applicant

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

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

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

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

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/217,111	08/31/2005	Bran Ferren	0504-004-002L-CIP001	5152

71484 7590 08/13/2010
IV - SUITER SWANTZ PC LLO
14301 FNB PARKWAY , SUITE 220
OMAHA, NE 68154

EXAMINER
LIPITZ, JEFFREY BRIAN

ART UNIT	PAPER NUMBER
3769	

MAIL DATE	DELIVERY MODE
08/13/2010	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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IV - SUITER SWANTZ PC LLO
14301 FNB PARKWAY , SUITE 220
OMAHA NE 68154

In re Application of:
FERREN, BRAN et al
Serial No.: 11/217,111
Filed: August 31, 2005
Docket: 0504-004-002L-CIP001
Title: MULTI STEP PATTERNING OF A SKIN SURFACE

DECISION ON PETITION

This is a decision on the petition filed on April 29, 2010 in which the petitioner requests reconsideration and withdrawal of the election of species requirement mailed on September 8, 2009. This petition is considered as pursuant to 37 CFR 1.144 and 37 CFR 1.181, and no fee is required.

The petition is **dismissed**.

The relevant part of the record shows that:

1. In the September 8, 2009 Office Action, an election of species requirement was promulgated. The examiner held there were five patentably distinct species, namely, Species 1 directed to Fig. 37; Species 2 directed to Fig. 38; Species 3 directed to Fig. 39; Species 4 directed to Fig. 40; and Species 5 directed to Fig. 41. The applicant was required to elect one Species and indicate all claims readable on the elected species.
2. In response on November 9, 2009, an election was made with traverse and arguments by the applicant were submitted. The applicant elected Species 4, Fig. 40 with claims 38-43, 55, 56, 58, 65, 69-72, 89-90, 93, and 96-109 readable on the elected Species 4, Fig. 40. The applicant traversed the election of species requirement based on lack of search burden and examiner's failure to comply with applicable rules, statutes, and guidelines.
3. On December 17, 2009, a Non-final Office action was issued and the restriction requirement was repeated and made final. Claims 38-43 and 97-99 were examined on the merits. The Examiner held claims 55, 56, 58, 65, 69-72, 89, 90, 93, 96, 100-109 as drawn to non-elected species and subspecies and withdrew them from consideration.

4. On April 29, 2010, the applicant filed the current petition requesting review of the election of species requirement mailed on September 8, 2009.

Discussion and Analysis

In the April 29, 2010 petition, petitioner requests withdrawal of the election of species requirement imposed in the September 8, 2009 Office Action. Petitioner also asserts that the election of species requirement was improper because Examiner has not complied with MPEP § 809.02, 806.04 and/or 814, and Examiner has not identified/grouped claims to be restricted.

Pursuant to MPEP 803, there are two criteria for a proper restriction requirement: (1) the inventions must be independent or distinct as claimed and (2) there would be a serious burden on the examiner if restriction is not required.

In the September 8, 2009 Office Action, the examiner restricted the disclosed and claimed species on the basis of being patentably distinct. The examiner listed five species, namely, Species 1 directed to figure 37; Species 2 directed to figure 38; Species 3 directed to figure 39; Species 4 directed to figure 40; and Species 5 directed to figure 41. A careful review of the record shows the examiner was correct in dividing up the five species as followed. Species 1 describes the light delivered to "a first depth within the skin region" to cause a first transformation of the photoresponsive material. Species 2 describes the light delivered "to the skin region" to produce a "response in the skin region". The target of the light is the skin region. Species 3 describes the light delivered "at a first level *above* the skin region to produce a transformation to photoresponsive material". The target of the light is not the skin region. Species 4 describes the light delivered "to the skin surface" to produce "a response in the photoresponsive material". Species 5 describes the light delivered to a level above the skin surface within the photoresponsive material. In the election of species requirement, the examiner has held that there are patentable differences between species as claimed as required by MPEP 806.04(h)[1]. The claims directed to the elected species are patentable over each other, then the election of species requirement of September 8, 2009 is proper. In addition, the applicant has not admitted on the record that the disclosed and claimed species are not patentably distinct or identify any evidence showing the species to be obvious variants (see page 7, first paragraph of the Office action mailed September 8, 2009). Since the examiner has held the various disclosed and claimed species are patentably distinct in accordance with MPEP 806.04[2], this election of species restriction is also proper in absence any other evidence showing the species to be obvious variants. Most importantly, it should be noted that upon the allowance of generic claim(s), the applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

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[1] MPEP 806.04(h)Species Must Be Patentably Distinct From Each Other[R-3]
**In making a requirement for restriction in an application claiming plural species, the examiner should group together species considered clearly unpatentable over each other **. Where generic claims are

[2] MPEP 806.04**>Genus and/or Species< Inventions [R-3]
**>Where an application includes claims directed to different embodiments or species that could fall within the scope of a generic claim, restriction between the species may be proper if the species are independent or distinct.

In response to the September 8, 2009 Office Action, applicant elected Species 4 and specified claims 38-43, 55, 56, 58, 65, 69-72, 89-90, 93, and 96-109 as being directed to Species 4. In the December 17, 2009 Office action, the examiner objected to claims 55 and 70 and their dependent claims 56, 58, 65, 69, 71, 72, 89, 90, 93, 96, 100-109 as *not* belonging to Species 4. Claims 38-43 and 97-99 were examined on the merits. In the petition, petitioner argues claims 55 and 70 contain limitations not mutually exclusive from the elected Species 4 of Fig. 40. This line of arguments is not persuasive. Petitioner fails to point out any limitations from the non-elected claims 55 and 70 which are not mutually exclusive from the elected claim 38 in view of the supporting specification as originally filed. Based on the supporting specification, claims 55 and 70 appear to be directed to non-elected species, such as those described in the flowchart of Fig. 39 and further illustrated in Figs. 45-50. In particular, claims 55 and 70 call for the light delivered at a first level above the skin region to produce a transformation to phtoresponsive material. The target of the light is *not* the skin region. Whereas based on the supporting specification the elected claim 38 appears to be directed to Figure 40, which calls for delivery of light to a skin surface region. The language of claim 38 is further illustrated in Figures 36A-G, which supports the limitations that the photoresponsive material and the light are delivered, and thus directed, to the skin region. Based on the originally filed supporting specifications, nowhere in the original specifications mentions or suggests the limitation of independent claims 38, 55 and 70 can be used together. The limitations of elected claim 38 do contain mutually exclusive characteristics with respect to the non-elected species as claimed in claims 55 and 70. In fact the disclosed and claimed species do contain different and mutually exclusive steps and functions as supported by the original filed specification and drawings. MPEP 806.04(f)[3] states that a restriction requirement for mutually exclusive species may be issued. The election of species requirement of September 8, 2009 does comply with MPEP § 806.04(f). Therefore examiner was correct in withdrawing claims 55, 56, 58, 65, 69-72, 89-90, 93, 96 and 100-109 as being drawn to non-elected species.

Furthermore, the examiner must establish there is a serious burden on the examiner if restriction is not required, pursuant to MPEP 808.02. In particular, MPEP 808.02(C)[4] states that a serious burden exists where it is necessary for the examiner to search different fields for the restricted species. In the present case, Species 1, 2 and 4 are required search class/subclasses: 359/3 (holograms), 424/1.11 (radionucleotides/drug activation in the body), 424/401 (cosmetic), 424/449 (transdermal), 428/403 (microcapsules/liposomes), and 433/215 (changing or removing teeth). Species 3 and 5 are required to search classes/subclasses: 219/121.68 (for laser etching), 424/401 (cosmetic), 424/59 (topical creams/lotions), 248/409 (surface layer properties), 604/289

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[3] MPEP 806.04(f)**>Restriction Between< Mutually Exclusive *>Species< [R-3] >Where two or more species are claimed, a requirement for restriction to a single species may be proper if the species are mutually exclusive.

[4] MPEP 808.02 Establishing Burden [R-5] (C)A different field of search: Where it is necessary to search for one of the inventions in a manner that is not likely to result in finding art pertinent to the other invention(s) (e.g., searching different classes/subclasses or electronic resources, or employing different search queries, a different field of search is shown, even though the two are classified together. The indicated different field of search must in fact be pertinent to the type of subject matter covered by the claims. Patents need not be cited to show different fields of search.

(treating skin), and 424/315.9 (layered compositions). All disclosed and claimed species are required to search class 606/2-12, 607/88-94 and 128/897-899. Each species does require a different field of search in different classes/subclasses or electronic resources and/or using different search queries. It should be noted that the application of prior art references to one species would not be applicable to another species. In order to perform a quality search and claim examination, the election of species requirement is justified and proper in accordance with MPEP § 806.02.

Conclusion

For the reasons outlined above, the election of species requirement imposed in the September 8, 2009 Office Action and made final in the December 17, 2009 Office action is in accordance with proper Office procedure. Accordingly, the election of species requirement of September 8, 2009 is proper. The requested relief to withdraw the election of species requirement will not be granted.

The application is being forwarded to the examiner via the SPE of Art Unit 3769 awaiting the applicant's response to the outstanding Office action mailed on July 16, 2010. Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision, 37 CFR 1.181(f). No extension of time under 37 CFR 1.136(a) is permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181". Any inquiry regarding this decision should be directed to Henry Yuen, Special Programs Examiner, at (571) 272-4856.

The petition is DISMISSED.

Angela D. Sykes, Director
Technology Center 3700

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.
11/217,111	08/31/2005	Bran Ferren	0504-004-002L-CIP001	5152

71484 7590 11/19/2010
IV - SUITER SWANTZ PC LLO
14301 FNB PARKWAY , SUITE 220
OMAHA, NE 68154

EXAMINER
LIPITZ, JEFFREY BRIAN

ART UNIT	PAPER NUMBER
3769	

MAIL DATE	DELIVERY MODE
11/19/2010	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.

UNITED STATES PATENT AND TRADEMARK OFFICE

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IV - SUITER SWANTZ PC LLO
14301 FNB PARKWAY , SUITE 220
OMAHA NE 68154

In re Application of:
Adams, Paul et al
Serial No.: 11/217,111
Filed: August 31, 2006

Docket: 0504-004-002L-CIP001
Title: MULTI STEP PATTERNING OF A SKIN SURFACE

DECISION ON PETITION

This is a decision on the renewed petition filed on October 13, 2010 to request reconsideration of the petition decision mailed on August 13, 2010 that denied withdrawal of the restriction requirement mailed on Sep. 8, 2009 in connection with the above-referenced application. This petition is being considered pursuant to 37 CFR § 1.144 and 37 CFR § 1.181, and no fee is required.

The petition is denied.

Background

The previous petition was dismissed. The requested withdrawal of restriction requirement of Sep. 8, 2009 was not granted. A standing restriction requirement under 35 USC § 121 based on the claims directed to various distinct and independent species remains unchanged. The examiner had held there was an examination and serious search burden for these patentably distinct species due to their mutually exclusive characteristics (MPEP 803 and 808.02). The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph. On review, the technology center Director concurred with the examiner's restriction requirement. The restriction requirement of September 8, 2009 does comply with applicable rules and MPEP § 803.

Discussion and Analysis

On pages 2-3 of the renewed petition, petitioner argues that the restriction requirement of September 8, 2009 was not supported by any patent statutes or the Code of Federal Regulations. The restriction requirement was solely based on MPEP. Petitioner emphasized that MPEP has no force of law. This line of arguments is not persuasive because the restriction requirement of September 8, 2009 clearly was based on 35 USC § 121 (see Paragraph C at bottom of page 2 of the Office action of September 8, 2009). 35 U.S.C. 121 is the statutory provision that gives the USPTO the authority to require restriction. 37 CFR 1.146 is directed to election of species. The specific details are neither in the statute nor in the rule. The specific details regarding practice and procedures on restriction practice are set forth in the MPEP which the examiners followed.

On pages 3-4 of the renewed petition, petitioner argues that MPEP § 806.04(f) is inconsistent with the law or rules. In particular, petitioner argues the examiner did not demonstrate that the present election of species requirement is proper simply because the applicant used separate flow charts or separate descriptions in the specification, or that the law requires restriction when species are unique. This line of arguments is not persuasive. It should be noted that the election of species requirement was based on five patentably distinct species, namely, Species 1 directed to Fig. 37; Species 2 directed to Fig. 38; Species 3 directed to Fig. 39; Species 4 directed to Fig. 40; and Species 5 directed to Fig. 41. The examiner has indicated that claims directed to the elected species are patentably distinct from the other species. The applicant has not admitted on the record that the disclosed and claimed species are not patentably distinct or identify any evidence showing the species to be obvious variants (see page 7, first paragraph of the Office action mailed September 8, 2009). Therefore, the election of species restriction is proper in absence any other evidence showing the species to be obvious variants. Each of the species does contain its mutually exclusive characteristics as set forth in the examiner's election of species requirement of September 8, 2009 and explained in the earlier petition decision of August 13, 2010. It is noted that petitioner did not explain why claims 38, 55 and 70 directed to non-elected species do not contain any mutually exclusive limitations in accordance with the supporting specification.

Petitioner also argues that under the Patent Office's interpretation of the law, no one would ever obtain a patent on an invention that covered more than a single species. This is not true. It should be noted that upon the allowance of generic claim(s), the applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR §1.141[1].

Paragraph C of page 4 of the renewed petition, petitioner argues that the term "mutually exclusivity" defined in MPEP § 806.04(f) is inconsistent with the patent statute of 35 USC 121. Petitioner disagrees with the MPEP. In particular, petitioner alleges that the USPTO has not demonstrated that Congress intended "independent and distinct" to simply mean no "overlap in

[1] § 1.141 Different inventions in one national application. (a) Two or more independent and distinct inventions may not be claimed in one national application, ex-cept that more than one species of an invention, not to exceed a reasonable number, may be specifically claimed in different claims in one national application, provided the application also includes an allowable claim gen-eric to all the claimed species and all the claims to species in excess of one are written in dependent form (§ 1.75) or otherwise include all the limitations of the generic claim.

claim scope." This line of arguments is not persuasive because the examiner merely followed the rule as set forth in 37 CFR §1.146[2] in promulgating the election of species requirement of September 8, 2009.

Paragraph D of page 5 of the renewed petition, petitioner argued that the Office has the burden of proof to show the claims directed to non-elected species contain mutually exclusive characteristics or limitations. This is not true because whether the claims contain mutually exclusive characteristics or limitations can be found in the supporting specification as filed on August 31, 2005. This was clearly explained in the election of species requirement of September 8, 2009. Petitioner must point to the supporting specification to dispute the examiner's findings. There is no burden of proof involved here at all.

On pages 5-6 of the renewed petition, petitioner argues that USPTO does not have the freedom to restrict the claims based on allegedly "patentably distinct" disclosed species because 37 CFR § 1.141 states "more than one species of an invention, not to exceed a reasonable number, may be specifically claimed in different claims" in one national application. Petitioner has correctly pointed out where the authority is when the examiner promulgated the election of species requirement. In this case, the examiner believes the election of species requirement was proper and prudent in order to conduct a more efficient and quality examination of the elected species. Petitioner correctly points out that the examiner must consider the claimed subject matter when issuing an election of species requirement in accordance with MPEP § 806.01 because claims define inventions. It is part of the examiner's consideration when issuing an election of species requirement. Since the examiner has clearly determined the claims directed to various species are patentably distinct and issued an election of species requirement, therefore, no double patenting rejection will be permitted when a divisional application is filed in accordance with MPEP § 804.01 and § 806.04(h).

On pages 6-8 of the renewed petition, petitioner points out there are many areas of search include overlapping or identical searches. On page 8 of the renewed petition, petitioner argues that species 1, 2 and 4 should not be restricted. Species of 3 and 5 also should not be restricted due to the overlapping search areas. Petitioner opines that the examiner did not establish a serious search burden. This line of arguments is too speculative. As pointed out in the earlier decision, an analysis of the search areas involved reveals there were many technology fields must be searched in order to perform a quality examination of claims. There may be some overlapping search areas. However, petitioner overly simplifies the searches in his arguments. It must be noted that the search for various distinct species are not completely the same. The species do require a different field of search, electronic resources and employing different search queries; and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph. It is additionally pointed out that, contrary to what petitioner argues,

[2] § 1.146 Election of species. In the first action on an application containing a generic claim to a generic invention (genus) and claims to more than one patentably distinct species embraced thereby, the examiner may require the applicant in the reply to that action to elect a species of his or her invention to which his or her claim will be restricted if no claim to the genus is found to be allowable. However, if such application contains claims directed to more than a reasonable number of species, the examiner may require restriction of the claims to not more than a reasonable number of species before taking further action in the application.

the examination burden is not limited exclusively to a prior art search but also includes that effort required to apply the art by making and discussing all appropriate grounds of rejection. Multiple inventions or species, such as those in the present application, normally require additional reference material and further discussion for each additional species examined. Concurrent examination of multiple species would thus typically involve a significant burden even if all searches were coextensive. In view of the various disclosed distinct species presented, it is determined that there is an examination and search burden for these non-elected patentably distinct species. Lastly, on page 9 of the renewed petition, petitioner correctly points out that Class 248 is not an analogous search area. This was a typographical error.

Under the circumstances, the examiner's restriction requirement mailed on September 8, 2009 is proper. The request to have the restriction requirement withdrawn will not be granted.

Conclusion

For the reasons outlined above and the earlier decision of August 13, 2010, the election of species requirement dated September 8, 2009 is in accordance with proper Office procedure. Accordingly, the requirement stands. Petitioner's request to withdraw the election of species restriction is denied.

The application is being forwarded to the examiner via the Supervisory Patent Examiner of Art Unit 3769 awaiting a response to the outstanding Office action mailed on September 29, 2010. The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings (37 CFR § 1.181(f)).

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision, 37 CFR 1.181(f). No extension of time under 37 CFR 1.136(a) is permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181" and directed to the Office of the Deputy Commissioner for Patent Examination Policy at Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450. See MPEP 1002.02(b).

Any inquiry regarding this decision should be directed to Henry Yuen, Special Programs Examiner, at (571) 272-4856.

Accordingly, the petition is denied.

Angela D. Sykes

Angela D. Sykes, Director
Technology Center 3700

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

IV - SUITER SWANTZ PC LLO
14301 FNB PARKWAY , SUITE 220
OMAHA NE 68154

MAILED
DEC 20 2011
OFFICE OF PETITIONS

In re Application of
Bran Ferren et al.
Application No. 11/217,111
Filed: August 31, 2005
Attorney Docket No. 0504-004-002L-CIP001

ON PETITION

This is a decision on the PETITION PURSUANT TO 37 CFR 1.182 REQUESTING REVIEW OF TC 3700 DIRECTOR'S DECISION ON PETITION UNDER 37 CFR 1.181, filed January 19, 2011, requesting that the Director exercise his supervisory authority to review and overturn the decision of the Director, Technology Center 3700 (Technology Center Director), dated November 19, 2010, which denied the petition filed October 13, 2010.

The petition under 37 CFR 1.181, to overturn the decision of the Technology Center Director dated November 19, 2010 is **DENIED**[1] .

BACKGROUND

A first requirement for restriction was mailed April 3, 2009.

A response to the restriction requirement was filed on May 8, 2009.

A second, revised requirement for restriction was mailed September 8, 2009.

A response to the revised restriction requirement was filed November 9, 2009.

A petition from the restriction requirement to the Technology Center Director was filed April 29, 2010.

A petition decision by the Technology Center Director, dismissing the April 29, 2010 petition was mailed August 13, 2010.

[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.

A renewed petition was filed October 13, 2010.

A petition decision by the Technology Center Director, denial of the renewed petition was mailed November 19, 2010.

The instant petition to the Director was filed January 19, 2011.

STATUTE, REGULATION, AND EXAMINING PROCEDURE

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;
(2) In cases in which a statute or the rules specify that the matter is to be determined directly by or reviewed by the Director; and
(3) To invoke the supervisory authority of the Director in appropriate circumstances. For petitions involving action of the Board of Patent Appeals and Interferences, see § 41.3 of this title.

35 USC 121 states:

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. A patent issuing on an application with respect to which a requirement for restriction under this section has been made, or on an application filed as a result of such a requirement, shall not be used as a reference either in the Patent and Trademark Office or in the courts against a divisional application or against the original application or any patent issued on either of them, if the divisional application is filed before the issuance of the patent on the other application. If a divisional application is directed solely to subject matter described and claimed in the original application as filed, the Director may dispense with signing and execution by the inventor. The validity of a patent shall not be questioned for failure of the Director to require the application to be restricted to one invention.

OPINION

Petitioner's request for review of the Technology Center Director's decision of November 19, 2010 has been considered. It is emphasized that this is a review of the Technology Center Director's petition decision, as petitioned, not a review of the examiner's restriction requirement.

Petitioners raise two questions with respect to the Technology Center Director's decision on page 2 of the petition and espoused upon those questions for the remainder of the petition. The questions are (1) Does the PTO have legal authority to restrict an applicant's claims based solely on disclosed figures, without providing any reference to it's claims and (2) when the PTO fails to identify claims that are to be restricted, does the PTO have legal authority to force an applicant to state what specific embodiments it's claims cover and do not cover. In this regard, the Technology Center Director's decision has been reviewed and no error is found in the decision.

To clarify the record, petitioner's questions are addressed below. In answer to both questions, the USPTO has the legal authority to require applicants elect an invention without resort to applicants' claims. 35 USC § 121 gives the USPTO the authority to "require" the application to be restricted to one of the inventions. (underlining added) Hence an applicant will be required to elect an invention for prosecution in accordance with 35 USC § 121. The examiner may refer to the portions of the written specification or the drawings or both, as being indicative of the species but not to the claims. As provided for in 35 USC 112, 2nd paragraph, it is the province of the applicant to set forth what the claimed invention is, and in particular,

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention. (underlining added)

Thus, it is not the examiner that gets to choose the claims that are directed to the applicants' invention but, as required by the statute, it is applicant that must choose. See In re Weber, 198 USPQ 328, 331 (CCPA 1978)

> [2] An applicant is given, by the statute, the right to claim his invention with the limitations he regards as necessary to circumscribe that invention, with the proviso that the application comply with the requirements of §112. We have decided in the past that §112, second paragraph, which says in part "[t]he specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention," allows the inventor to claim the invention as he contemplates it. In re Wolfrum, 486 F.2d 588, 179 USPQ 620 (CCPA 1973).
>
> [3] As a general proposition, an applicant has a right to have each claim examined on the merits. If an applicant submits a number of claims, it may well be that pursuant to a proper restriction requirement, those claims will be dispersed to a number of applications.

> Such action would not affect the right of the applicant eventually to have each of the claims examined in the form he considers to best define his invention.

If the examiner were to specify the claims as suggested by petitioner, it would not be in conformance with the statute.

Petitioners' complaints with regard to USPTO procedure set forth in the Manual of Patent Examining Procedure are noted. No change in procedure is warranted at this time.

DECISION

The petition is granted to the extent that the decision of the Technology Center Director of November 19, 2010 has been reviewed; however, the petition is **denied** with respect to making any change or otherwise disturbing the Technology Center Director's decision of November 19, 2010.

The application is being returned to Technology Center Art Unit 3769 for consideration by the examiner in due course.

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

Andrew Hirshfeld
Associate Commissioner for
Patent Examination Policy

ak/cf

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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Christopher M. Goff (27839)
ARMSTRONG TEASDALE LLP
7700 Forsyth Boulevard
Suite 1800
St. Louis MO 63105

MAILED
MAY 03 2011
OFFICE OF PETITIONS

In re Application of :
Long et al. :
Application No. 11/217,131 :
Filed: August 31, 2005 :
For: ABSORBENT ARTICLE :
FEATURING A TEMPERATURE CHANGE :
MEMBER :

ON APPLICATION FOR
PATENT TERM ADJUSTMENT

This is in response to the "PETITION FOR PATENT TERM ADJUSTMENT PURSUANT TO 37 CFR §1.705(b)", filed March 9, 2011. Applicants request that the determination of patent term adjustment be corrected from three hundred forty-eight (348) days to three hundred nineteen (319) 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 **Dismissed**.

Applicants dispute the 56 day reduction for the submission of the information disclosure (IDS) on November 8, 2010. Applicants contend an additional 29 days is required based upon the submission of the IDS submitted on December 7. 2010. Thus applicants contend a reduction of 85 days, not 56 days is required.

A review shows that the 29 day reduction for the submission of the IDS on December 7, 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 December 7, 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, an additional 29 day reduction is not warranted. The reduction of 56 days for the submission of the November 8, 2010 will remain.

Applicants' delay prior to the mailing of the Notice of Allowance is 165 days. Office delay prior to the mailing of the Notice of Allowance is 513 days.

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance is three hundred forty-eight (348) days.

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

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

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

Charlema Grant

Charlema Grant
Petition Attorney
Office of Petitions

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7307510	2007-12-11	11/217,393	2005-09-02	CRNT-0264-US

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

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

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

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

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

MAINTENANCE FEE (37 CFR 1.20(e)-(g))
The appropriate maintenance fee must be submitted with this petition.

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

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

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

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

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

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

○ A sole patentee

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

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

● The assignee of record of the entire interest

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

The Assignee of record of the entire interest			
Under 37 CFR 3.71 an assignee becomes of record by filing a statement in compliance with 37 CFR 3.73(b). Signature requirements are set forth in 37 CFR 1.4(d), and the undersigned certifies that he / she is empowered to act on behalf of the assignee of the entire interest			
Signature	/Andrew Rosenstein/	Date (YYYY-MM-DD)	2012-02-06
Name	Andrew Rosenstein		
Enter Reel and Frame Number		Remove	
Reel Number	017863	Frame Number	0721
Enter Reel and Frame Number		Remove	
Reel Number	020518	Frame Number	0001
Enter Reel and Frame Number		Remove	
Reel Number	021096	Frame Number	0131
Click ADD for additional Reel Number and Frame Number		Add	

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

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In re Patent No. 7307510
Issue Date: December 11,2007
Application No. 11217393
Filed: September 2,2005
Attorney Docket No. CRNT-0264-US

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

This is a decision on the electronic petition, filed February 6,2012 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of February 6,2012 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/217,517	08/31/2005	Robert P. Morris	1343/US	7149

49278 7590 11/21/2011
SCENERA RESEARCH, LLC
5400 Trinity Road
Suite 303
Raleigh, NC 27607

EXAMINER
PHAM, LINH K

ART UNIT	PAPER NUMBER
2174	

MAIL DATE	DELIVERY MODE
11/21/2011	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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Theodosios Thomas
SCENERA RESEARCH, LLC
5400 Trinity Road
Suite 303
Raleigh, North Carolina 27607

In re Application of: Robert P. MORRIS Appl. No.: 11/217,517 Filed: August 31, 2005 For: METHOD AND SYSTEM PROVIDING FOR NAVIGATION OF A MULTI-RESOURCE USER INTERFACT	DECISION ON PETITION UNDER 37 CFR § 1.103(a)

This is a decision on the petition for suspension of prosecutions under 37 CFR § 1.103(a) filed on 14 November 2011.

The petition is **GRANTED**.

Pursuant to applicant's requests filed on 14 November 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 the undersigned whose telephone number is (571) 272-3613.

/Vincent N. Trans/
Vincent N. Trans, QAS
Technology Center 2100
Computer Architecture and Software

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.
11/217,517	08/31/2005	Robert P. Morris	1343/US	7149

49278 7590 02/23/2012
SCENERA RESEARCH, LLC
5400 Trinity Road
Suite 303
Raleigh, NC 27607

EXAMINER
PHAM, LINH K

ART UNIT	PAPER NUMBER
2174	

MAIL DATE	DELIVERY MODE
02/23/2012	PAPER

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

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

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Theodosios Thomas
SCENERA RESEARCH, LLC
5400 Trinity Road
Suite 303
Raleigh, North Carolina 27607

In re Application of: Robert P. MORRIS Appl. No.: 11/217,517 Filed: August 31, 2005 For: METHOD AND SYSTEM PROVIDING FOR NAVIGATION OF A MULTI-RESOURCE USER INTERFACE	DECISION ON PETITION UNDER 37 CFR § 1.103(a)

This is a decision on the petition for suspension of prosecutions under 37 CFR § 1.103(a) filed on 22 February 2012.

The petition is **GRANTED**.

Pursuant to applicant's requests filed on 22 February 2012, 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 the undersigned whose telephone number is (571) 272-3613.

/Vincent N. Trans/
Vincent N. Trans, QAS
Technology Center 2100
Computer Architecture and Software

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500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

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DEC 14 2010

OFFICE OF PETITIONS

In re Application of :
Karaoguz et al. :
Application No. 11/217,645 : ON APPLICATION FOR
Filed: September 1, 2005 : PATENT TERM ADJUSTMENT
Atty Docket No. 16673US01 :

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 October 8, 2010. Applicants submit that the correct patent term adjustment to be indicated on the patent is one thousand three hundred eighty-four (1384) days[1], not seven hundred eighty-two (782) 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). 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

[1] This calculation is based on a projected issuance date of January 25, 2011.

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, applicants must timely file an application for patent term adjustment prior to the payment of the issue fee[2].

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

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 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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[2] For example, if an applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

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

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

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

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MILLEN, WHITE, ZELANO & BRANIGAN, P.C.
2200 CLARENDON BLVD.
SUITE 1400
ARLINGTON VA 22201

MAILED
MAR 23 2011
OFFICE OF PETITIONS

In re Patent No. 7,888,364	:
Gunzner et al.	: DECISION ON REQUEST FOR
Issue Date: February 15, 2011	: RECONSIDERATION OF
Application No. 11/217,663	: PATENT TERM ADJUSTMENT
Filed: September 2, 2005	:
Attorney Docket No. GENENTECH-0001	:
Title: PYRIDYL INHIBITORS OF HEDGEHOG SIGNALLING	:

This is a decision on the petition filed on February 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 one thousand one hundred seventy-seven (1,177) days.

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

The period of adjustment to which the patent is entitled under 37 CFR 1.702(a) is 536 days.

The period of adjustment to which the patent is entitled under 37 CFR 1.702(b) is 896 days.

The time taken up by the notice of appeal is excluded from the period of B-delay pursuant to 37 CFR 1.703(b)(4) in connection with the Notice of Appeal filed September 20, 2010. The reduction of 11 days commenced September 20, 2010; the date that the Notice of Appeal was filed, and ended September 30, 2010, the day the Notice of Allowance was mailed. See, 37 CFR 1.703(b)(4).

Patentee's delay totals 255 days.

In view thereof, the patent is entitled to an overall adjustment of 1166 days.

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

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

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

Charlema Grant

Charlema Grant
Attorney
Office of Petitions

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JUL 12 2011
OFFICE OF PETITIONS

In re Patent No. 7,888,364	:	
Issue Date: 15 February, 2011	:	
Application No. 11/217,663	:	ON PETITION
Filed: 2 September, 2005	:	
Attorney Docket No. **GENENTECH-0001**	:	

This is a decision on the petition filed on 12 April, 2011, pursuant to 37 C.F.R. §1.183 and §3.81(b) to correct, *inter alia*, the name of the assignee on the front page of the above-identified patent by way of a certificate of correction under 37 C.F.R. §1.323.

NOTE:

Petitioners always are reminded to set forth recordation data, including therein date and Reel/Frame.

While Petitioner failed to submit that information, Office records indicate it as set forth below.

The request is **GRANTED**— upon the instant showing of the recordation of the assignment on 30 December, 2009, and the location of recordation as Reel/Frame 023719/0887.

Petitioner requests issuance of a certificate of correction the identification of the Assignee to "**GENENTECH INC. (South San Francisco, California, USA)**" of the substance/form of that submitted therewith.

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

Patent No. 7,888,364
Application No. 11/217,663

Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[1]) regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

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

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

§1.2 Business to be transacted in writing.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Thomas E. Schatzel
Law Offices of Thomas E. Schatzel, P.C.
200 Altura Vista
Los Gatos CA 95032

MAILED

OCT 25 2010

OFFICE OF PETITIONS

In re Application of	:	
Martin Junkar	:	
Application No. 11/217,693	:	NOTICE
Patent No. 7,253,767	:	
Filed: September 01, 2005	:	
Attorney Docket No. **SS-746-03**		

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

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-2783.

/Tredelle D. Jackson/
Paralegal Specialist
Office of Petitions

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John C. Peck
1548 Ft. Hill Drive
Seneca, SC 29678

MAILED

AUG 18 2011

OFFICE OF PETITIONS

In re Application of	:	
John C. Peck	:	
Application No. 11/217,806	:	DECISION ON PETITION
Filed: September 1, 2005	:	TO WITHDRAW FROM
Attorney Docket No. FOX-2	:	RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 CFR §§ 1.36(b) or 10.40 filed August 5, 2011.

The request is **NOT APPROVED**.

The Office strongly encourages practitioner(s) requesting withdrawal from representation as practitioner of record in an application to review the record to determine whether he or she is, in fact, of record and how he or she was made of record. 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) were 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. Similarly, if practitioner(s) was appointed by a Customer Number, the practitioner(s) should ensure that the correct number is provided in the Request[1]. Additionally, as set forth in MPEP 403(I), the addition or deletion of a practitioner from the list of persons associated with a Customer Number should be done by way of a *Request for Customer umber Data Change* (PTO/SB/124) and not a *Request for Withdrawal As Attorney or Agent and Change of Correspondence Address* (PTO/SB/83).

Further, the request cannot be approved because the requested change in the correspondence address is improper.

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 (*See* USPTO Form PTO/SB/82). However, the Office will only accept correspondence address changes to the most current address Information provided for the assignee of the entire

[1]Leigh Gregory was appointed by Customer Number 29698 in the Power of Attorney filed on October 7, 2005.

interest *that properly became of record under 37 CFR 3.71*[2], 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[3]. Therefore, the Office cannot change the correspondence address to the address on the Request to Withdraw at this present time.

On the other hand, since a change of correspondence address was filed on August 5, 2011, all future communications from the Office will be directed to the new address of record[4].

It should be noted that Leigh P. Gregory will remain as attorney of record unless a renewed request under 37 CFR 1.36 is filed prior to issuance. After issuance, no consideration on a request under 37 CFR 1.36 will be given.

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

Andrea Smith
Petitions Examiner
Office of Petitions

cc: Leigh P. Gregory
P.O. Box 168
Clemson, SC 29633-0168

[2] 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.

[3] The change of correspondence address is improper, in that it addresses future correspondence to Jack Peck, who is not the first named inventor in the above application.

[4] Leigh Gregory will remain of record unless a renewed request under 37 CFR 1.36 is filed prior to issuance.

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Leigh P. Gregory
P.O. Box 168
Clemson, SC 29633-0168

MAILED

SEP 21 2011

OFFICE OF PETITIONS

In re Patent No. 8,019,463	:	
Issue Date: September 13, 2011	:	
Application No. 11/217,806	:	DECISION ON PETITION
Filed: September 1, 2005	:	TO WITHDRAW FROM
Attorney Docket No. FOX-2	:	RECORD

This is a decision on the renewed Request to Withdraw as attorney or agent of record under 37 CFR §§ 1.36(b) or 10.40 filed September 12, 2011[1].

The request is **APPROVED**.

The request was signed by Leigh P. Gregory on behalf of himself and all the attorneys/agents associated with Customer Number 29698. Therefore, Leigh P. Gregory and all the attorneys/agents associated with Customer Number 29698 have been withdrawn.

Applicant is reminded that there are no attorneys/agents of record at this time.

Since this application issued into a patent on September 13, 2011, this application file is being referred to the Files Repository.

All future communications, which may be mailed, regarding maintenance fees for the above-identified patent will be mailed to the fee address of record.

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

Andrea Smith
Petitions Examiner
Office of Petitions

cc: John C. Peck
1548 Ft. Hill Drive
Seneca, SC 29678

[1] The petition was filed prior to issuance.

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LEXMARK INTERNATIONAL, INC.
INTELLECTUAL PROPERTY LAW DEPARTMENT
740 WEST NEW CIRCLE ROAD
BLDG. 082-1
LEXINGTON KY 40550-0999

MAILED

FEB 11 2011

OFFICE OF PETITIONS

In re Application of	:	
Chengwu Cui et al.	:	
Application No. 11/217,815	:	DECISION ON PETITION
Filed: September 1, 2005	:	
Attorney Docket No. 2005-0536.02	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 2, 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 May 17, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed February 17, 2010. Accordingly, the date of abandonment of this application is May 18, 2010. A Notice of Abandonment was mailed on June 4, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of 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. Accordingly, the issue and publication fees 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 A. Inabinet/

Kimberly A. Inabinet
Petitions Examiner
Office of Petitions

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500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED

SEP 30 2010

OFFICE OF PETITIONS

In re Patent No.7,751,850 :
Karaoguz. :
Issue Date : July 6, 2010 :
Application No. 11/217,834 :
Filed: September 1, 2005 :
Attorney Docket No. 16675US01 :

DECISION FOR REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

This is a decision on the petition under 37 CFR 1.705(d), filed September 2, 2010, requesting that the patent term adjustment for the subject patent be reflected as one thousand, one hundred and ninety-nine (1,199) days.

The request for reconsideration of the patent term adjustment under 37 CFR 1.705(d) is **DISMISSED**.

Patentee's are given TWO (2) MONTHS from the mail date of this decision to respond. No extension of time will be granted under 37 CFR 1.136.

Applicants assert the 2 day reduction to the patent term adjustment for the payment of the issue fee on May 24, 2010, three months and two days after the Notice of Allowance and Issue Fee Due was mailed on February 22, 2010, was improper. In summary, patentee states that the date that was three months after the mailing of the Notice of Allowance was Saturday, May 22, 2010, therefore, the filing of the response on Monday, May 24, 2010, was timely.

Applicants' argument is not persuasive. Pursuant to 37 CFR 1.704(b), the period of adjustment of the term of the patent should be reduced by 2 days, the number of says in the period beginning on the day after the date that is three months after the date of mailing of the Notice of Allowance on, May 23, 2010, and ending on the date the reply was filed May 24, 2010. The calculation of 2 days of application delay is based on the date of receipt of the response in the Office. The Office notes that 35 U.S.C. 154(b)(2)(C)(ii) does not require that a reply be filed in the Office within its three month grace period, but simply specifies that there is this three month period. Therefore, the "carry-over" provisions of 35 U.S.C. 21(b) does not apply to the three month periods in 35 U.S.C. 154(b)(2)(C)(ii). Accordingly, the reduction to the patent term adjustment of 2 days was warranted and will not be removed.

In view thereof, the patent term adjustment of 1,197 days indicated in the patent is correct.

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

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

By Mail: Mail Stop Petition
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

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

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

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov
DIW Jan-11

NAVAL RESEARCH LABORATORY
ASSOCIATE COUNSEL (PATENTS)
CODE 1008.2
4555 OVERLOOK AVENUE, S.W.
WASHINGTON DC 20375-5320

MAILED

FEB 01 2011

OFFICE OF PETITIONS

In re Application of	:	
Thomas et al.	:	
Application Number: 11/217851	:	ON PETITION
Filing Date: 09/01/2005	:	
Attorney Docket Number: 96653-US2	:	

This is a decision in response to the petition under 37 CFR 1.137(b) filed on November 30, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on November 27, 2005, for failure to timely respond to the Notice to File Missing Parts of Nonprovisional Application mailed on September 26, 2005, which set a two (2) month shortened period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on June 6, 2006.

Receipt of the drawings filed on January 11, 2011 is acknowledged.

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

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

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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NAVAL RESEARCH LABORATORY
ASSOCIATE COUNSEL (PATENTS)
CODE 1008.2
4555 OVERLOOK AVENUE, S.W.
WASHINGTON DC 20375-5320

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OFFICE OF PETITIONS

In re Application of
James P. Thomas, et al.
Application No. 11/217,851
Filed: September 1, 2005
Attorney Docket No. 96653-US2

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.182, filed, September 30, 2011, to change the name of inventor "Muhammad A. Qidwai" to – Siddiq M. Qidwai --.

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 Technology Center AU 3644 to await a reply to the outstanding Office action mailed July 6, 2011.

/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
www.uspto.gov

APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/217,851	09/01/2005	3644	1130	96653-US2	20	2

CONFIRMATION NO. 7419

CORRECTED FILING RECEIPT

OC000000050728294

26384
NAVAL RESEARCH LABORATORY
ASSOCIATE COUNSEL (PATENTS)
CODE 1008.2
4555 OVERLOOK AVENUE, S.W.
WASHINGTON, DC 20375-5320

Date Mailed: 11/01/2011

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)

James P. Thomas, Alexandria, VA;
Jared N. Baucom, Alexandria, VA;
William R. Pogue III, Easton, MD;
Siddiq M. Qidwai, Annandale, VA;

Power of Attorney: The patent practitioners associated with Customer Number 26384

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/610,865 09/01/2004

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: 09/26/2005

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/217,851**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Autophagous multifunction structure-power system

Preliminary Class

244

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

Law offices of James R. Cypher
409 13th Street, 11th Floor
OAKLAND CA 94612

MAILED
SEP 20 2010
OFFICE OF PETITIONS

In re Application of
Hien Nguyen
Application No. 11/217,957
Filed: August 31, 2005
Attorney Docket No. **614-4401**

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 6, 2010, to revive the above-identified application.

The petition is **DISMISSED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before May 19, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed February 19, 2010. Accordingly, the date of abandonment of this application is May 20, 2010.

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

As to item 1

While the revival of applications abandoned for failure to timely prosecute and for failure to timely pay the issue fee are incorporated together in 37 CFR 1.137, the statutory provisions for the revival of an application abandoned for failure to timely prosecute and for failure to timely submit the issue fee are mutually exclusive. *See Brenner v. Ebbert*, 398 F.2d 762, 157 USPQ 609 (D.C. Cir. 1968). 35 U.S.C. 151 authorizes the acceptance of a delayed payment of the issue fee, if the issue fee "is submitted ... and the delay in payment is shown to have been unavoidable." 35 USC 41(a)(7) likewise authorizes the acceptance of an "unintentionally delayed payment of the fee for issuing each patent." Thus, 35 U.S.C. 41(a)(7) and 151 each require payment of the issue fee as a condition of reviving an application abandoned or patent lapsed for failure to pay the issue fee. Therefore, the filing of a Request for Continued Examination (RCE) without payment of the issue fee or any outstanding balance thereof is not an acceptable reply in an application abandoned or patent lapsed for failure to pay the issue fee or any portion thereof. The Notice of Allowance requires the timely payment of the issue fee in effect on the date of its mailing to avoid abandonment of the application. In instances in which there is an increase in the issue fee by the time of payment of the issue fee required in the Notice of Allowance, the Office will mail a notice requiring payment of the balance of the issue fee then in effect. *See In re Mills*, 12 USPQ2d 1847, 1848 (Comm'r Pat. 1989). The phrase "for failure to pay the issue fee or any portion thereof" applies to those instances in which the applicant fails to pay either the issue fee required in the Notice of Allowance or the balance of the issue fee required in a subsequent notice. In such instances, the reply must be the issue fee then in effect, if no portion of the issue fee was previously submitted, or any outstanding balance of the issue fee then in effect, if a portion of the issue fee was previously submitted. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee. Even if an application abandoned for failure to pay the publication fee is being revived solely for purposes of continuity with a continuing application, the petition to revive under 37 CFR 1.137 must include payment of the publication fee.

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

By internet: EFS-Web[1]

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

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

JoAnne Burke
Petitions Examiner
Office of Petitions

[1] www.uspto.gov/ebc/efs help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197).

UNITED STATES PATENT AND TRADEMARK OFFICE

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Law offices of James R. Cypher
409 13th Street, 11th Floor
OAKLAND CA 94612

MAILED
OCT 2 0 2010
OFFICE OF PETITIONS

In re Application of	:	
Hien Nguyen	:	
Application No. 11/217,957	:	DECISION GRANTING PETITIONS
Filed: August 31, 2005	:	UNDER 37 CFR 1.137(b) AND
Attorney Docket No. SST-1468	:	37 CFR 1.313(c)(2)

This is a decision on the petitions, filed October 11, 2010, under 37 CFR 1.137(b) (renewed), to revive the above-identified unintentionally abandoned application and on the petition under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue.

The petitions are **GRANTED**.

As to the petition under 37 CFR 1.137(b):

This application became abandoned for failure to timely pay the issue and publication fees on or before May 19, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed February 19, 2010.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that petitioner has submitted (1) payment of the $1,510 issue fee and the $300 publication fee, (2) the petition fee of $1,620 (previously paid), and (3) an adequate statement of unintentional delay. 37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional."

As to the petition under 37 CFR 1.313(c)(2):

Petitioner requests withdrawal of this application from issue for consideration of a submission under 37 CFR 1.114.

The petition satisfies the requirements of 37 CFR 1.313(c)(2). Accordingly, this application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (RCE).

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

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

This matter is being referred to Technology Center AU 3635 for processing the RCE and for consideration of the amendment submitted on August 6, 2010.

/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.*

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)
7,228,250	2007-06-05	11/218,078	2005-08-31	A-17732

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

SMALL ENTITY
☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

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

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

MAINTENANCE FEE (37 CFR 1.20(e)-(g))
The appropriate maintenance fee must be submitted with this petition.

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

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

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

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

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

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

○ A sole patentee

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

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

○ The assignee of record of the entire interest

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/James F. Porcello/	Date (YYYY-MM-DD)	2012-04-10
Name	James F. Porcello	Registration Number	29425

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
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www.uspto.gov

In re Patent No. 7228250
Issue Date: June 5,2007
Application No. 11218078
Filed: August 31,2005
Attorney Docket No. 05090/6695

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

This is a decision on the electronic petition, filed April 10,2012 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of April 10,2012 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JUL 15 2011
OFFICE OF PETITIONS

BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO IL 60610

In re Application of :
Nishikiori, et al. :
Application No. 11/218,202 : DECISION ON APPLICATION
Filed: August 31, 2005 : FOR PATENT TERM ADJUSTMENT
Attorney Docket No. 11333/86 :

This is in response to the "Request for Reconsideration of Patent Term Adjustment Pursuant to 37 CFR 1.705(b)" filed March 25, 2011. Applicants requests that the initial Determination of Patent Term Adjustment under 35 U.S.C. 154(b) be corrected from five hundred and thirty-nine (1,132) days to five hundred and ninety-seven (597) days.

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

The Office has updated the PALM and PAIR screens to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is five hundred and ninety-seven (597) days. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On December 28, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment is 539 days. On March 25, 2011, applicant submitted the instant petition. Applicant maintains that the patent term adjustment indicated on the Determination of Patent Term Adjustment is incorrect and that the patent term adjustment at the time of the mailing of the Notice of Allowance should be 597 days.

Applicants' argument has been considered and is well taken. On December 11, 2009, applicants submitted a supplemental reply or paper in the form of an Information Disclosure Statement (IDS)

after filing a reply to a restriction/election requirement on October 14, 2009. 37 CFR 1.704(c)(8) provides that:

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

The record does not support a conclusion that the Examiner expressly requested the filing of the IDS. However, further review of the Information Disclosure Statement filed December 11, 2009, revealed a proper statement under 37 CFR 1.704(d).[1] **Accordingly, pursuant to 37 CFR 1.704(c)(8), the period of reduction of 58 days will be removed.**

In view thereof, the determination of the patent term adjustment at the time of the mailing of the notice of allowance is 597 days.

---

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

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

The $200.00 fee set forth under 37 CFR 1.18(e) will be charged to deposit account 23-1925.

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

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

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PALM screen

Patent Term Adjustments

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

Application Number*: 11218202 Search | Explanation of PTA Calculation | Explanation of PTE Calculation

PTA Calculations for Application: 11218202

Application Filing Date	08/31/2005	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	750
A Delays	750	PTO Manual Adjustment	58
B Delays	0	Applicant Delay (APPL)	211
C Delays	0	Total PTA (days)	597

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
69	07/13/2011		P028	Adjustment of PTA Calculation by PTO	58	0	
61	12/28/2010	08/09/2010	MN/=.	Mail Notice of Allowance		47	
60	12/20/2010		ACRE	Allowed Case Returned to the Examiner for Clerical Processing		0	
59	12/20/2010		DVER	Document Verification		0	
58	12/20/2010		N/=.	Notice of Allowance Data Verification Completed		0	
57	12/20/2010		CNTA	Allowability Notice		0	
54	11/17/2010		IDSC	Information Disclosure Statement considered		0	
53	11/17/2010		WIDS	Information Disclosure Statement (IDS) Filed		0	
52	11/17/2010	10/07/2010	M844	Information Disclosure Statement (IDS) Filed	41	50	
51	10/16/2010		FWDX	Date Forwarded to Examiner		0	
49	10/15/2010		APBR	Appeal Brief Review Complete		0	
50	10/07/2010		AP.B	Appeal Brief Filed		0	
48	10/06/2010		DOCK	Case Docketed to Examiner in GAU		0	
47	08/09/2010		N/AP	Notice of Appeal Filed		0	
46	06/07/2010		MCTFR	Mail Final Rejection (PTOL - 326)		0	
45	06/04/2010		CTFR	Final Rejection		0	
44	04/29/2010		FWDX	Date Forwarded to Examiner		0	
41	04/29/2010		ABN9	Disposal for a RCE / CPA / R129		0	
43	04/28/2010		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE		0	
42	04/28/2010	04/05/2010	RCEX	Request for Continued Examination (RCE)	23	38	
40	04/28/2010		BRCE	Workflow - Request for RCE - Begin		0	
38	01/05/2010		MCTFR	Mail Final Rejection (PTOL - 326)		0	
37	01/04/2010		CTFR	Final Rejection		0	
39	12/11/2009	10/14/2009	M844	Information Disclosure Statement (IDS) Filed	58	33	
36	12/11/2009		IDSC	Information Disclosure Statement considered		0	
35	12/11/2009		WIDS	Information Disclosure Statement (IDS) Filed		0	
34	10/23/2009		FWDX	Date Forwarded to Examiner		0	
33	10/14/2009		ELC.	Response to Election / Restriction Filed		0	
32	10/14/2009		XT/G	Request for Extension of Time - Granted		0	
31	08/14/2009		MCTRS	Mail Restriction Requirement		0	
30	08/14/2009		CTRS	Restriction/Election Requirement		0	
29	06/12/2009		DOCK	Case Docketed to Examiner in GAU		0	
28	06/08/2009		FWDX	Date Forwarded to Examiner		0	
27	05/19/2009	02/19/2009	A...	Response after Non-Final Action	89	24	
26	05/19/2009		XT/G	Request for Extension of Time - Granted		0	
25	02/13/2009		DOCK	Case Docketed to Examiner in GAU		0	
24	11/19/2008	10/31/2006	MCTNF	Mail Non-Final Rejection	750	0.5	
23	11/19/2008		CTNF	Non-Final Rejection		0	
18	09/09/2008		DOCK	Case Docketed to Examiner in GAU		0	
17	10/05/2007		DOCK	Case Docketed to Examiner in GAU		0	
22	12/28/2006		IDSC	Information Disclosure Statement considered		0	
16	12/28/2006		RCAP	Reference capture on IDS		0	
15.7	12/28/2006		M844	Information Disclosure Statement (IDS) Filed		0	
15	12/28/2006		WIDS	Information Disclosure Statement (IDS) Filed		0	
14	09/15/2006		DOCK	Case Docketed to Examiner in GAU		0	
10	01/04/2006		TSSCOMP	IFW TSS Processing by Tech Center Complete		0	
9	01/04/2006		DOCK	Case Docketed to Examiner in GAU		0	
7	09/21/2005		COMP	Application Is Now Complete		0	
4	09/21/2005		COMP	Application Is Now Complete		0	
8	09/20/2005		WROIPE	Application Return from OIPE		0	
6	09/20/2005		ROIPE	Application Return TO OIPE		0	
5	09/20/2005		OIPE	Application Dispatched from OIPE		0	
3	09/19/2005		L194	Cleared by OIPE CSR		0	
2	09/11/2005		SCAN	IFW Scan & PACR Auto Security Review		0	
21	08/31/2005		IDSC	Information Disclosure Statement considered		0	

13	08/31/2005	RQPR	Request for Foreign Priority (Priority Papers May Be Included)	0
12	08/31/2005	RCAP	Reference capture on IDS	0
11.7	08/31/2005	M844	Information Disclosure Statement (IDS) Filed	0
11	08/31/2005	WIDS	Information Disclosure Statement (IDS) Filed	0
1	08/31/2005	IEXX	Initial Exam Team nn	0
0.5	08/31/2005	EFILE	Filing date	0

Export to: Excel

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Date : 5/31/2011
Patent No. : 7,539,364 B2
Serial No. : 11/218,270
Inventor(s) : Cole et al.
Issued : May 26, 2009
Title : **METHOD AND APPARATUS FACILITATING MECHANICAL BEAM STEERING FOR OPTICAL INTEGRATED CIRCUITS**
Docket No. : **A289**

Re: Request for Reconsideration

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of 37 CFR 1.322 and/or 1.323.

Assignees' names and addresses (assignment data) printed in a patent are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Fee(s) Transmittal Form PTOL-85B. After payment of the issue fee, correction of assignment data submitted on the PTOL-85B can only be done by Certificate of Correction under 37 CFR 1.323, with a request under 37 CFR 3.81(b).

A petition is required to correct the Assignee, under 37 CFR 1.183, and should include: (1) the petition fee set forth in 37 CFR 1.117(h) (currently $130); (2) the correct name and address of the assignee; (3) the reel and frame number where the assignment is recorded or proof of the date the assignment was submitted for recordation.

A 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 the patent;
B. include a request for a certificate of correction under 37 CFR 1.323 along with the fee set forth in 37 CFR 1.20(a); and
C. include the processing fee set forth in 37 CFR 1.17(i).

If the request is granted, Certificates of Correction Branch will be notified that a Certificate of Correction may be issued.
See Manual of Patent Examining Procedure, Section 1481.01 (Rev. 3) (Oct. 2005).

Applicant has not included items A and or C above, accordingly, the request for Certificate of Correction to add or change the assignee data is dismissed.
Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

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

Ernest C. White, *LIE*
ernest.white@uspto.gov
(571) 272-3385
For Mary F. Diggs (703) 756-1580
Decisions & Certificates
of Correction Branch

TUROCY & WATSON, LLP
127 Public Square
57th Floor, Key Tower
CLEVELAND OH 44114

ecw

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: 50001/126:2	
Application Number: 11/218,283	Filing Date (or 371(b) or (f) Date): August 31,2005
Patent Number: 7,667,159	Issue Date: February 23, 2010
First Named Inventor: Robert M. Pailthorp	
Title: Resolving Thermoelectric Potentials During Laser Trimming of Resistors	

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

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

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

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

Signature Michael L. Levine	Date August 17, 2010
Name (Print/Typed) Michael L. Levine	Registration Number 33,947

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

☑ *Total of 1 forms are submitted.

The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 10 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**
If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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ELECTRO SCIENTIFIC INDUSTRIES/STOEL RIVES, LLP
900 SW FIFTH AVE.
SUITE 2600
PORTLAND, OR 97204-1268

Mail Date: 08/26/2010

Applicant	: Robert M. Pailthorp	: DECISION ON REQUEST FOR
Patent Number	: 7667159	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/218,283	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 08/31/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1211** 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 : 04/11/11

TO SPE OF : ART UNIT 2873

SUBJECT : Request for Certificate of Correction for Appl. No.: 11218325 Patent No.: 7542209

CofC mailroom date: 02/08/10

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (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: _____

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

/Ricky Mack/ | AU 2873

SPE | **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/218,345	09/01/2005	Mickey R. Brigance	032010.024	7040

25461 7590 03/11/2011
SMITH, GAMBRELL & RUSSELL
SUITE 3100, PROMENADE II
1230 PEACHTREE STREET, N.E.
ATLANTA, GA 30309-3592

EXAMINER
HOLT, ANDRIAE M

ART UNIT	PAPER NUMBER
1616	

MAIL DATE	DELIVERY MODE
03/11/2011	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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MAR 0 9 2011

SMITH, GAMBRELL & RUSSELL
SUITE 3100, PROMENADE II
1230 PEACHTREE STREET, N.E.
ATLANTA GA 30309-3592

In re Application of
Brigance et al.
Serial No.: 11/218,345
Filed: September 1, 2005
Attorney Docket No.: **032010.024**

SUSPENSION OF ACTION

This is in reply to the petition under 37 CFR 1.103(a) to suspend action in this application at applicants' request for a six month period of time, filed February 3, 2011.

BACKGROUND

Applicants request suspension of action so that Applicants can complete field experiments which results are intended to be submitted to evidence the unexpected and superior results of the claimed invention and overcome the rejections of record.

DISCUSSION

§ 1.103 Suspension of action by the Office.

(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.

DECISION

In view of the above, the petition for suspension of action is **GRANTED** for a period of six months from the date of mailing of this decision.

Should there be any questions with respect to this action, please contact the examiner or Marianne Seidel, by mail addressed to: Director, Technology Center 1600, P. O. BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at 571-272-0519 or by facsimile transmission at Office general facsimile number, 571-273-8300.

/MC Seidel/
Marianne C. Seidel, Quality Assurance Specialist
Technology Center 1600

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AUG 10 2010

OFFICE OF PETITIONS

INTEGRAL INTELLECTUAL
PROPERTY INC.
1370 DON MILLS ROAD,
SUITE 300
TORONTO ON M3B 3N7 CA CANADA

In re Application of	:	
Adams, et al.	:	
Application No. 11/218,608	:	ON APPLICATION FOR
Filed: September 6, 2005	:	PATENT TERM ADJUSTMENT
Atty Docket No. **RIM040-01US**	:	

This is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(b)" filed July 23, 2010. Applicants submits that the patent term adjustment to be indicated on the patent is eight hundred and one (801) days, not five hundred and forty-one (541) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

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

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

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

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

It is noted that any period of adjustment will be entered in light of 35 U.S.C. 154(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

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

---

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

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

It is further noted that a Request for Continued Examination (RCE) was filed in this application on June 2, 2009.

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

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

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

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Senior Petitions Attorney
Office of Petitions

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Infineum USA L.P.
1900 E. Linden Ave.
P.O. Box 710
Linden, NJ 07036

MAILED

DEC 29 2010

OFFICE OF PETITIONS

In re Application of :
Robert W. SHAW, et *al.* :
Application No. 11/218,647 :
Filed: September 2, 2005 :
Attorney Docket No. **2004M012** :

DECISION ON PETITION
UNDER 37 CFR 1.137(b)

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

The petition is **GRANTED**.

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

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of April 28, 2009. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is July 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 a Request for Continued Examination (RCE) and fee of $810, and a Notice of Appeal with fee of $540; (2) the petition fee of $1620; and (3) a proper statement of unintentional delay.

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

This application is being referred to Technology Center AU 1797 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the Notice of Appeal submitted in accordance with 37 CFR 1.114.

Thurman K. Page
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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INFINEUM USA LP
PO BOX 710
1900 E. LINDEN AVE
LINDEN, NJ 07036

MAILED

AUG 16 2010

OFFICE OF PETITIONS

In re Application of
Robert W. Shaw
Application No. 11/218,674
Filed: September 2, 2005
Attorney Docket No. 2004M011

ON PETITION

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 petition is **DISMISSED**.

This application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in 37 CFR 41.37(a)(1). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed October 22, 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 December 23, 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); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item(s) (1).

A petition to revive cannot be granted where there is an outstanding requirement. In the instant case, there was no response to the outstanding Office action mailed May 28, 2009. While it is noted that petitioner did file a Request for Continued Examination (RCE), the petitioner failed to file a submission as required under 37 CFR 1.114. A courtesy copy of this Office action is being

mailed along with this decision. Accordingly, the petition to revive cannot be granted until a proper response to the Office action is received.

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

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

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

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

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

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

April M. Wise
Petitions Examiner
Office of Petitions

Attachment: A copy of the final Office Action mailed May 28, 2009.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/218,674	09/02/2005	Robert W. Shaw	2004M011	1875

7590 05/28/2009

Infineum USA L.P.
P.O. Box 710
1900 E. Linden Ave.
Linden, NJ 07036

EXAMINER
VASISTH, VISHAL V

ART UNIT	PAPER NUMBER
1797	

MAIL DATE	DELIVERY MODE
05/28/2009	PAPER

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

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

Office Action Summary	Application No.	Applicant(s)	
	11/218,674	SHAW, ROBERT W.	
	Examiner	Art Unit	
	VISHAL VASISTH	1797	

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

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on 04 February 2009.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-9 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-9 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Applicant's response filed 2/4/2009 amended independent claim 1 which did not overcome the 35 USC 103 rejection set forth in office action mailed on 9/4/2008. Applicants also amended dependent claims 3 and 4, but these amendments were for form and not substance. The office action mailed on 9/4/2008 is maintained below.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicants in their response filed on 2/4/2009 amended independent claim 1 with the limitation, "achieving a piston cleanliness rating of greater than 50 in an XUD-IIBTE fired engine test." The applicant has one example of an oil that meets this standard. Oil A has a piston cleanliness rating of 50.6 according to the XUD-IIBTE fired engine test. Applicant does not appear to have support for the open-ended range of piston

cleanliness recited in the claim, including compositions with piston cleanliness ratings far greater than the exemplified composition.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claim 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morikuni et al., EP Patent No. 1167497 (hereinafter referred to as EP '497).

The rejection from Paragraph 4 of office action mailed on 9/4/2008 is maintained and incorporated herein by reference.

Response to Arguments

7. Applicant's arguments filed on 2/4/2009 with respect to claims 1-9 have been considered but are moot in view of the new ground(s) of rejection.

Applicants argue that EP '497 does not require a salicylate detergent. This is not persuasive. EP '497 teaches a salicylate detergent with a TBN within the claimed range as a preferred detergent as exemplified by the example 3, paragraph [0059].

Applicants also argue that EP '497 does not specify the soap content. This, however, is also not persuasive. EP '497 teaches an overbased salicylate with a specific soap content and which provides to the detergent a salicylate soap content within the claimed range. EP '497 teaches that a certain level of soap content needs to be maintained in order to enhance the high temperature detergency properties of the composition (Para. [0040]).

Applicants further argue that EP '497 does not suggest the amount of soap in the present composition. This, however, is also not persuasive. Although EP '497 doe snot explicitly disclose the mmol of detergent soap per kg of composition, a range of possibilities can be extrapolated based on the known range of soap content in the composition and the possible molecular weights of the detergent.

Applicants also argue that the present invention provides unexpected results and provide data that allegedly supports the applicant's position and amended their claims in order to further demonstrate unexpected results. Applicant has not shown unexpected results merely by placing the results of the XUD-IIBTE fired engine test into the claims as a limitation. Applicants state that some of the lubricants of EP '497 may "provide the claimed level of performance," and therefore it seems unlikely that applicants have compared their "inventive oil" against what is considered the closest prior art. In re Burckel, 592 F.2d 1175, 201 USPQ 67 (CCPA 1979). "A comparison of the claimed

invention with the disclosure of each cited reference to determine the number of claim limitations in common with each reference, bearing in mind the relative importance of particular limitations, will usually yield the closest single prior art reference." In re Merchant, 575 F.2d 865, 868, 197 USPQ 785, 787 (CCPA 1978) (emphasis in original). Where the comparison is not identical with the reference disclosure, deviations therefrom should be explained, In re Finley, 174 F.2d 130, 81 USPQ 383 (CCPA 1949), and if not explained should be noted and evaluated, and if significant, explanation should be required. In re Armstrong, 280 F.2d 132, 126 USPQ 281 (CCPA 1960) (deviations from example were inconsequential).

Conclusion

8. Applicants' amendment necessitated the new ground(s) of rejection presented in this office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicants are reminded of the extension of time policy as set forth in 37 CFR 1.136(a). 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. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VISHAL VASISTH whose telephone number is (571)270-3716. The examiner can normally be reached on M-R 8:30a-5:30p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on (571)272-1444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

VVV

/Glenn A Caldarola/
Acting SPE of Art Unit 1797

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PO BOX 710
1900 E. LINDEN AVE
LINDEN, NJ 07036

MAILED
NOV 04 2010
OFFICE OF PETITIONS

In re Application of :
Robert W. Shaw :
Application No. 11/218,674 :
Filed: September 2, 2005 :
Attorney Docket No. 2004M011 :

ON PETITION

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

The petition is **GRANTED**.

The application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in 37 CFR 41.37(a)(1). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed October 22, 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 1.17(b). As no claim was allowed, the application became abandoned on December 23, 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 Request for Continued Examination (RCE) and fee of $810 and the submission required by 37 CFR 1.114; (2) the petition fee of $1620; and (3) a proper statement of unintentional delay.

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

This application is being referred to Technology Center AU 1797 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

April M. Wise
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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MAILED

OCT 29 2010

OFFICE OF PETITIONS

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

In re Patent No. 7,089,590 :
Issue Date: August 8, 2006 :
Application No. 11/218,689 : NOTICE
Filed: September 2, 2005 :
Attorney Docket No. 20281-003002

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

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

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

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

Inquiries related to this communication should be directed to Irvin Dingle at (571) 272-3210.

Irvin Dingle
Petitions Examiner
Office of Petitions

cc: Fish & Richardson P.C.
1180 Peachtree Street, N.E.
21st Floor
Atlanta, GA 30309

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. BOX 2938
MINNEAPOLIS, MN 55402

Mail Date: 08/23/2010

Applicant	: George K. Korinsky	: DECISION ON REQUEST FOR
Patent Number	: 7652882	: RECALCULATION of PATENT
Issue Date	: 01/26/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/218,916	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/02/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **0** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Decision Date : May 10,2011

In re Application of :

Adrian Jones

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11219030

Filed : 02-Sep-2005

Attorney Docket No : 7267P001

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed May 10,2011 , to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

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

Petitioner is advised that the issue fee paid 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 2627 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	11219030
Filing Date	02-Sep-2005
First Named Inventor	Adrian Jones
Art Unit	2627
Examiner Name	HUY NGUYEN
Attorney Docket Number	7267P001
Title	METHOD AND SYSTEM FOR VERIFYING NETWORK RESOURCE USAGE RECORDS

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

- [x] 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 s hyman/
Name	Eric S. Hyman
Registration Number	30139

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE 5/4/09

Paper No.: _____

TO SPE OF : ART UNIT 3774

SUBJECT : Request for Certificate of Correction for Appl. No.: 11219098 Patent No.: 7462199

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

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

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

Valerie Jackson

Certificates of Correction Branch

703-308-9390 ext. _____

703756 1573

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: _____

David Isabella

SPE AU 3774

SPE

3774

Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110110

DATE : January 10, 2011

TO SPE OF : ART UNIT 3627

SUBJECT : Request for Certificate of Correction on Patent No.: 7,734,504 B2 (Application number 11/219,104

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 Changes are approved.

SPE: /F. Ryan Zeender/ **Art Unit** 3627

UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
www.uspto.gov

DEC 2 7 2010

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

In re application of	:	DECISION ON PETITION
(Kadaba, et al.)	:	TO CORRECT INVENTORSHIP
Serial Number: 11/219,131	:	UNDER 37 CFR. 1. 48 (a)
Filed: 09/01/2005	:	
For: METHOD AND SYSTEM FOR	:	
GATHERING DATA	:	

This is a decision on the petition filed on November 03, 2008 under 37 CFR 1.48(a) to correct the inventorship of the above identified application.

The petition is GRANTED.

The application was filed on September 1, 2005 listing Nagesh Kadaba as inventor. On November 03, 2008, applicants filed the present petition to add as inventor: Christopher T. Schenken. It has been found that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth inventorship.

Accordingly, this application has been corrected in compliance with 37 CFR 1.48(a). The inventorship of this application has been changed to Nagesh Kadaba and Christopher T. Schenken.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of Office records to reflect the inventorship as corrected.

/Matthew S. Gart/
Supervisory Patent Examiner Art Unit 3687
Technology Center 3600
(571) 272-3955
Facsimile No.: (571) 273-3955

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No.

PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK NJ 08933-7003

MAILED

OCT 01 2010

OFFICE OF PETITIONS

In re Patent No. 7,638,522	:	DECISION ON REQUEST
Guillemont et al.	:	FOR RECONSIDERATION OF
Issue Date: December 29, 2009	:	PATENT TERM ADJUSTMENT
Application No. 11/219,163	:	and
Filed: September 2, 2005	:	NOTICE OF INTENT TO ISSUE
Atty Docket No.JAB-1713-USCIP1	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on March 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 by five hundred five (505) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.** The patent term adjustment is corrected to indicate that the term of the above-identified patent is extended or adjusted by **two hundred eighty-seven (287)** days.

Patentee is correct that the B delay is 483 days. However, patentee's calculation fails to take into account that a period of adjustment of 245 days was entered for B delay at issuance. Thus, patentee's calculation of a revised patent term adjustment is to high as it adds 483 days, but does not remove the 245 days already accorded. The 245 days is being removed and corrected to 483 days.

Further, two periods of reduction pursuant to 37 CFR 1.704(c)(10) are being corrected. A notice of allowance was mailed in this application on June 12, 2009. After that date on August 19, 2009, and on November 23, 2009, patentee filed papers related to the priority papers in the application. All papers

were responded to as of the mailing of the priority acknowledgment on November 30, 2009. With respect to the filing of these papers, the Office entered periods of reduction of 94 days and 37 days for the period beginning on August 21, 2009 and ending on November 22, 2009; and for the period beginning on November 23, 2009 and ending on December 29, 2009, the date of the issuance of the patent. The periods should have been calculated based on a filing date of the first paper of August 19, 2009, not August 21, 2009. Further, the periods should have been calculated based on the mailing date of the response on November 30, 2009, not the date of issuance of the patent. Accordingly, the periods are corrected to 96 days and 8 days for the period beginning on August 19, 2009 and ending on November 22, 2009; and for the period beginning on November 23, 2009 and ending on November 30, 2009, the date of mailing of the response.

In view thereof, the revised patent term adjustment is 287 days (721 (238 + 483) days of Office delay - (31 + 153 + 146 + 96 + 8) days of applicant delay).

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

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

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

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **two hundred eighty-seven (287)** days.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,638,522 B2

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

INVENTOR(S) : Guillemont 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 22 days

Delete the phrase "by 22 days" and insert – by 287 days--

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OFFICE OF PETITIONS

FISH & RICHARDSON PC
PO BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 7,734,914	: DECISION ON
Ethan Malasky	: REQUEST FOR RECONSIDERATION
Application No. 11/219,235	: of PATENT TERM ADJUSTMENT
Issue Date: June 8, 2010	: and
Filed: September 2, 2005	: NOTICE OF INTENT TO ISSUE
Attorney Docket No. 07844-0757001	: CERTIFICATE OF CORRECTION

This is a decision on the petition under 37 CFR 1.705(d), filed August 6, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the patent is extended or adjusted by one thousand three hundred thirteen (1313) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand three hundred thirteen (1313) days is **GRANTED to the extent indicated herein**.

On June 8, 2010, the above application issued into US Patent No. 7,734,914 with a patent term adjustment of one thousand two hundred sixty-seven (1267) days. The Office calculated a patent term adjustment of 1267 days based upon 798 days of "A"' delay plus 470 days of "B" delay (645 days from the over 3 year date to the issue date, reduced by 175 days for when the application was under appeal), minus 1 day of Applicant delay.

Patentee argues that the 645 days of Office delay due to the Office's failure to issue the patent within three years should not have been reduced by 175 days. Patentee asserts that although he filed a Notice of Appeal, 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. 37 CFR 1.703(b)(4) states that the three year delay should be reduced by:

> 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.

Here, applicant filed the Notice of Appeal on August 4, 2009. While no decision by the Board was rendered, the Office mailed a Notice of Allowance on January 25, 2010. Accordingly, pursuant to 37 CFR 1.704(b)(4), the over 3 year Office delay should be reduced by 175 days.

Furthermore, a review of the application reveals that the 645 days of Office delay for failure to issue the patent within three years is incorrect. The application was filed on September 2, 2005, and issued on June 8, 2010. Accordingly, the over 3 year period began on September 3, 2008 (not September 2, 2008), and ended on June 8, 2010, a period of 644 days. As such, the "B" delay is 469 days (644 days minus 175 days).

Lastly, a review of the application reveals that the Office did not subtract the overlapping period between "A" and "B" delay. As pointed out by Patentee, this period was from September 3, 2008 to January 8, 2009, totaling 128 days. The Office thanks Patentee for bringing this to the Office's attention.

In view thereof, the correct number of days of patent term adjustment is one thousand, one hundred thirty-eight (1138) days,(1442 days of PTO delay (798 days of "A" delay and 469 days of "B" delay), reduced by 128 days of overlap and 1 day of Applicant delay).

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

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

The application is being forwarded to the Certificate of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand, one hundred thirty-eight (1138)** days.

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

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

DRAFT CERTIFICATE OF CORRECTION

PATENT : 7,734,914 B2

DATED : **June 8, 2010**

INVENTOR(S) : Malasky

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 1267 days.

Delete the phrase "by 1267 days" and insert – by 1138 days--

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FISH & RICHARDSON PC
PO BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 7,734,914	: DECISION ON
Ethan Malasky	: REQUEST FOR RECONSIDERATION
Application No. 11/219,235	: of PATENT TERM ADJUSTMENT
Issue Date: June 8, 2010	:
Filed: September 2, 2005	:
Attorney Docket No. 07844-0757001	:

This is a decision on the "RESPONSE TO DECISION ON APPLICATION FOR PATENT TERM ADJUSTMENT AND NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION", filed January 18, 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 one thousand one hundred thirty-eight (1138) days to one thousand three hundred thirteen (1313) days.

The petition to correct the patent term adjustment is **DISMISSED**.

On June 8, 2010, the above application issued into US Patent No. 7,734,914 with a patent term adjustment of one thousand two hundred sixty-seven (1267) days. The Office calculated a patent term adjustment of 1267 days based upon 798 days of "A"' delay plus 470 days of "B" delay (645 days from the over 3 year date to the issue date, reduced by 175 days for when the application was under appeal), minus 1 day of Applicant delay. On August 6, 2010, patentee filed an application for patent term adjustment under 37 CFR 1.705(d), asserting that the correct patent term adjustment was 1313 days. The Office mailed a decision on December 15, 2010, stating that the correct patent term adjustment at time of issuance was 1138 days.

Patentee argues that the 644 days of Office delay due to the Office's failure to issue the patent within three years should not have been reduced by 175 days. Patentee asserts that although he filed a Notice of Appeal, 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 is 175 days, beginning on August 4, 2009, the date of filing of the notice of appeal, and ending on January 25, 2010, the date the Office mailed a Notice of Allowance. Thus, "B" delay is 469 (644 - 175) days.

In view thereof, the correct number of days of patent term adjustment is one thousand, one hundred thirty-eight (1138) days (1442 days of PTO delay (798 days of "A" delay and 469 days of "B" delay), reduced by 128 days of overlap and 1 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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KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

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APR 27 2011
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In re Application of	:	
DRINAN, Darrel D. et al.	:	
Application No. 11/219,327	:	DECISION ON PETITION
Filed: September 02, 2005	:	TO WITHDRAW
Attorney Docket No. **PHILOMETRON 0036**	:	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 28, 2010.

The request is **NOT APPROVED** because it is moot.

A review of the file record indicates that the power of attorney to Knobbe Martens Olson & Bear LLP has been revoked by the assignee of the patent application on April 10, 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 Michelle R. Eason at 571-272-4231.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

cc: **JINN SU**
40087 MISSION BLVD #250
FREMONT CA 94539

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OFFICE OF PETITIONS

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

In re Patent No. 7, 477,400	:	
Issued: January 13, 2009	:	
Application No. 11/219,374	:	ON PETITION
Filed: September 2, 2005	:	
Attorney Docket No.: M-15948 US (70064.64)	:	

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

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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JOHN S. PRATT, ESQ
KILPATRICK STOCKTON, LLP
1100 PEACHTREE STREET
SUITE 2800
ATLANTA GA 30309

MAILED

AUG 26 2010

OFFICE OF PETITIONS

In re Application of	:	
Apple et al.	:	
Application No. 11/219,570	:	DECISION ON PETITION
Filed: 09/02/2005	:	
Attorney Docket No. 61901-588590	:	

This is a decision on the petition under 37 CFR.1.181 filed April 2, 2010, to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to respond in a timely manner to the non-final Office action, mailed June 25, 2009, which set a three-month shortened statutory period for reply. Extensions of this period were available under 37 CFR 1.136(a). On January 5, 2010, the Office mailed a Notice of Abandonment.

Petitioners stated that they filed a timely reply to the non-final Office action accompanied by a request for an extension of time for response within the third month (and fee). Petitioners submitted a copy of the reply including a certificate of mailing dated Monday, December 28, 2009. Furthermore, the reply and the request for an extension of time were located among the papers in the Image File Wrapper for the above-identified application.

In view of the above, the reply is considered timely filed on Monday, December 28, 2009, with the request for an extension of time for response within the third month (and fee). See 37 CFR 1.8 and 1.136(a).

Accordingly, the petition under 37 CFR 1.181 is granted. The holding of abandonment is hereby withdrawn. The application is restored to pending status in view of the fact that petitioners filed

a timely response to the non-final Office action with a certificate of mailing dated December 28, 2009.

This matter is being referred to Technology Center Art Unit 2614 for further action on the reply.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3211. All other questions regarding the status of the application or the examination procedures should be directed to the Technology Center.

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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BANNER & WITCOFF, LTD
ATTORNEYS FOR CLIENT NUMBER 007131
10 SOUTH WACKER DR.
SUITE 3000
CHICAGO IL 60606

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FEB 15 2012

OFFICE OF PETITIONS

In re Patent No. RE39875	:	
Issued: October 9, 2007	:	
Application No. 11/219,641	:	NOTICE
Filed: November 4, 2005	:	
Attorney Docket No. 007131.00368	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28, filed January 25, 2012.

Your fee deficiency submission under 37 CFR 1.28 is **NOT ACCEPTED**.

Any reconsideration petition should be filed within one (1) month of the mailing of this decision. Extensions of time are not available.

37 CFR 1.28(c)(2)(ii) states:

Itemization of the deficiency payment . An itemization of the total deficiency payment is required. The itemization must include the following information:

(A) Each particular type of fee that was erroneously paid as a small entity, (e.g., basic statutory filing fee, two-month extension of time fee) along with the current fee amount for a non- small entity;
(B) The small entity fee actually paid, and when. This will permit the Office to differentiate, for example, between two one-month extension of time fees erroneously paid as a small entity but on different dates;
(C) The deficiency owed amount (for each fee erroneously paid); and
(D) The total deficiency payment owed, which is the sum or total of the individual deficiency owed amounts set forth in paragraph (c)(2)(ii)(C) of this section.

37 CFR 1.28(c)(3) states:

Failure to comply with requirements. If the requirements of paragraphs (c)(1) and (c)(2) of

this section are not complied with, such failure will either: be treated as an authorization for the Office to process the deficiency payment and charge the processing fee set forth in § 1.17(i), or result in a requirement for compliance within a one-month non-extendable time period under § 1.136(a) to avoid the return of the fee deficiency paper, at the option of the Office.

The Office requires petitioner to comply with 37 CFR 1.28(c)(2) within one month of the mailing of this decision.

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

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)

Inquiries related to this communication should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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DICKSTEIN SHAPIRO LLP
1825 EYE STREET NW
Washington, DC 20006-5403

Mail Date: 08/04/2010

Applicant	: Gregory Guederian	: DECISION ON REQUEST FOR
Patent Number	: 7641695	: RECALCULATION of PATENT
Issue Date	: 01/05/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/219,744	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/07/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **238** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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BROOKS KUSHMAN P.C.
1000 TOWN CENTER
TWENTY-SECOND FLOOR
SOUTHFIELD, MI 48075

Mail Date: 08/06/2010

Applicant	: Stephan Kaiser	: DECISION ON REQUEST FOR
Patent Number	: 7655741	: RECALCULATION of PATENT
Issue Date	: 02/02/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/219,902	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/06/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **275** 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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LOREAL
Lerner, David, Littenberg, Krumholz & Mentlik, LLP
600 South Avenue West
Westfield NJ 07090

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JAN 03 2011

OFFICE OF PETITIONS

In re Application of	:	
Bui, et al.	:	
Application No. 11/219,946	:	DECISION ON PETITION
Filed: September 6, 2005	:	
Attorney Docket No. LOREAL 3.0-110	:	

This is a decision on the petition under 37 CFR 1.182, filed October 21, 2010, to change the order of the names of the inventors.

The petition is **GRANTED**.

Office records have been corrected to reflect the change in the order of the named inventors. A corrected Filing Receipt, which sets forth the desired order of the named inventors, accompanies this decision on petition.

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 to await receipt of the issue fee, the publication fee, and a completed PTOL-85B.

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

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/219,946	09/06/2005	1796	1650	LOREAL 3.0-110	26	2

CONFIRMATION NO. 3442

CORRECTED FILING RECEIPT

95112
LOREAL
Lerner, David, Littenberg, Krumholz & Mentlik, LLP
600 South Avenue West
Westfield, NJ 07090

OC000000044633542

Date Mailed: 11/23/2010

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

Applicant(s)

Hy Si Bui, Piscataway, NJ;
Shao Xiang Lu, Plainsboro, NJ;
Francois Pradier, New York, NY;
Ramon Mercado, Clifton, NJ;

Assignment For Published Patent Application

L'OREAL, Paris, FRANCE

Power of Attorney: The patent practitioners associated with Customer Number 000530

Domestic Priority data as claimed by applicant

Foreign Applications

If Required, Foreign Filing License Granted: 09/28/2005

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/219,946**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

COSMETIC COMPOSITIONS CONTAINING BLOCK COPOLYMERS, TACKIFIERS AND PHENYLATED SILICONES

Preliminary Class

525

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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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/220,018	09/06/2005	Warren S. Daansen	74052	3277

25702 7590 09/02/2011
SCOTT C. RAND, ESQ.
MCLANE, GRAF, RAULERSON & MIDDLETON, PA
900 ELM STREET, P.O. BOX 326
MANCHESTER, NH 03105-0326

EXAMINER
CARTAGENA, MELVIN A

ART UNIT	PAPER NUMBER
3754	

MAIL DATE	DELIVERY MODE
09/02/2011	PAPER

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

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

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SCOTT C. RAND, ESQ. ::
MCLANE, GRAF, RAULERSON & MIDDLETON, ::
PA :
900 ELM STREET, P.O. BOX 326 ::
MANCHESTER NH 03105-0326

DECISION ON PETITION

In re Application of:
DAANSEN, WARREN S.
Serial No.: 11/220,018
Filed: Sep. 6, 2005
Title: SLIT VALVES AND DISPENSING NOZZLES EMPLOYING SAME

This is a decision on the petition filed on July 28, 2011 seeking withdrawal of the finality of the Office action mailed April 7, 2011. This petition is being considered pursuant to 37 CFR §1.181. No fee is required.

The petition is dismissed as untimely.

In the May 25, 2011 petition, the petitioner requests the finality of the Office action of Aril7, 2011 be reconsidered and withdrawn because the applicant believes that the final rejection was premature in view of the examiner rebuttal arguments in the Advisory Action of July 25, 2011. In particular, petitioner argues that the examiner's new grounds of rejection were not necessitated by the applicant's arguments as stated in the Rule 116 amendment of July 7, 2011.

A further review of the file record shows that the instant petition was filed more than two months after the mailing date of the final Office action of April 7, 2011. Pursuant to 37 CFR 1.181(f)[1], the petition is not timely filed since the petition was not filed within two months of the action

[1] 37 CFR 1.181(f): The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.

complained of. As the petition was not timely filed, the requested withdrawal of finality of the Office action of April 7, 2011 will not be granted. Based on the reasons as stated above, petitioner's request to withdraw the finality of the Office action dated April 7, 2011 is hereby dismissed as untimely.

A review of the Advisory Action July 25, 2011 as conducted. The Advisory Action does not show any new grounds of rejection. The grounds of rejection remain the same as stated in the Final Rejection of April 7, 2011. Nowhere in the Advisory Action indicates that there was any new ground of rejection entered. The examiner merely answered the applicant's arguments as raised in the Rule 116 Amendment. Accordingly, the Rule 116 Amendment has been entered for appeal purpose.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision, 37 CFR 1.181(f). No extension of time under 37 CFR 1.136(a) is permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181". The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings.

Any inquiry regarding this decision should be directed to Henry Yuen, Special Programs Examiner, at (571) 272-4856.

PETITION DISMISSED AS UNTIMELY.

Donald T. Hajec, Director
Technology Center 3700

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HEWLETT-PACKARD COMPANY
Intellectual Property Administration
3404 E. Harmony Road
Mail Stop 35
FORT COLLINS CO 80528

In re Application of	:	
Taft et al.	:	
Application No. 11/220,036	:	DECISION ON PETITION
Filed: September 6, 2005	:	UNDER 37 C.F.R. § 1.137(B)
Attorney Docket No. 200407360-1	:	
Title: SELECTIVELY MASKING	:	
IMAGE DATA	:	

This is a decision on the petition pursuant to 37 C.F.R. § 1.137(b), filed on February 28, 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 submit the issue and publication fees in a timely manner in reply to the Notice of Allowance and Issue Fee Due, mailed October 1, 2010, which set a shortened statutory period for reply of three months. On October 5, 2010, form PTOL-85b was received, however the required fees were not included therewith (the Deposit Account information does not appear thereon). No extensions of time are permitted for transmitting issue fees[1] or publication fees.[2] Accordingly, the above-identified application became abandoned on January 2, 2011. A Notice of Abandonment was mailed on January 19, 2011.

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

(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in 37 C.F.R. § 1.17(m);
(3) A statement that the entire delay in filing the

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

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.

The petition, issue, and publication fees will be charged to Deposit Account no. 08-2025 in due course, as authorized on the copy of form PTOL-85b that was included with this petition.

With this petition, Applicant has submitted the proper statement of unintentional delay. 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
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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OFFICE OF PETITIONS

In re Application of	:	
Chao-Lien Lin et al.	:	
Application No. 11/220,084	:	ON PETITION
Filed: September 6, 2005	:	
Attorney Docket No. **P040078LOZ1US**	:	

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

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

The petition is hereby **GRANTED**.

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

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/220,128	09/06/2005	Max Bachem	24974-0004001	2462

26190 7590 03/10/2011
FISH & RICHARDSON P.C.
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

EXAMINER
GUPTA, VANI

ART UNIT	PAPER NUMBER
3777	

NOTIFICATION DATE	DELIVERY MODE
03/10/2011	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):

PATDOCTC@fr.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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George P. Bonanto
Fish & Richardson P.C.
1425 K Street, N.W.
11th Floor
Washington D.C. 20005-3500

In re Application of:
Max Bachem :
Appl. No.: 11/220,128 : DECISION ON PETITION
Filed: September 6, 2005 :
For:
ULTRASOUND DEVICE AND
METHOD FOR STIMULATING CELLS
OF THE BODY AND
THERAPEUTICALLY TREATING
BACTERIAL INFECTION :

This is a decision on the petition filed on June 18, 2008 by which petitioners request acceptance of color drawings. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition was filed with the required fee and 3 (three) sets of color drawings of figures 1, 2, 5, 12, 13.

Review of the application and of the claims shows that the color photographs are necessary as the only practical medium by which to disclose the subject matter sought to be patented, as described at least in paragraphs 0075, 0077, 0084, and 0097 involving staining and differentiating of cells [e.g., phagocytozing].

PETITION is **GRANTED**.

/Tse Chen/
Supervisory Patent Examiner, Art Unit 3777

UNITED STATES PATENT AND TRADEMARK OFFICE

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JOHN STEPHENS
PO BOX 2422
FRIDAY HARBOR, WA 98250

MAILED
APR 06 2011
OFFICE OF PETITIONS

In re Application of	:	
John W. Stephens	:	
Application No. 11/220,194	:	DECISION ON PETITION
Filed: September 6, 2005	:	
Attorney Docket No.	:	

This is a decision on the renewed petition under the unavoidable provisions of 37 CFR 1.137(a), filed June 1, 2007, 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, November 3, 2006, 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 March 4, 2007.

The petition is **DISMISSED.**

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

With respect to item 1:

A petition to revive cannot be granted where there is an outstanding requirement. In the instant case, there was no response to the outstanding Office action mailed November 3, 2006. A courtesy copy of the Office action is being mailed along with this decision. Accordingly the petition to revive cannot be granted until the response to the Office action is received. If petitioner intends to submit a renewed petition the reply to the Office action must be submitted along with the renewed petition.

With respect to item 3:

Petition attests that the response to the Office action mailed November 3, 2006 was unavoidable because of limited resources and the inability to access his files.

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

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

In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting *Ex parte Pratt*, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also *Winkler v. Ladd*, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); *Ex parte Henrich*, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." *Smith v. Mossinghoff*, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." *Haines v. Quigg*, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

The showing of record is not sufficient to establish to the satisfaction of the Director that the delay was unavoidable within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a). *See* MPEP 711(c)(III)(C)(2) for a discussion of the requirements for a showing of unavoidable delay.

An application is "unavoidably" abandoned only wher petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure of mail, telegraph, telefacsimile, or the negligence of otherwise reliable employees, the response is not timely received in the office. *Ex parte Pratt, supra.*

While it is unfortunate that Larry Chamberlain became ill it was petitioner's responsibility to file a timely response to the outstanding Office action. Petitioner has not shown that adequate provisions were made for the careful handling of Office actions in order to ensure a timely response thereto. Petitioner's lack of knowledge of matters of procedure before the Patent and Trademark Office does not excuse a delay during the prosecution of the application. Moreover, while resources would have been necessary to employ the assistance of counsel in continuing the prosecution of the above-identified application, persons seeking patent rights have no "right" to the assistance of counsel during the application process. *Boyden v. Commissioner of Patents*,

441 F.2d 1041, 168 USPQ 680 (D.C. Cir. 1971). As patent applications are commonly prosecuted pro se, arguments that the financial inability to employ counsel to aid in the prosecution of an application rendered the abandonment of the application "unavoidable" are unpersuasive. That is, while applicants may obtain the services of counsel to assist in the application process, such counsel is not strictly necessary, and, as such, the financial inability to employ such counsel does not render a delay in providing a required response "unavoidable"

If petitioner cannot provide the evidence necessary to establish unavoidable delay, or simply does not wish to, petitioner may wish to consider filing a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the $810 petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

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

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

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

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

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

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

/dab/
David Bucci
Petitions Examiner
Office of Petitions

Attachment: copy of the non-final Office action mailed November 3, 2006.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/220,194	09/06/2005	John W. Stephens		1744

7590 11/03/2006

JOHN STEPHENS
P.O. BOX 2422
FRIDAY HARBOR, WA 98250

EXAMINER
THOMAS, DAVID B

ART UNIT	PAPER NUMBER
3723	

DATE MAILED: 11/03/2006

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

Office Action Summary	Application No.	Applicant(s)	
	11/220,194	STEPHENS, JOHN W.	
	Examiner	Art Unit	
	David B. Thomas	3723	

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

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on 15 November 2005.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-8 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-8 is/are rejected.

7)☒ Claim(s) 1,3,4 and 7 is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on 15 November 2005 is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claims 1, 3, 4, and 7 are objected to because of the following informalities: Each claim fails to end in a period. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 5-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Harrison (5,123,584).

Harrison discloses a nail positioning device having first and second ends with planar surfaces, a cylindrical bore, a magnetic component, and a diameter to length ratio of approximately 1:8.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harrison, as applied to claims 1 and 5-8 above, in view of Floyd (4,562,948) and Iannone (4,315,551).

Harrison discloses the nail positioning device as claimed except that the cylindrical body is magnetized rather than retaining the magnetic component inside the cylindrical bore. Floyd teaches retaining the magnetic component inside the bore via a small steel disc sized for interference fit, as well as providing the cylindrical bore with a major and a minor diameter, however, the face of the steel disc is planar rather than concave. Iannone teaches that it would be desirable that the nail receiving insert of an elongated rod, which is basically what a nail is, positioning device have a concave surface to serve as a guide. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the cylindrical bore of the device of Harrison in order to receive and retain a magnetic component within by providing a major and minor diameter, a magnetic component, and a steel disc insert to retain and protect the magnetic component, as taught by Floyd, and to further provide a concave surface on the nail receiving side of the steel insert, such as that taught by Iannone, in order to serve as a guide for the nail.

Conclusion

6. The remaining prior art made of record but not relied upon, at this time, is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David B. Thomas whose telephone number is (571) 272-4497. The examiner can normally be reached on Mon-Fri 8am-7pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail can be reached on (571) 272-4485. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

dbt

David B. Thomas
Primary Examiner
Art Unit 3723

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.
11/220,349	09/06/2005	Erick Rollo Asmussen	P1108/N2544	1635

23456 7590 02/17/2011
WADDEY & PATTERSON, P.C.
1600 DIVISION STREET, SUITE 500
NASHVILLE, TN 37203

EXAMINER
NAMAY, DANIEL ELLIOT

ART UNIT	PAPER NUMBER
3749	

NOTIFICATION DATE	DELIVERY MODE
02/17/2011	ELECTRONIC

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

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

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

docket@IPLAWGROUP.COM
BFL@iplawgroup.com

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.
11220349	9/6/2005	ASMUSSEN ET AL.	P1108/N2544

EXAMINER
Daniel E.. Namay

ART UNIT	PAPER
3749	20110209

DATE MAILED:

WADDEY & PATTERSON, P.C.
1600 DIVISION STREET, SUITE 500
NASHVILLE, TN 37203

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

Commissioner for Patents

Inventorship

In view of the papers filed 21 February 2006, 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 the addition of Mathew G. Getz as a named inventor.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of Office records to reflect the inventorship as corrected.

/Steven B. McAllister/
Supervisory Patent Examiner, Art Unit 3749

/Daniel E. Namay/
Examiner, Art Unit 3749

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY OF COMMERCE AND
COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. Box 1450
Alexandria, VA 22313-1450

February 9, 2012

Patent No.: 8,069,270 B1
Applicant : Manali Nambiar, et al.
Issued : November 29, 2011
For : **ACCELERATED TAPE BACKUP RESTORATION**
Atty Docket No.: **CISCP449/654269**

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 Rules 1.323.

Respecting the alleged error in changing the third inventor name.The third inventor's name is printed in accordance with the Declaration submitted at the time of filing the application. Therefore, no correction is in order here under Rule 1.323.

However, your attention is directed to C.F.R. 1.324, wherein a request is being made to change, add or delete inventor(s), after issuance of the patent. If petition is granted, application will be forwarded for correction of Office records to reflect the inventorship as corrected and to the Certificate of Correction Branch for issuance of certificate of correction.

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

A petition under C.F.R. 1.324 should include:

A. the processing fee set forth in 37 CFR 1.20(b) (currently $130);
B. a statement from each person being added as an inventor that the inventorship occurred without any deceptive intention on his or her part, a statement from the current inventors agreeing to the change of inventorship of stating that they have no disagreement in regard to the requested change, and a statement from all assignees of the current inventors agreeing to the change of inventorship in the patent.

Further correspondence concerning this matter should be filed and directed to Supervisory Patent Examiner of Technology Center 2184, Henry Tsai, at the U.S. Patent and Trademark Office.

Antonio Johnson
For Mary F. Diggs
Decisions & Certificates
of Correction Branch
(571)272-0483

Weaver Austin Villeneuve & Sampson LLP - CISC-ANDI
Attn: CISC-ANDI
P.O. Box 70250
Oakland CA 94612-0250

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.
11/220,730	09/07/2005	Hanning Zhou	046601-5207US	4294

24341 7590 09/22/2010
MORGAN, LEWIS & BOCKIUS, LLP. (PA)
2 PALO ALTO SQUARE
3000 EL CAMINO REAL, SUITE 700
PALO ALTO, CA 94306

EXAMINER
LAY, MICHELLE K

ART UNIT	PAPER NUMBER
2628	

NOTIFICATION DATE	DELIVERY MODE
09/22/2010	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):

padocketingdepartment@morganlewis.com
vskliba@morganlewis.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

MORGAN, LEWIS & BOCKIUS, LLP. (PA)
2 PALTO ALTO SQUARE
3000 EL CAMINO REAL, SUITE 700
PALO ALTO CA 94306

MAIL

SEP 22 2010

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

In re Application of
Zhou, Hanning *et al.*
Serial No.: 11/220,730
Filed: September 07, 2005
For: **SYSTEM AND METHOD FOR USER MONITORING INTERFACE OF 3-D VIDEO STREAMS FROM MUTIPLE CAMERAS**

DECISION ON PETITION
ACCEPTANCE OF COLOR DRAWINGS

This is a decision on the petition under 37 CFR §1.84(a)(2) filed October 21, 2005, requesting the acceptance of color drawings.

The petition requests that the color drawings identified in Figures 3A, 3B, 4, 5A, 5B, 6, 7, 8, 9A, 9B, 10A, 10B, 10C, 10D, 10E, 10F, 10G & 11 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.

Kenneth Wieder
Quality Assurance Specialist
Technology Center 2600
Communications

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.
11/220,730	09/07/2005	Hanning Zhou	046601-5207US	4294

7590 03/24/2011
MORGAN, LEWIS & BOCKIUS, LLP. (PA)
2 PALO ALTO SQUARE
3000 EL CAMINO REAL, SUITE 700
PALO ALTO, CA 94306

EXAMINER
SAMS (LAY), MICHELLE L

ART UNIT	PAPER NUMBER
2628	

NOTIFICATION DATE	DELIVERY MODE
03/24/2011	ELECTRONIC

ACKNOWLEDGEMENT OF REQUEST

Notice of Allowance/Allowability Mailed

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

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

FORM PTOM327-5 (Rev. 02/08)

UNITED STATES PATENT AND TRADEMARK OFFICE

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

March 22, 2011

MORGAN, LEWIS & BOCKIUS, LLP.(PA)
2 PALO ALTO SQUARE
3000 EL CAMINO REAL, SUITE 700
PALO ALTO CA 94306

Re Application of	
ZHOU, HANNING	: **DECISION ON PETITION**
Application No: **11/220730**	: **ACCEPTANCE OF COLOR**
Filed: **09/07/2005**	: **DRAWINGS**
Attorney Docket No: **046601-5207US**	:

This is a decision on the Renewal of 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 25, 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 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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 8-8-11 **Paper No.:** _____

TO SPE OF : ART UNIT 3754

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/220760 Patent No.: 7,721,918

CofC mailroom date: 8-4-11

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

FOR IFW FILES: Check Claims

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

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

FOR PAPER FILES:

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

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

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: _____

Kevin P. Shaver
SPE

3754
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

KLAUBER & JACKSON
4TH FLOOR
411 HACKENSACK AVE
HACKENSACK NJ 07601

MAILED
MAR 21 2011
OFFICE OF PETITIONS

In re Application of	:	
Biscarini et al.	:	
Application No. 11/220896	:	DECISION
Filing or 371(c) Date: 09/07/2005	:	ON PETITION
Patent No.: 7498060	:	
Issue Date: 03/03/2009	:	
Attorney Docket Number: 1379-1-029	:	

This is a decision on the "Request to Correct Assignee Under 37 C.F.R. §3.81(b)," filed December 6, 2010, to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The Petition is **granted**.

The petition was accompanied by a certificate of correction as required by 3.81(b), and the fee submitted with the present petition. Further, Office assignment records reflect the name of CONSEJO SUPERIOR DE INVESTIGACIONES CIENTIFICAS, is the assignee of record. As the request complies with the provisions of 37 CFR 3.81(b), it would be appropriate for a certificate of correction to be processed.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

This matter is being referred to the Certificates of Correction Branch for processing of a certificate of correction after issuance of this application into a patent.

The fee for a Certificate of Correction, $100.00, in addition to the processing fee, $130.00, has been charged to Petitioner's deposit account.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Christopher John Rudy
Ste. 8
209 Huron Ave.
Port Huron MI 48060

MAILED
JAN 11 2012
OFFICE OF PETITIONS

In re Application of :
Louis A. SERAFIN, Jr., et al. :
Application No. 11/220,997 : ON PETITION
Filed: September 7, 2005 :
Attorney Docket No.: LASCER-60X-US :

This is a decision on the petition under 37 CFR 1.181(a)(3) filed June 21, 2010, and supplemented June 28, 2010, requesting supervisory review of the decision of the Director of Technology Center 3700 (Technology Center Director) dated April 16, 2010, which decision refused to set aside the restriction requirement of March 25, 2009. The instant petition requests that the examiner be directed to withdraw the restriction requirement.

The petition to withdraw the restriction requirement in the above-identified application is **DENIED**.

BACKGROUND

On March 25, 2009, an Office action requiring restriction between inventions was mailed. The Office action of March 25, 2009 required an election between the following inventions: Group I, claims 1-7, 31, and 32, drawn to a method of making a ceramic body, classified in class 264, subclass 643; Group II, claims 8-15 and 29, drawn to an article of manufacture, classified in class 623, subclass 23.56; Group III, claims 16-19, 28, and 30, drawn to a ceramic knee replacement implant, classified in class 623, subclass 20.14; and Group IV, drawn to a femoral or tibial implant, classified in class 623, subclass 20.32 or 20.35.

On May 12, 2009, an amendment was filed and the invention of Group II was elected with traverse because the claims clearly link one to another and unity of invention is present. New claims 33-44 were stated to read upon the elected invention. The amendment of May 12, 2009: changed claims 8-15 from article claims to method claims; canceled claims 17-19, 23-24, 26-27, and 29-32; and added new claims 33-34.

On July 24, 2009, a non-final Office action was mailed. The July 24, 2009 non-final Office action: acknowledged the election with traverse of Group II, now directed toward newly added claims 33-44; withdrew claims 1-16, 20-22, 25, and 28 from consideration; responded to the traversal; rejected claims 38-42 under 35 U.S.C. 112, second paragraph; and rejected claims 33-44 under 35 U.S.C. 103.

On November 24, 2009, a petition to withdraw the restriction requirement and a response to the non-final Office action of July 24, 2009 were filed.

On January 28, 2010, a decision dismissing the petition of November 24, 2009 was mailed.

On March 29, 2010, a petition requesting reconsideration of the petition decision mailed January 28, 2010 was filed.

On April 16, 2010, a decision dismissing the petition of March 29, 2010 was mailed.

The instant petition was filed June 21, 2010 and supplemented on June 28, 2010.

STATUTE, REGULATION, AND EXAMINING PROCEDURE

35 U.S.C. 121 states:

> 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. A patent issuing on an application with respect to which a requirement for restriction under this section has been made, or on an application filed as a result of such a requirement, shall not be used as a reference either in the Patent and Trademark Office or in the courts against a divisional application or against the original application or any patent issued on either of them, if the divisional application is filed before the issuance of the patent on the other application. If a divisional application is directed solely to subject matter described and claimed in the original application as filed, the Director may dispense with signing and execution by the inventor. The validity of a patent shall not be questioned for failure of the Director to require the application to be restricted to one invention.

37 CFR 1.142 states:

> (a) If two or more independent and distinct inventions are claimed in a single application, the examiner in an Office action will require the applicant in the reply

to that action to elect an invention to which the claims will be restricted, this official action being called a requirement for restriction (also known as a requirement for division). Such requirement will normally be made before any action on the merits; however, it may be made at any time before final action. (b) Claims to the invention or inventions not elected, if not canceled, are nevertheless withdrawn from further consideration by the examiner by the election, subject however to reinstatement in the event the requirement for restriction is withdrawn or overruled.

MPEP 806.05(f) states:

A process of making and a product made by the process can be shown to be distinct inventions if either or both of the following can be shown: (A) that the process as claimed is not an obvious process of making the product and the process as claimed can be used to make another materially different product; or (B) that the product as claimed can be made by another materially different process. Allegations of different processes or products need not be documented. A product defined by the process by which it can be made is still a product claim (*In re Bridgeford*, 357 F.2d 679, 149 USPQ 55 (CCPA 1966)) and can be restricted from the process if the examiner can demonstrate that the product as claimed can be made by another materially different process; defining the product in terms of a process by which it is made is nothing more than a permissible technique that applicant may use to define the invention.

MPEP 806.05(j) states:

To support a requirement for restriction between two or more related product inventions, or between two or more related process inventions, both two-way distinctness and reasons for insisting on restriction are necessary, i.e., separate classification, status in the art, or field of search. See MPEP § 808.02. See MPEP § 806.05(c) for an explanation of the requirements to establish two-way distinctness as it applies to inventions in a combination/subcombination relationship. For other related product inventions, or related process inventions, the inventions are distinct if

(A) the inventions as claimed do not overlap in scope, i.e., are mutually exclusive;
(B) the inventions as claimed are not obvious variants; and
(C) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect. See MPEP § 802.01.

MPEP 808.02 states:

> Where the inventions as claimed are shown to be independent or distinct under the criteria of MPEP § 806.05(c) - § 806.06, the examiner, in order to establish reasons for insisting upon restriction, must explain why there would be a serious burden on the examiner if restriction is not required. Thus the examiner must show by appropriate explanation one of the following:
>
> (A) Separate classification thereof: This shows that each invention has attained recognition in the art as a separate subject for inventive effort, and also a separate field of search. Patents need not be cited to show separate classification.
> (B) A separate status in the art when they are classifiable together: Even though they are classified together, each invention can be shown to have formed a separate subject for inventive effort when the examiner can show a recognition of separate inventive effort by inventors. Separate status in the art may be shown by citing patents which are evidence of such separate status, and also of a separate field of search.
> (C) A different field of search: Where it is necessary to search for one of the inventions in a manner that is not likely to result in finding art pertinent to the other invention(s) (e.g., searching different classes/subclasses or electronic resources, or employing different search queries, a different field of search is shown, even though the two are classified together. The indicated different field of search must in fact be pertinent to the type of subject matter covered by the claims. Patents need not be cited to show different fields of search.

MPEP 809 states:

> There are a number of situations which arise in which an application has claims to two or more properly divisible inventions, so that a requirement to restrict the claims of the application to one would be proper, but presented in the same case are one or more claims (generally called "linking" claims) which, if allowable, would require rejoinder of the otherwise divisible inventions. See MPEP § 821.04 for information pertaining to rejoinder practice. Linking claims and the inventions they link together are usually either all directed to products or all directed to processes (i.e., a product claim linking properly divisible product inventions, or a process claim linking properly divisible process inventions). The most common types of linking claims which, if allowable, act to prevent restriction between inventions that can otherwise be shown to be divisible, are
>
> (A) genus claims linking species claims; and
> (B) subcombination claims linking plural combinations.

> Where an application includes claims to distinct inventions as well as linking claims, restriction can nevertheless be required. The linking claims must be examined with, and thus are considered part of, the invention elected. When all claims directed to the elected invention are allowable, should any linking claim be allowable, the restriction requirement between the linked inventions must be withdrawn. Any claim(s) directed to the nonelected invention(s), previously withdrawn from consideration, which depends from or requires all the limitations of the allowable linking claim must be rejoined and will be fully examined for patentability. Where the requirement for restriction in an application is predicated upon the nonallowability of generic or other type of linking claims, applicant is entitled to retain in the application claims to the nonelected invention or inventions. Where such withdrawn claims have been canceled by applicant pursuant to the restriction requirement, upon the allowance of the linking claim(s), the examiner must notify applicant that any canceled, nonelected claim(s) which depends from or requires all the limitations of the allowable linking claim may be reinstated by submitting the claim(s) in an amendment. Upon entry of the amendment, the amended claim(s) will be fully examined for patentability. See MPEP § 821.04 for additional information regarding rejoinder.

MPEP 821.04(b) states:

> Where claims directed to a product and to a process of making and/or using the product are presented in the same application, applicant may be called upon under 35 U.S.C. 121 to elect claims to either the product or a process. See MPEP § 806.05(f) and § 806.05(h). The claims to the nonelected invention will be withdrawn from further consideration under 37 CFR 1.142. See MPEP § 821 through § 821.03. However, if applicant elects a claim(s) directed to a product which is subsequently found allowable, withdrawn process claims which depend from or otherwise require all the limitations of an allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must depend from or otherwise require all the limitations of an allowable product claim for that process invention to be rejoined. Upon rejoinder of claims directed to a previously nonelected process invention, the restriction requirement between the elected product and rejoined process(es) will be withdrawn. If applicant cancels all the claims directed to a nonelected process invention before rejoinder occurs, the examiner should not withdraw the restriction requirement. This will preserve applicant's rights under 35 U.S.C. 121. Where the application as originally filed discloses the product and the process for making and/or using the product, and only claims directed to the product are presented for examination, applicant may present claims directed to the process of making and/or using the allowable product by way of amendment pursuant to 37 CFR 1.121. In view of the rejoinder procedure, and in order to expedite prosecution, applicants are encouraged to present such process claims,

preferably as dependent claims, in the application at an early stage of prosecution. Process claims which depend from or otherwise require all the limitations of the patentable product will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. However, if applicant files an amendment adding claims to a process invention, and the amendment includes process claims which do not depend from or otherwise require all the limitations of an allowable product, all claims directed to that newly added invention may be withdrawn from consideration, via an election by original presentation (see MPEP § 821.03).

MPEP 1893.03(d) states in part:

Examiners are reminded that unity of invention (not restriction practice pursuant to 37 CFR 1.141 -1.146) is applicable in international applications (both Chapter I and II) and in national stage applications submitted under 35 U.S.C. 371. Restriction practice in accordance with 37 CFR 1.141-1.146 continues to apply to U.S. national applications filed under 35 U.S.C. 111(a), even if the application filed under 35 U.S.C. 111(a) claims benefit under 35 U.S.C. 120 and 365(c) to an earlier international application designating the United States or to an earlier U.S. national stage application submitted under 35 U.S.C. 371.

MPEP 2113 states:

PRODUCT-BY-PROCESS CLAIMS ARE NOT LIMITED TO THE MANIPULATIONS OF THE RECITED STEPS, ONLY THE STRUCTURE IMPLIED BY THE STEPS

"[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted) (Claim was directed to a novolac color developer. The process of making the developer was allowed. The difference between the inventive process and the prior art was the addition of metal oxide and carboxylic acid as separate ingredients instead of adding the more expensive pre-reacted metal carboxylate. The product-by-process claim was rejected because the end product, in both the prior art and the allowed process, ends up containing metal carboxylate. The fact that the metal carboxylate is not directly added, but is instead produced in-situ does not change the end product.).

> The structure implied by the process steps should be considered when assessing the patentability of product-by-process claims over the prior art, especially where the product can only be defined by the process steps by which the product is made, or where the manufacturing process steps would be expected to impart distinctive structural characteristics to the final product. See, e.g., *In re Garnero*, 412 F.2d 276, 279, 162 USPQ 221, 223 (CCPA 1979) (holding "interbonded by interfusion" to limit structure of the claimed composite and noting that terms such as "welded," "intermixed," "ground in place," "press fitted," and "etched" are capable of construction as structural limitations.)

OPINION

Petitioner requests supervisory review of the Technology Center Director's decision, and that the examiner be directed to withdraw the restriction requirement of March 25, 2009. Petitioner argues that: (1) there are linking claims that must be examined with the elected invention; (2) certain limitations of the elected product claims are included in the process claims so restriction is improper; and (3) no lack of unity was found in the PCT parent case.

Specifically, with respect to petitioner's first argument that there are linking claims present in the application, linking claims and the inventions they link together are usually either all directed to products or all directed to processes (i.e., a product claim linking properly divisible product inventions, or a process claim linking properly divisible process inventions). The most common types of linking claims which, if allowable, act to prevent restriction between inventions that can otherwise be shown to be divisible, are (A) genus claims linking species claims; and (B) subcombination claims linking plural combinations. See MPEP 809, *supra*. A review of the record indicates the following relationships between the claims notwithstanding petitioner's contention otherwise:

> Claim 1 is not a linking claim of claim 33; rather they are a process of making and a product made by the process and are properly restricted as set forth in MPEP 806.05(f), *supra*;
>
> Claims 2-5, 10-13, 15, and 16 are not linking claims of claim 34; rather they are a process of making and a product made by the process and are properly restricted as set forth in MPEP 806.05(f), *supra*;
>
> Claim 20-22, 25 and 28 are not linking claims of claim 34; rather they are related products and are properly restricted as set forth in MPEP 806.05(j).
>
> Claims 2, 4, 11, and 16 are not linking claims of claims 35 and 39; rather they are a process of making and a product made by the process and are properly restricted as set forth in MPEP 806.05(f), *supra*;

Claims 20-22 and 25 are not linking claims of claims 35 and 39; rather they are related products and are properly restricted as set forth in MPEP 806.05(j);

Claims 2, 5, 12, and 16 are not linking claims of claims 36 and 40; rather they are a process of making and a product made by the process and are properly restricted as set forth in MPEP 806.05(f), *supra*;

Claims 20-22 and 28 are not linking claims of claims 36 and 40; rather they are related products and are properly restricted as set forth in MPEP 806.05(j), *supra*;

Claims 2-3, 10, and 16 are not linking claims of claims 37 and 41; rather they are a process of making and a product made by the process and are properly restricted as set forth in MPEP 806.05(f), *supra*;

Claims 20-22 are not linking claims of claims 37 and 41; rather they are related products and are properly restricted as set forth in MPEP 806.05(j), *supra*;

Claims 2, 13, and 15 are not linking claims of claims 38 and 42; rather they are a process of making and a product made by the process and are properly restricted as set forth in MPEP 806.05(f), *supra*;

Claims 20-22 are not linking claims of claims 38 and 42; rather they are related products and are properly restricted as set forth in MPEP 806.05(j), *supra*; and

Claim 14 is not a linking claim of claim 43; rather they are a process of making and a product made by the process and are properly restricted as set forth in MPEP 806.05(f), *supra*.

In the Office action of March 25, 2009 the examiner set forth proper reasons for restriction. As there are process of making and product claims present in this application and no linking claims, if the elected product claims are subsequently found allowable, withdrawn process claims which depend from or otherwise require all the limitations of an allowable product claim will be considered for rejoinder. See MPEP 821.04(b), *supra*.

With respect to petitioner's argument that certain limitations of the elected product claims are included in the process claims so restriction is improper, a process of making and a product made by the process can be shown to be distinct inventions if either or both of the following can be shown: (A) that the process as claimed is not an obvious process of making the product and the process as claimed can be used to make another materially different product; or (B) that the product as claimed can be made by

another materially different process. See MPEP 806.05(f), *supra.* As set forth in the restriction requirement, the product as claimed can be made by another materially different process. Accordingly, restriction is proper. Moreover, petitioner is reminded that the patentability of a product does not depend on its method of production. See MPEP 2113, *supra.*

Petitioner further argues that the restriction requirement is improper because there is no serious burden on the examiner if restriction is not required. Specifically, petitioner argues that the USPTO has conducted a full international search and the number of references necessary to search all the inventions set forth in the restriction requirement is not burdensome. The determination of whether or not there is a serious burden on the examiner is not whether a full international search has been made nor is it the number of references necessary to search. Rather, a serious burden on the examiner occurs when the examiner can show one of the following: (A) separate classification of each claimed invention; (B) a separate status in the art of the claimed inventions when they are classifiable together; or (C) a different field of search is required for the claimed inventions. See MPEP 808.02, *supra.* As set forth in the Office action of March 25, 2009, each of the claimed inventions has a separate classification. Furthermore, as set forth by the Technology Center Director in the petition decision of January 28, 2010:

> "In the petition, petitioner also argues the parent PCT application was searched by USPTO, there should not be any search burden in this US application. This line of arguments is purely speculative and totally ignores the potential search for the manufacturing a prosthetic implant of any sort which is not specific to the knee joint, femur or tibia. It should be noted that the elected Group II invention for the article of manufacture is a product by process claim and therefore includes some of the method classes which would not be included in the search for Groups III and IV inventions. For example, Group I invention requires prior art search in Class 264, Subclass 643 and Class 419 Subclasses 38, 42, 49. Group II invention requires a search in Class 264 Subclasses 642 and Class 427 and Subclasses 2.26-2.27, 528-531, and Class 623, Subclass 23, 56, 16.11, 19.11, 20.1, 21.11 and 22.11; Group III invention requires a search in Class 623, Subclass 20/14 and Class 501 subclass 134. Finally, Group IV invention requires a search in Class 623, Subclass 20.32-20.34 and 20.35-20.36. Additionally, text search inquiries would involve different search applications for at least some of the grouped inventions. The potential additional classification and text searching also is a sufficient showing of serious burden existing in examining the claims together and is considered implied by the requirement as set up by the examiner. The different classifications and searches as provided by the examiner are sufficient to show serious burden. These search areas are totally different and diverse. This is another indication that there is a serious search burden in accordance with MPEP 808.02(C)2. Under the circumstances, in order to

> perform a quality examination in this application, since the inventions require a different field of search, the restriction for examination purposes as indicated is appropriate."

Therefore, it has been shown that each invention has attained recognition in the art as a separate subject for inventive effort, and also a separate field of search.

Finally, petitioner argues that restriction is improper because no lack of unity was found in the parent PCT application. As the instant application is a continuation-in-part of the parent PCT application and not a National Stage 371 application the unity of invention standard does not apply. See MPEP 1893.03(d), *supra*.

DECISION

The instant petition is granted to the extent that the action of the Technology Center Director has been reviewed, but is **denied** with respect to directing withdrawal of the restriction requirement.

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

The above-identified application is being referred to Technology Center 3700 for further processing consistent with this decision.

Telephone inquires concerning this decision may be directed to Petitions Examiner David Bucci at (571) 272-7099.

Andrew Hirshfeld
Associate Commissioner for
Patent Examination Policy

ak

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MAILED
MAR 29 2012
OFFICE OF PETITIONS

In re Application of	:	
Haller et al.	:	DECISION ON APPLICATION
Application No. 11/221,095	:	FOR
Filed: 09/06/2005	:	PATENT TERM ADJUSTMENT
Atty Docket No.	:	
585-0039US	:	

This letter is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT filed on February 24, 2012, which is treated as a petition under 37 CFR 1.705(b). Applicants request that the initial determination of patent term adjustment be decreased by 705 days from 1148 days to 443 days.

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

The Office has updated the PALM and PAIR screens to reflect that the revised Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is four hundred forty-three (443) days. A copy of the updated PAIR screen, showing the revised determination, is enclosed.

On February 15, 2012, the Office mailed the Determination of Patent Term Adjustment under 35 USC 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is one thousand one hundred forty-eight (1148) days (1148 days of Office delay reduced by 0 days of applicant delay).

On February 24, 2012, applicants timely submitted the instant application for patent term adjustment.[1]

Applicants state that the patent term adjustment is incorrect in that the 705 day period of adjustment in connection with the

[1] PALM records show that the Issue Fee has not yet been paid.

mailing of the final decision of the Board of Patent Appeals and Interferences (Board Decision) mailed on January 12, 2012, is not warranted.

Upon review, patentees are correct. Upon review, no allowable claim remained in the application after the mailing of the Board Decision mailed on January 12, 2012. Accordingly, the 705 day period of adjustment was in error and will be removed.

In view thereof, the revised determination of PTA at the time of the mailing of the Notice of Allowance is **four hundred forty-three (443)** days (443 days of PTO delay, reduced by 0 days of Applicant delay).

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

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

The Office of Data Management has been advised of this decision. The application is thereby forwarded to the Office of Data Management for issuance of the 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 if applicable, for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

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

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of adjusted PAIR calculation

11/221,095	ULTRACAPACITOR POWERED IMPLANTABLE PULSE GENERATOR WITH DEDICATED POWER SUPPLY	585-0039US	03-28-2012::09:33:23

Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 11/221,095

Filing or 371(c) Date:	09-06-2005	Overlapping Days Between {A and B} or {A and C}:	0
Issue Date of Patent:	-	Non-Overlapping USPTO Delays:	1148
A Delays:	1148	PTO Manual Adjustments:	-705
B Delays:	0	Applicant Delays:	0
C Delays:	0	Total PTA Adjustments:	443

Patent Term Adjustment History **Explanation Of Calculations**

Number	Date	Contents Description	PTO(Days)	APPL (Days)	Start
127	03-28-2012	Adjustment of PTA Calculation by PTO		705	0
113	02-15-2012	Mail Notice of Allowance			0
112	02-12-2012	Office Action Review			0
111	02-12-2012	Notice of Allowance Data Verification Completed			0
110	02-12-2012	Issue Revision Completed			0
109	02-12-2012	Document Verification			0
108	02-10-2012	Allowability Notice			0
107	05-23-2011	Information Disclosure Statement considered			0
106	12-15-2011	Information Disclosure Statement considered			0
105	06-06-2011	Information Disclosure Statement considered			0
104	05-23-2011	Information Disclosure Statement considered			0
95	01-24-2012	Date Forwarded to Examiner			0
94	01-20-2012	Amendment Submitted/Entered with Filing of CPA/RCE			0
93	01-20-2012	Request for Continued Examination (RCE)			0
92	01-24-2012	Disposal for a RCE / CPA / R129			0
91	01-20-2012	New or Additional Drawing Filed			0
90	01-20-2012	Workflow - Request for RCE - Begin			0
89	01-12-2012	Electronic Review			0
88	01-12-2012	Email Notification			0
87	01-12-2012	Mail BPAI Decision on Appeal - Affirmed	705		62
86	01-10-2012	BPAI Decision - Examiner Affirmed			0
85	12-15-2011	Information Disclosure Statement (IDS) Filed			0
84	12-15-2011	Information Disclosure Statement (IDS) Filed			0
83	06-06-2011	Reference capture on IDS			0
82	06-06-2011	Information Disclosure Statement (IDS) Filed			0
81	06-06-2011	Information Disclosure Statement (IDS) Filed			0
80	05-23-2011	Information Disclosure Statement (IDS) Filed			0
79	05-23-2011	Information Disclosure Statement (IDS) Filed			0
78	05-23-2011	Information Disclosure Statement (IDS) Filed			0
77	05-17-2010	Email Notification			0
75	05-17-2010	Docketing Notice Mailed to Appellant			0
74	05-13-2010	Assignment of Appeal Number			0
73	05-10-2010	Appeal Awaiting BPAI Docketing			0
72	05-05-2010	Email Notification			0
71	05-05-2010	Mail Reply Brief Noted by Examiner			0
70	05-03-2010	Reply Brief Noted by Examiner			0
69	03-30-2010	Date Forwarded to Examiner			0
68	03-03-2010	Reply Brief Filed			0
67	01-25-2010	Exam. Ans. Review Complete			0
66	01-06-2010	Mail Examiner's Answer			0
65	01-04-2010	Examiner's Answer to Appeal Brief			0

64	10-27-2009	Appeal Brief Review Complete		0
63	10-27-2009	Date Forwarded to Examiner		0
62	10-06-2009	Appeal Brief Filed		0
61	09-16-2009	Mail Appeals conf. Proceed to BPAI		0
60	09-14-2009	Pre-Appeals Conference Decision - Proceed to BPAI		0
59	07-15-2009	Request for Pre-Appeal Conference Filed		0
58	07-15-2009	Notice of Appeal Filed		0
57	04-20-2009	Mail Final Rejection (PTOL - 326)		0
56	04-17-2009	Final Rejection		0
55	02-24-2009	Date Forwarded to Examiner		0
54	02-18-2009	Response after Non-Final Action		0
53	11-24-2008	Mail Non-Final Rejection		0
52	11-21-2008	Non-Final Rejection		0
49	09-18-2008	Date Forwarded to Examiner		0
48	09-09-2008	Amendment Submitted/Entered with Filing of CPA/RCE		0
47	09-18-2008	Date Forwarded to Examiner		0
46	09-09-2008	Request for Continued Examination (RCE)		0
45	09-18-2008	Disposal for a RCE / CPA / R129		0
44	09-09-2008	Workflow - Request for RCE - Begin		0
43	06-16-2008	Mail Final Rejection (PTOL - 326)		0
42	06-12-2008	Final Rejection		0
41	06-06-2008	Mail-Petition Decision - Dismissed		0
40	06-06-2008	Petition Decision - Dismissed		0
39	02-15-2008	Petition Entered		0
38	04-12-2008	Date Forwarded to Examiner		0
37	03-21-2008	Response after Non-Final Action		0
36	01-23-2008	Mail Non-Final Rejection	443	0.5
35	01-22-2008	Non-Final Rejection		0
33	10-19-2005	Information Disclosure Statement considered		0
32	06-18-2007	Information Disclosure Statement considered		0
31	10-04-2007	Case Docketed to Examiner in GAU		0
30	10-19-2005	Reference capture on IDS		0
29	10-19-2005	Information Disclosure Statement (IDS) Filed		0
28	06-18-2007	Reference capture on IDS		0
27	06-18-2007	Information Disclosure Statement (IDS) Filed		0
22	06-18-2007	Information Disclosure Statement (IDS) Filed		0
21	10-19-2005	Information Disclosure Statement (IDS) Filed		0
20	05-14-2007	Correspondence Address Change		0
19	03-08-2007	PG-Pub Issue Notification		0
18	12-01-2006	IFW TSS Processing by Tech Center Complete		0
17	10-17-2006	Correspondence Address Change		0
16	10-17-2006	Change in Power of Attorney (May Include Associate POA)		0
15	09-07-2006	Rescind Nonpublication Request for Pre Grant Publication		0
14	02-13-2006	Correspondence Address Change		0
13	10-13-2005	New or Additional Drawing Filed		0
12	10-04-2005	Application Return from OIPE		0
11	10-04-2005	Application Is Now Complete		0
10	10-04-2005	Application Return TO OIPE		0
9	10-04-2005	Application Dispatched from OIPE		0
8	10-04-2005	Application Is Now Complete		0
6	09-06-2005	PGPubs nonPub Request		0
4	09-29-2005	Cleared by L&R (LARS)		0

3	09-22-2005	Referred to Level 2 (LARS) by OIPE CSR	0
2	09-17-2005	IFW Scan & PACR Auto Security Review	0
1	09-06-2005	Initial Exam Team nn	0
0.5	09-06-2005	Filing date	0

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MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP
300 S WACKER DRIVE
32ND FLOOR
CHICAGO IL 60606

In re Application of	:	
Cooper, et al.	:	
Application No. 11/221,298	:	ON PETITION
Filed: September 7, 2005	:	
Attorney Docket No. E3691-00193	:	

This is a decision on the petition to revive under 37 CFR 1.137(b), filed June 2, 2011.

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

The above-identified application became abandoned for failure to timely file a corrected drawing figure as required by the Notice to File Corrected Application Papers, mailed February 8, 2011. This Notice set a non-extendable period for reply of two months. No corrected drawing figure having been received, the application became abandoned on April 9, 2011. The Office mailed a Notice of Abandonment on May 2, 2011.

With the instant petition, applicants paid the petition fee, made the proper statement of unintentional delay, and submitted the required reply in the form of a corrected drawing Figure 26.

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

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

Cliff Congo
Petitions Attorney
Office of Petitions

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LEE & HAYES, PLLC
601 W RIVERSIDE
SUITE 1400
SPOKANE, WA 99201

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FEB 28 2011

OFFICE OF PETITIONS

In re Application of	:	
COHEN, Alexander J. et al.	:	
Application No. 11/221,396	:	DECISION ON PETITION
Filed: September 07, 2005	:	TO WITHDRAW
Attorney Docket No. **QQ1 - 0040US**	:	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 25, 2011.

The request is **MOOT**.

A review of the file record indicates that the power of attorney to LEE & HAYES, PLLC has been previously changed. 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 Tredelle Jackson at 571-272-2783.

/Tredelle D. Jackson/
Paralegal Specialist
Office of Petitions

cc: **MARGARET ANDERSON**
106 E. 6TH STREET, SUITE 900
AUSTIN TX 78701

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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. COHNE, ET AL.	:	
Application No. 11/221,421	:	DECISION ON PETITION
Filed: September 7, 2005	:	TO WITHDRAW
Attorney Docket No. **QQ1-0118US**	:	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
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SPOKANE, WA 99201

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Iandiorio Teska & Coleman
255 Bear Hill Road
Waltham MA 02451

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DEC 09 2011
OFFICE OF PETITIONS

In re Application of :
Wotton :
Application No. 11/221,471 : DECISION ON PETITION
Filed: September 8, 2005 :
Attorney Docket No.SECUROS-1093 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 28, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This above-identified application became abandoned for failure to timely file a reply to a non-final Office action mailed March 16, 2011. The Office Action set a three (3) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on June 17, 2011. A Notice of Abandonment was mailed on November 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 an amendment (2) the petition fee of $1860.00, 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 3733 for appropriate action by the Examiner in the normal course of business on the reply received

Charlema Grant
Attorney Advisor
Office of Petitions

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MAY 10 2011
OFFICE OF PETITIONS

In re Application of

Simske, et al. :
:
Application No. 11/221,562
: DECISION ON PETITION
Filed: September 7, 2005
:
Attorney Docket No. **200503694-1**

This is a decision on the petition under 37 CFR §1.137(b), March 23, 2011, to revive the above-identified application.

The petition is **granted**.

This application became abandoned for failure to timely remit the issue fee of $1,510.00 and publication fee of $300.00 as required by the Notice of Allowance and Issue Fee Due (the "Notice") mailed November 30, 2010. The Notice set forth a three (3) month statutory period for reply. No response was received within the allowable period. Accordingly, this application became abandoned on March 1, 2011. A Notice of Abandonment was mailed March 17, 2011.

The issue fee and publication fee were received March 23, 2011.

Form PTOL-85B, filed March 23, 2011, is noted.

Deposit account 08-2025 will be charged $1,620.00 for the petition fee.

The application is being directed to the Office of Data Management for further processing.

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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JUN 21 2011
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STEVEN W. FERGUSON, MD, CMD
P. O. BOX 69
105 COMMERCE STREET
POWELLSVILLE NC 27967

In re Application of	:	
Steve Wallace FERGUSON	:	ON PETITION
Application No. 11/221,652	:	
Filed: September 7, 2005	:	

This is a decision on the petition under 37 CFR 1.137(b), filed May 3, 2011, to revive the above-identified application.

The petition is **DISMISSED**.

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

The application became abandoned for failure to reply in a timely manner to the nonfinal Office action mailed January 28, 2009, which set a shortened statutory period for reply of three (3) months. The application became abandoned on April 29, 2009. A Notice of Abandonment was mailed September 30, 2009.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). The instant petition lacks item (1).

Regarding item (1), petitioner has failed to sign the Response.

Petitioner may wish to consider hiring a registered patent attorney or agent to assist in the prosecution of this application. Additionally, petitioner is encouraged to contact the Inventors Assistance Center (IAC) by telephone at 800-786-9199 or 571-272-1000, Monday through Friday from 8:30AM to 5:30PM (EST). The IAC provides patent

information and services to the public and is staffed by former Supervisory Patent Examiners and experience Primary Examiners who answer general questions concerning patent examining policy and procedure.

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

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

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

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

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

Telephone inquiries related to this decision may be directed to Robert DeWitty, Petitions Attorney, Office of Petitions at (571) 272-8427.

David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED
AUG 29 2011
OFFICE OF PETITIONS

STEVEN W. FERGUSON, MD, CMD
P. O. BOX 69
105 COMMERCE STREET
POWELLSVILLE NC 27967

In re Application of	:	
Steve Wallace FERGUSON	:	ON PETITION
Application No. 11/221,652	:	
Filed: September 7, 2005	:	

This is in response to the renewed petition under 37 CFR 1.137(b), filed August 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 nonfinal Office action mailed January 28, 2009 (outstanding Office action), which set a shortened statutory period for reply of three (3) months. The application became abandoned on April 29, 2009. A Notice of Abandonment was mailed September 30, 2009.

The petition satisfies the conditions for revival pursuant to 37 CFR 1.137(b) by including (1) a reply in the form of a Response to the outstanding Office action mailed January 28, 2009, (2) a petition fee of $810, and (3) a statement of unintentional delay. The reply to the outstanding Office action is accepted as having been unintentionally delayed.

Telephone inquires regarding this decision should be directed to Robert DeWitty, Petitions Attorney, Office of Petitions (571-272-8427).

The application will be referred to Technology Center Art Unit 1617 for further action on the filed Response.

Rajneesh Krishnamurthy
for Anthony Knight
Director
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

ANGIODYNAMICS, INC.
14 PLAZA DRIVE
LATHAM, NY 12110

MAILED
AUG 09 2011
OFFICE OF PETITIONS

In re Patent No. **7,329,236**	:	
Issue Date: February 12, 2008	:	
Application No. 11/221,679	:	NOTICE UNDER 37 CFR 1.28(c)
Filed: September 7, 2005	:	
Attorney Docket No. **FLO-001B CIP 2**	:	

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.

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-7253.

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

cc: **KENDAL M. SHEETS**
CPA GLOBAL
2318 MILL ROAD, SUITE 12 FLOOR
ALEXANDRIA, VA 22314

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.
11/221,704	09/09/2005	Taro Ikeda	278134US26 CIP	7149

22850 7590 10/18/2010
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER
KACKAR, RAM N

ART UNIT	PAPER NUMBER
1716	

NOTIFICATION DATE	DELIVERY MODE
10/18/2010	ELECTRONIC

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

OCT 18 2010

wk

Mailed :	:	
In re Application of	:	DECISION ON
Ikeda et al.	:	PETITION
Serial No. 11/221,704	:	
Filed: September 9, 2005		
For: SUBSTRATE SUPPORTING STRUCTURE FOR SEMICONDUCTOR PROCESSING, AND PLASMA PROCESSING DEVICE		

This is a decision on the PETITION FILED UNDER 37 CFR 1.181 on July 16, 2010 to consider the Information Disclosure Statement (IDS) that was filed on September 9, 2005. The Examiner did consider the IDS however the reference listed under 'AA" was not initialled nor crossed out

DECISION

Accordingly, the petition is **GRANTED**.

The Examiner is requested to consider the reference"AA" on the IDS that was filed September 9, 2005 and to make of record the consideration of that reference.

/SHARON GIBSON/
Director, Technology Center 1700
Chemical and Materials Engineering

Steven P. Weihrouch
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA VA 22314

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.
11/221,704	09/09/2005	Taro Ikeda	278134US26 CIP	7149

22850 7590 11/05/2010
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER
KACKAR, RAM N

ART UNIT	PAPER NUMBER
1716	

NOTIFICATION DATE	DELIVERY MODE
11/05/2010	ELECTRONIC

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

NOV 05 2010

wk

Mailed :	:	
In re Application of	:	DECISION ON
Ikeda et al.	:	PETITION
Serial No. 11/221,704	:	
Filed: September 9, 2005		
For: SUBSTRATE SUPPORTING STRUCTURE FOR SEMICONDUCTOR PROCESSING, AND PLASMA PROCESSING DEVICE		

This is a decision on the PETITION FILED UNDER 37 CFR 1.181 on July 16, 2010 to consider the Information Disclosure Statement (IDS) that was filed on September 9, 2005. The Examiner did consider the IDS however the reference listed under 'AA" was not initialled nor crossed out

DECISION

Accordingly, the petition is **GRANTED**.

The Examiner is requested to consider the reference"AA" on the IDS that was filed September 9, 2005 and to make of record the consideration of that reference.

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

Steven P. Weihrouch
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA VA 22314

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MAILED
OCT 08 2010
OFFICE OF PETITIONS

KELLER LAPUMA WOODARD PC - IV
15154 PINECREST DRIVE
COUNCIL BLUFFS, IA 51503

In re Application of	:	
Edward K.Y. Jung, et al.	:	
Application No. 11/222,031	:	ON PETITION
Filed: September 8, 2005	:	
Attorney Docket No.: 0605-002-002-000000	:	

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

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of January 28, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). In view of the 3-month extension of time on July 23, 2010, the application became abandoned on July 28, 2010. A Notice of Abandonment was mailed on August 18, 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) under 37 CFR 1.114, including the fee of $810; (2) the petition fee of $1,620; and (3) an adequate statement of unintentional delay.

This application is being referred to Technology Center AU 1631 for processing in the normal course of business of the RCE in accordance with 37 CFR 1.114.

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

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No.

AT&T Legal Department - AS
Attn: Patent Docketing
Room 2A-207
One AT&T Way
Bedminster NJ 07921

MAILED
JUN 17 2011
OFFICE OF PETITIONS

In re Patent No. 7,756,253	:	
Issue Date: July 13, 2010	:	
Application No. 11/222,068	:	ON PETITION
Filed: September 8, 2005	:	
Attorney Docket No. 50053	:	
(7785-450)	:	

This is in response to the PETITION UNDER 37 CFR 3.81(b) AND REQUEST FOR CERTIFICATE OF CORRECTION filed March 25, 2011, which is properly treated as a request under 37 CFR 3.81(b) to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

Pursuant to the issue fee transmittal filed May 27, 2010, the patent issued in the name of assignee "AT&T Intellectual Property II, LP, Reno, NV (US)." Patentee files this request, requesting that the name of the assignee be corrected to "AT&T Intellectual Property I, LP, Atlanta, GA (US)" and submits a certificate of correction for this purpose.

Patentee's evidence and Office records show that the assignment of the above-identified application to "AT&T Intellectual Property I, LP, Atlanta, GA (US) was recorded on September 26, 2008. The recording of the assignment (Reel/Frame 021594/0001) occurred before payment of the issue fee on May 27, 2010 and before issuance of the patent on July 13, 2010.

Receipt of the required $100 certificate of correction fee and the required $130 processing fee is acknowledged.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3219. 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 has been notified of this decision granting the petition under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction to correct the Assignee data.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 5/10/10 Paper No.: ——

TO SPE OF : ART UNIT 1796

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/222077 Patent No.: 7381767 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: The supplemental IDS filed on 2/13/06 was considered and mailed to applicant in the non-final on 10/9/07. Applicant responded on 10/24/07 and the issue fee was paid on 4/14/08. Applicant had ample opportunity to review the record and there is no evidence of error, either "attributed to the Office" or otherwise. Therefore, the consideration and entry of the art is not proper

Q. Wu AU 1762

UNITED STATES PATENT AND TRADEMARK OFFICE

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

April 12, 2011

Lucas K. Shay
E.I. DuPont de Nemours and Company
4417 Lancaster Pike
Wilmington DE 19805

Patent No: 7,381,767 B2
Application No: 11/222,077
Applicant: Xiyun Serene Fan, et al.
Issued: June 3, 2008
Title: **ETHYLENE COPOLYMER MODIFIED POLYPROPYLENE AND SHAPED ARTICLES**

Request for Certificate of Correction:

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

The errors complained of in your request cannot be corrected since: "per the examiner, the supplemental IDS filed 02/13/06 was considered and mailed to applicant in the non-final on 10/09/07. Applicant responded on 10/24/07, and the issue fee was paid on 04/14/08. Applicant had ample opportunity to review the record and there is no evidence of error, either attributed to the office or otherwise. Therefore, the consideration and entry of the art is not proper".

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

Further correspondence concerning this matter should be filed and directed to Decisions & Certificates of Correction Branch.

/Virginia Tolbert/
Virginia Tolbert
For Mary Diggs, Supervisor
Decisions and Certificate of Correction
(571) 272-0460 (voice)
(571) 270-9892 (fax)

vt

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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PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK NJ 08933-7003

MAILED

FEB 01 2011

OFFICE OF PETITIONS

In re Application of	:	
Shanley et al.	:	
Application No. 11/222,202	:	DECISION ON PETITION
Filed: September 7, 2005	:	
Attorney Docket No. CMI5001USCNT18	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 9, 2007, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before April 4, 2007, as required by the Notice of Allowance and Fee(s) Due mailed January 4, 2007. Accordingly, the date of abandonment of this application is April 5, 2007. A Notice of Abandonment was mailed May 1, 2007.

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 $1,400.00 and the publication fee of $300.00, (2) the petition fee of $1,500.00; and (3) a proper statement of unintentional delay.

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

Further, 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.

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

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

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: Cindy A. Lynch
1003 Hamilton Court
Menlo Park, CA 94025

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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PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK, NJ 08933-7003

MAILED

MAR 02 2011

OFFICE OF PETITIONS

In re Application of :
John F. Shanley et al :
Application No. 11/222,202 :
Filed: September 7, 2005 :
Attorney Docket No. EXPANDABLE MEDICAL DEVICE FOR DELIVERY OF BENEFICIAL AGENT

ON PETITION

This is a decision on the petition, filed March 1, 2011 under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on May 9, 2007 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 3738 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

/Irvin Dingle/
Irvin Dingle
Petitions Examiner
Office of Petitions

---

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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NORTON ROSE OR LLP
1, PLACE VILLE MARIE
SUITE 2500
MONTREAL QC H3B 1R1 CA CANADA

MAILED
JUL 29 2011
OFFICE OF PETITIONS

In re Application of	:	
Mark Bonner	:	
Application No. 11/222,244	:	DECISION ON PETITION
Filed: September 8, 2005	:	
Attorney Docket No. CA 007P01(NR55528402	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 13, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a proper and timely manner to the final Office action mailed, April 16, 2010, which set a shortened statutory period for reply of three (3) months. A three-month extension of time under the provisions of 37 CFR 1.136(a) was timely obtained. Accordingly, the application became abandoned on October 19, 2010. A Notice of Abandonment was mailed November 24, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $405.00 and the submission required by 37 CFR 1.114; (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 matter is being referred to Technology Center AU 3754 for processing of the Request for Continued Examination under 37 CFR 1.114 and the Amendment filed with the instant petition.

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAILED
AUG 18 2011
OFFICE OF PETITIONS

LAW OFFICE OF ROBERT M. WALLACE
2112 EASTMAN AVENUE, SUITE 102
VENTURA CA 93003

In re Application of	:	
BROWN, et al	:	
Application No. 11/222,248	:	ON PETITION
Filed: September 7, 2005	:	
Attorney Docket No.	:	
009383/USA/P/Y5/MDP/COPPE		

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

The petition is **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 October 6, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) for were obtained. Accordingly, the date of abandonment of this application is January 7, 2011. A Notice of Abandonment was mailed June 21, 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(s) (3).

With respect to item (3): The instant petition filed July 15, 2011, does not include a date of execution for the statement of unintentional delay. Since the date has been omitted, the Office cannot determine when the statement was signed. In this regard, the date of execution of the statement of unintentional delay is in question, the petition does not meet the requirement as set out in 37 CFR 1.137(b) and cannot be granted at this time.

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
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LAW OFFICE OF ROBERT M. WALLACE
2112 EASTMAN AVENUE, SUITE 102
VENTURA CA 93003

MAILED
SEP 09 2011
OFFICE OF PETITIONS

In re Application of	:	
BROWN, et al	:	
Application No. 11/222,248	:	ON PETITION
Filed: September 7, 2005	:	
Attorney Docket No.	:	
009383/USA/P/Y5/MDP/COPPE		

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed September 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 October 6, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) for were obtained. Accordingly, the date of abandonment of this application is January 7, 2011. A Notice of Abandonment was mailed June 21, 2011.

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

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

This application is being referred to Technology Center AU 1723 for processing of the RCE and for appropriate action by the Examiner in the normal course of business.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

PHILLIP S. SCHAENGOLD
9 Riverwatch Ln
Savannah GA 31411

MAILED

JAN 03 2011

OFFICE OF PETITIONS

In re Application of Phillip S. Schaengold Application No. 11/222,389 Filed: September 8, 2005 Attorney Docket No. **438P2251**	: : : : :	DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 14, 2010, to revive the above-identified application.

The petition is **GRANTED**.

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

This application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of April 27, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is July 28, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Notice of Appeal; (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 2612 to await the filing of an appeal brief or for such other appropriate reply as may be submitted to continue prosecution of the application.

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

INNOVATION COUNSEL LLP
2171 STEVENS CREEK BLVD
STE. 200A
CUPERTINO CA 95014

MAILED
JUL 11 2011
OFFICE OF PETITIONS

In re Application of	:	
Haeng-Won Park et al	:	
Application No. 11/222,799	:	DECISION GRANTING PETITION
Filed: September 12, 2005	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. PANK01577 US	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed July 8, 2011, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on June 20, 2011 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 2629 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed IDS.

/Karen Creasy/
Karen Creasy
Petitions Examiner
Office of Petitions

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 9/2/10

TO SPE OF : ART UNIT 3617

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/222917 Patent No.: 7523893 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 requested changes proposed in the Request for Certificate of Correction have been approved. /ml/ 9/21/2010

/ S. Joseph Morano/ AU 3617

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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

MAILED

FEB 29 2012

OFFICE OF PETITIONS

In re Application of

Oshima, et al.

Application No. 11/223,005

Filed: September12, 2005

Attorney Docket No. 1086.1242

DECISION ON PETITION

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181(a), filed February 6, 2012.

The petition is **granted**.

This application was held abandoned on July 14, 2011, after no reply was received to the non-final Office action mailed April 13, 2011. The notice set forth a shortened statutory period of reply of three months from its mailing date. No response was received within the allowable period and the application became abandoned on July 14, 2011. A Notice of Abandonment was mailed December 5, 2011. The instant petition was filed on February 6, 2012. Petitioner maintains that the notice of April 13, 2011, was never received.

When, as in this case petitioner is arguing that an Office communication was not received, petitioner must establish non-receipt of the Office communication in accordance with section 711.03(c) of the *Manual of Patent Examining Procedure* that requires the following:

> To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

> Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

Petitioner has met the burden of proof as established by Section 711.03(c)(II) of the MPEP. The holding of abandonment is, therefore, withdrawn.

The application file is being forwarded to Technology Center 2100, GAU 2186 for further processing that will include remailing the non-final Office action and resetting of the period for reply.

Questions concerning this decision should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

BRADLEY N. RUBEN
503 MITCHELL COURT
CHAMPAIGN, IL 61821-3535

MAILED
FEB 17 2011
OFFICE OF PETITIONS

In re Application of	:	
Per Marin, et al.	:	
Application No. 11/223,074	:	ON PETITION
Filed: September 10, 2005	:	
Attorney Docket No.: 106FD-001D	:	

This is a decision on the renewed petition under 37 CFR 1.137(a), filed November 26, 2010, to revive the above-identified application.

The petition is **DISMISSED.**

This application became abandoned on November 14, 2009, for a failure to timely submit the issue and publication fees in response to the Notice of Allowance and Issue Fee Due mailed on August 13, 2009, which set a three (3) month statutory period for reply. A Notice of Abandonment was subsequently mailed on December 1, 2009. On December 11, 2009 and May 17, 2010, a petition to revive under the provisions of 37 CFR 1.137(a) was filed; however, the petitions were dismissed in a decisions mailed March 18, 2010 and June 30, 2010, respectively. On November 26, 2010, the present petition was filed.

Petitioner asserts that the delay was unavoidable because of a clerical error when creating the PTOL-85. Petitioner explains "[a]s in the normal and customary course for my practice, the PTOL-85 received from the Office is scanned into ACROBAT (or a PDF is downloaded from PAIR) and the undersigned creates text fields in ACROBAT with default value for each field (rather than exiting the text field mode and 'filing out' the form. However, for text boxes, if the size of the box does not accommodate the font size chosen, the default value does not print, as in the present situation. The sizing of the text box is purely clerical task, and it was in performing this task that the error occurred."

A grantable petition under 37 CFR 1.137(a) must be accompanied by:

> (1) The reply required to the outstanding Office action or notice, unless previously filed; (2) The petition fee as set forth in § 1.17(l); (3) A showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was

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

The petition lacks item (3) above.

As noted in the previous decision, the Office has adopted the reasonably prudent person standard in determining if the delay was unavoidable:

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

The showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.137(a). Specifically, an application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure or mail, telegraph, telefacsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office.[2]

With regard to petitioner's contention that the failure to include a form of payment on the form was a clerical error, this point is not well taken because petitioner's registered patent attorney concededly prepared the form himself and signed it. Whether the failure to include the fee authorization occurred due to a clerical error is immaterial because the form was prepared and signed by petitioner's registered patent attorney.

While petitioner is correct that a clerical error may constitute unavoidable delay, the error in this case is a mistake by counsel himself rather than a clerical error by a reliable and trusted employee. Mistakes by an attorney, unlike those of an employee of counsel, are not a source of unavoidable error.

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[1] In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm=r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff=d, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm=r Pat. 139, 141 (1913). In addition, decisions on revival are made on a Acase-by-case basis, taking all the facts and circumstances into account.@ Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was Aunavoidable.@ Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

[2] Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).

The U.S. Patent and Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and applicant is bound by the consequences of those actions or inactions.[3] Specifically, petitioner's delay caused by the mistakes or negligence of his voluntarily chosen representative does not constitute unavoidable delay within the meaning of 35 U.S.C. § 133.[4]

In summary, the showing of record is that the abandonment resulted from a mistake on the part of petitioner's counsel in failing to ensure that a proper means for the timely payment of the issue and publication fees was listed on the form, rather than as a result of unavoidable delay in submitting the payment.

As the showing presented is insufficient to establish unavoidable delay within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a), the petition must be dismissed.

ALTERNATIVE VENUE

Petitioner may wish to consider filing a petition under 37 CFR 1.137(b),[5] which now provides that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b).

The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including

---

[3] Link v. Wabash, 370 U.S. 626, 633-34 (1962).

[4] Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N. D. Ind. 1987); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm=r Pat. 130, 131 (Comm=r Pat. 1891).

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

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with ' 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(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)).

the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to revival of this application should be filed within **TWO (2) MONTHS** from the mail date of this decision and 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[6]

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

[6] www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

UNITED STATES PATENT AND TRADEMARK OFFICE

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

BRADLEY N. RUBEN
503 MITCHELL COURT
CHAMPAIGN, IL 61821-3535

MAILED
MAY 12 2011
OFFICE OF PETITIONS

In re Application of
Per Marin
Application No. 11/223,074
Filed: September 10, 2005
Attorney Docket No.: 106FD-001D

ON PETITION

This is a decision on the petition, filed April 25, 2011, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is GRANTED.

This application became abandoned for failure to timely pay the issue fee and publication fee on or before November 13, 2009, as required by the Notice of Allowance and Fee(s) Due, mailed August 13, 2009. A Notice of Abandonment was subsequently mailed on December 1, 2009.

The present 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) an adequate statement of unintentional delay[1].

It is noted that the requisite issue fee was paid on December 11, 2009, with a previously filed petition under the provisions of 37 CFR 1.181. Accordingly, the issue fee payment of $755 submitted with the present petition is being refunded to counsel's deposit account.

The application is being referred to the Office of Data Management to be processed into a patent.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing as a patent should be directed to (571) 272-4200.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

[1] 37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. While the statement is not made by an attorney of record, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

UNITED STATES PATENT AND TRADEMARK OFFICE

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.
11/223,138	09/12/2005	Ashit Gandhi	85804-016201	6637

7590 09/21/2010
YAHOO! INC. C/O GREENBERG TRAURIG, LLP
MET LIFE BUILDING
200 PARK AVENUE
NEW YORK, NY 10166

EXAMINER
MESA, JOEL

ART UNIT	PAPER NUMBER
2447	

NOTIFICATION DATE	DELIVERY MODE
09/21/2010	ELECTRONIC

DECISION DISMISSING PETITION UNDER 37 CFR 1.138(d)

The declaration of express abandonment will not be recognized

This is in response to the petition under 37 CFR 1.138(d), requesting for a refund of any previously paid search fee and excess claims fee in the above-identified application.

The petition is dismissed.

The express abandonment will **not** be recognized for the reason(s) indicated below:

1. ☑ The petition was not filed in sufficient time to permit the appropriate officials to recognize the abandonment before an examination has been made of the application. See 37 CFR 1.138(d).
2. ☐ The petition was not signed by a party authorized by 37 CFR 1.33(b)(1), (3) or (4).
3. ☐ The application is not an application filed under 35 U.S.C. 111(a) on or after December 8, 2004.
4. ☐ The petition for express abandonment under 1.138(d) is dismissed because the applicant did not pay any search fee and excess claims fees in the above-identified application.

Telephone inquiries should be directed to the Office of Data Management at (571) 272-4200.

Mimi Harmes

Patent Publication Branch
Office of Data Management

FORM PET651D (Rev. 08/07)

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 06/05/10

TO SPE OF : ART UNIT 1792

SUBJECT : Request for Certificate of Correction for Appl. No.: 11223158 Patent No.: 7383696

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

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

Lamonte Newsome

Certificates of Correction Branch

703-756-1574

Thank You For Your Assistance

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

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

Comments: The request is appropriate and does not introduce new matter.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

/Barbara Gilliam/ _1710_

SPE Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO. : 7383696 B2
APPLICATION NO. : 11/223,158
ISSUE DATE : 06/10/08
INVENTOR(S) : **Kemmochi , et al.**

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

The drawing sheet, consisting of Fig. 7B should be deleted to be replaced with the drawing sheet, consisting of Fig. 7B, as shown on the attached pages.

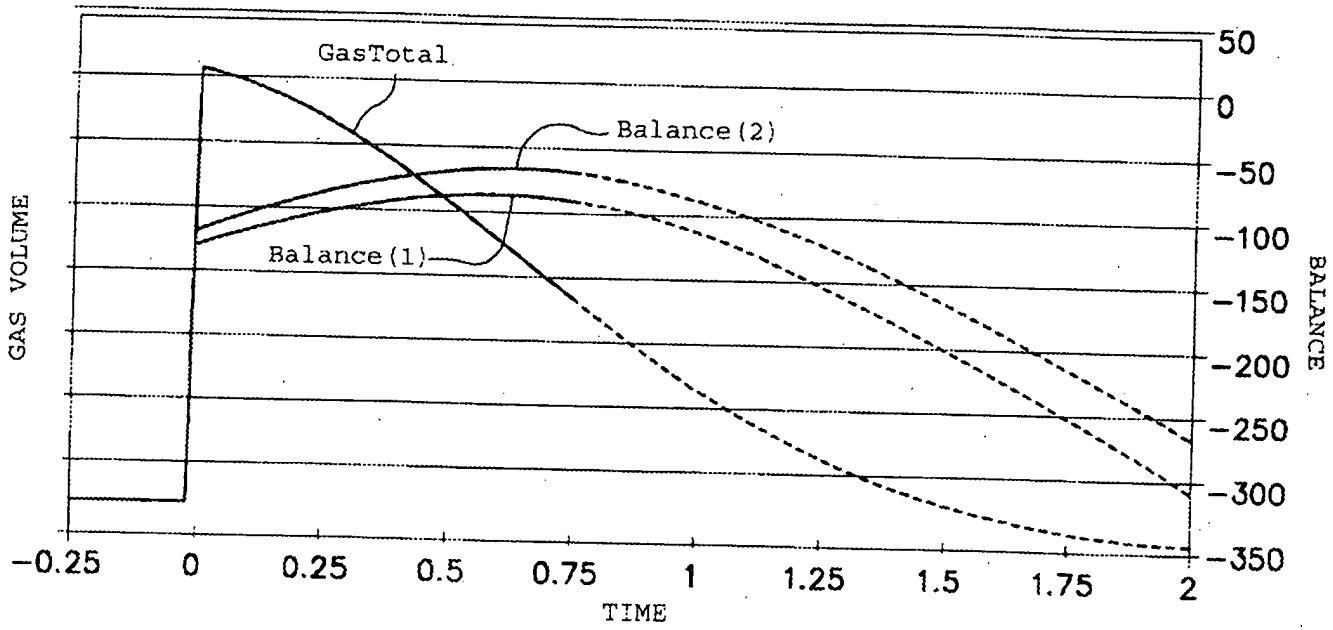
GasTotal
Balance(2)
Balance(1)
GAS VOLUME
BALANCE
TIME
50
0
−50
−100
−150
−200
−250
−300
−350
−0.25
0
0.25
0.5
0.75
1
1.25
1.5
1.75
2

FIG.7B

PATENT
450100-4072.2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

U.S. Patent No.: 7,881,373

Issue Date: February 1, 2011

Inventors: Kanji MIHARA et al.

745 Fifth Avenue
New York, NY 10151

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this correspondence is being transmitted via Electronic Filing Services on June 9, 2011

Maria Lapitan
(Typed or printed name of person signing transmittal)

MLapitan
(Signature of person signing transmittal)

REQUEST FOR CERTIFICATE OF CORRECTION UNDER 37 C.F.R. §1.322

Mail Stop Patent Correction Branch
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

On reviewing the above-identified patent, an error or omission has been noted in the printing thereof. The priority data is omitted. The error is attributed to the Office (37 C.F.R. §1.322). Enclosed is a copy of the filing receipt listing the priority data. Please correct the error as follows:

Please correct the following sections of the patent to read as follows:

--(63) **Related U.S. Application Data**

Continuation of application No. 10/045,576, filed on Mar. 20, 2001, now Pat. No. 7,050,495, which is a continuation of application No. 08/909,448, filed on Aug. 11, 1997, now Pat. No. 6,337,879.

(30) **Foreign Application Priority Data**

August 14, 1996	JP	08-214707
August 30, 1996	JP	08-229651--.

Since the error is attributed solely to the Office, it is believed that no fee is due. However, if a fee is required, the Commissioner is authorized to charge such fee to Deposit Account No. 50-0320.

An early notice that this Request has been granted is earnestly requested.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP
Attorneys for Applicants

By: William S. Frommer
Reg. No. 25,506
Tel. (212) 588-0800

Enclosure

PTO/SB/44 (09-07)
Approved for use through 08/31/2010. OMB 0651-0033
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,881,373

APPLICATION NO. : 11/223,162

ISSUE DATE : February 1, 2011

INVENTORS : Kanji MIHARA 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:

Title page Add

Item

--(63) Related U.S. Application Data

Continuation of application No. 10/045,576, filed on Mar. 20, 2001, now Pat. No. 7,050,495, which is a continuation of application No. 08/909,448, filed on Aug. 11, 1997, now Pat. No. 6,337,879.

(30) Foreign Application Priority Data

August 14, 1996	JP	08-214707
August 30, 1996	JP	08-229651--.

MAILING ADDRESS OF SENDER (Please do not use customer number below):

William S. Frommer, Esq.
Frommer Lawrence & Haug LLP
745 Fifth Avenue
New York, New York 10151

This collection of information is required by 37 CFR 1.322, 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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

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United States Patent and Trademark Office
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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
11/223,162	09/08/2005	2621	1850	450100-4072.2	16	11	6

CONFIRMATION NO. 8903

FILING RECEIPT

OC000000017212475

20999
FROMMER LAWRENCE & HAUG
745 FIFTH AVENUE- 10TH FL.
NEW YORK, NY 10151

DOCKETED

Date Mailed: 10/11/2005

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please mail to the Commissioner for Patents P.O. Box 1450 Alexandria Va 22313-1450. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).**

Applicant(s)

Kanji Mihara, Kanagawa, JAPAN;
Takuya Kitamura, Kanagawa, JAPAN;
Takao Suzuki, Kanagawa, JAPAN;

Power of Attorney:

William Frommer--25506

Domestic Priority data as claimed by applicant

This application is a CON of 10/045,576 03/20/2001

Foreign Applications

JAPAN 08-214707 08/14/1996
JAPAN 08-229651 08/30/1996

If Required, Foreign Filing License Granted: 10/07/2005

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US11/223,162

Projected Publication Date: To Be Determined - pending completion of Corrected Papers

Non-Publication Request: No

2005 OCT 13 A 9:33
FROMMER LAWRENCE & HAUG LLP

Early Publication Request: No

Title

Video data compression apparatus and method of same

Preliminary Class

382

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

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NOT GRANTED

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 6/15/2011

TO SPE OF : ART UNIT 2482

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/223162 Patent No.: 7881373 B2

CofC mailroom date: 6/9/2011

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: _____

_____

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: _____

/Chris Kelley/ — **SPE**

2482 — **Art Unit**

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Orum & Roth LLC
Suite 1616
53 W Jackson Boulevard
Chicago IL 60604-3606

MAILED
FEB 14 2011
OFFICE OF PETITIONS

In re Application of	:	
Mitsuo Saito et al.	:	
Application No. 11/223,183	:	DECISION ON PETITION
Filed: September 9, 2005	:	
Attorney Docket No. 14222	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 16, 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 May 25, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed February 25, 2010. Accordingly, the date of abandonment of this application is May 26, 2010. A Notice of Abandonment was mailed on June 16, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,510 and the publication fee of $300, (2) the petition fee of $1,620, and (3) a proper statement of unintentional delay. Accordingly, the issue and publication fees 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 A. Inabinet/

Kimberly A. Inabinet
Petitions Examiner
Office of Petitions

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ST. ONGE STEWARD JOHNSTON & REENS, LLC
986 BEDFORD STREET
STAMFORD CT 06905-5619

MAILED

DEC 14 2010

OFFICE OF PETITIONS

In re Application of :
Wesley W. Whitmyer, Jr. :
Application No. 11/223,335 :
Patent No. 7,647,364 :
Filed: September 09, 2005 :
Attorney Docket No. 03000-P0003D

NOTICE

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

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-2783.

/Tredelle D. Jackson/
Paralegal Specialist
Office of Petitions

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STONEMAN LAW PATENT GROUP
P.O. BOX 40070
PHOENIX AZ 85067-0070

MAILED
AUG 02 2011
OFFICE OF PETITIONS

In re Patent No. 7,617,445	:	
Issued: November 10, 2009	:	
Application No. 11/223,342	:	ON PETITION
Filed: September 9, 2005	:	
Attorney Docket No. P08168-T	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed June 24, 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**.

Additionally, petitioner has submitted an unnecessary additional $100.00 towards the current $810.00 Request For Continued Prosecution (RCE) fee. This amount will be refunded to petitioner's credit card in due course.

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

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Leyendecker & Lemire, LLC
Suite 280
9137 E Mineral Circle
Centennial CO 80112

MAILED
JUN 03 2011
OFFICE OF PETITIONS

In re Patent No. 7,180,015	:	
Issue Date: February 20, 2007	:	
Application No. 11/223,424	:	ON PETITION
Filed: September 9, 2005	:	
Attorney Docket No. **DHO-001**	:	

This is a decision on the petition under 37 CFR 1.378(c), filed May 17, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired at midnight February 20, 2011, for failure to pay the 3½ year maintenance fee. Since this petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

The 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 JoAnne Burke at (571) 272-4584.

JoAnne Burke
Petitions Examiner
Office of Petitions

cc: Douglas A. Hudson
19348 West 56th Lane
Golden, CO 80403

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HAROLD C. MOORE
MAGINOT, MOORE & BECK
BANK ONE CENTER/TOWER
111 MONUMENT CIRCLE, SUITE 3000
INDIANAPOLIS, IN 46204

MAILED

AUG 02 2010

OFFICE OF PETITIONS

In re Application of	:	
Gunnar HAGEN	:	
Application No. 11/223,808	:	DECISION ON PETITION
Filed: September 9, 2005	:	TO WITHDRAW
Attorney Docket No. 1890-0300	:	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 2, 2010.

The request is **NOT APPROVED because it is moot**.

A review of the file record indicates that the power of attorney to Maginot, Moore & Beck, has been revoked by the assignee of the patent application on July 8, 2010. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No.

THE INVENTION SCIENCE FUND
CLARENCE T. TEGREENE
11235 SE 6TH STREET
SUITE 200
BELLEVUE WA 98004

MAILED
JUL 07 2011
OFFICE OF PETITIONS

In re Application of	:	
Ferren et al.	:	
Application No. 11/223,899	:	
In re Patent No. 7,770,028	:	DECISION ON PETITION
Filing Date: September 9, 2005	:	PURSUANT TO 37 C.F.R.
Issue Date: August 3, 2010	:	§ 3.81(B)
Attorney Docket Number: 1103-	:	
006-008A-000000	:	
Title: LIMITED USE DATA STORING	:	
DEVICE	:	

This is a decision on the petition pursuant to 37 C.F.R. § 3.81(b), filed March 18, 2011, to correct the Assignee's information on the Issue Fee Transmittal Form PTOL-85(b).

The petition is **GRANTED** to the extent that the name of the Assignee will be corrected.

With this petition, Petitioner requests that a Certificate of Correction be issued to correct the assignee information that appears on the face of the patent. Petitioner has requested that the name of the Assignee should be changed from "Invention Science Fund 1, LLC, Bellevue, WA" to "The Invention Science Fund 1, LLC, Bellevue, WA (US)."

37 C.F.R. § 3.81(b), effective June 25, 2004, reads:

> (b) After payment of the issue fee: Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in 3.11 before issuance of the patent, and must include a request for a

> certificate of correction under 1.323 of this chapter (accompanied by the fee set forth in 1.20(a)) and the processing fee set forth in 1.17(i) of this chapter.

Petitioner has set forth that the assignment was submitted for recordation as set forth in 37 C.F.R. § 3.11 before issuance of the patent, and Office records confirm that an assignment was received in the Office on May 13, 2010, listing the Invention Science Fund 1, LLC of Bellevue, WA as the Assignee.

Payment of the required $100 certificate of correction fee and the $130 processing fee is acknowledged.

The Certificates of Correction Branch will be notified of this decision so that the requested Certificate of Correction can be issued, correcting the Assignee information to "The Invention Science Fund 1, LLC, Bellevue, WA (US)."

The Certificates of Correction Branch will note that **the certificate of correction which was included with this petition also requests correction of the text of the patent at column 38, line 7.**

It is noted that the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the address of record. If Petitioner desires to receive future correspondence regarding this patent, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to the address which appears on the petition. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence related to this patent unless Change of Correspondence Address, Patent Form (PTO/SB/123) is submitted for the above-identified patent. For Petitioner's convenience, a blank Change of Correspondence Address, Patent Form (PTO/SB/123), may be found at http://www.uspto.gov/web/forms/sb0123.pdf.

If appropriate, a change of fee address (form PTO/SB/47) and a request for customer number (form PTO/SB/125) should be filed in accordance with Manual of Patent Examining Procedure, section 2540.

A blank fee address form may be found at http://www.uspto.gov/web/forms/sb0047.pdf.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225. Any questions concerning the issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (703) 756-1814.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

cc: DANIEL J. HONZ
SUITER . SWANTZ PC LLO
14301 FNB PARKWAY
SUITE 220
OMAHA, NE 68154-5299

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Marc S. Hanish
THELEN REID & PRIEST LLP
P.O. Box 640640
San Jose CA 95164-0640

MAILED
DEC 28 2010
OFFICE OF PETITIONS

In re Application of	:	
Ryan Riley	:	
Application No. 11/223,906	:	ON PETITION
Filed: September 8, 2005	:	
Attorney Docket No. 035813-0006	:	

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

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of February 9, 2009. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is May 10, 2009. The Notice of Abandonment was mailed November 20, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $405, and the submission required by 37 CFR 1.114; (2) the petition fee of $810; and (3) a proper statement of unintentional delay.

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

in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

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

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

This application is being referred to Technology Center AU 2431 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

cc: **John P. Schaub**
P.O. Box 60610
Palo Alto, CA 94306

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GREENBERG TRAURIG, LLP
MET LIFE BUILDING
200 PARK AVENUE
NEW YORK NY 10166

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AUG 3 1 2010
OFFICE OF PETITIONS

In re Application of :
Burchetta et al :
Application No: 11/224,155 : ON PETITION
Filing Date: September 12, 2005 :
Attorney Docket No: 602097-026 :

This is a decision on the renewed petition filed July 26, 2010, entitled "REQUEST TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION OF MARCH 6, 2009".

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

This application became abandoned for failure to timely reply to the Nonfinal Rejection (Office action) mailed March 6, 2009, which set a statutory period for reply of (3) months. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on September 28, 2009.

Petitioner asserts that the Office action was never received because it was mailed to an incorrect address. However, A review of the record reveals that the Office action was mailed to the address associated with Customer Number **(32361)** provided for in the executed declaration submitted on December 12, 2005.

Petitioner further states that before the mailing of the Office Action, a Revocation and Power of Attorney and Change of Correspondence Address were filed in the Office which changed the

correspondence address to that associated with Customer Number 61834 (DRIER LLP, 499 Park Avenue, New York, NY 10022).

A review of the record reveals that the transmittal form submitted on November 5, 2007, indicate the following papers as being enclosed: Fee Transmittal/Form; Amendment/Reply; Power of Attorney, Revocation; Change of Correspondence Address; Assignment Recordation form attached, and return receipt postcard. However, the Office is not in receipt of the Attorney, Revocation and Change of Correspondence address to have been received on November 5, 2007 as stamped by the USPTO. **Further, the record indicates that prior to the mailing of the Office action on March 6, 2009; a Change of Address was submitted on January 31, 2008, for customer number 61834, which address is: OSTROW KAUFMAN & FRANKL LLP, SUSAN FORMICOLA, THE CRYSLER BUILDING, 405 LEXINGTON AVENUE, 62ND FLOOR, NEW YORK, NY 10174.** The address is different from the address petitioner indicated as the correct address. Further, the change of address submitted on January 31, 2008, was not recognized since it was submitted by an attorney not of record.

Petitioner was encouraged in the Decisions mailed February 17, 2010, and June 8, 2010, to submit a copy of the Power of Attorney/Revocation and Change of Correspondence Address, said to have been submitted on October 30, 2007, with a postcard receipt stamped from the USPTO.

However, petitioner once again submitted with the above petition a copy of a Power of Attorney that was received in Application No. 10/683,821 on **September 1, 2009.** Petitioner also submitted a statement under 37 CFR 3.73(b) signed on **April 12, 2010.** The Power of Attorney is not proper for the instant application.

Further, Petitioner states that "Per the Office's request, Petitioner ***resubmits*** a copy of the Power of Attorney/Revocation and Change of Correspondence Address, **said to have been submitted on October 30, 2007,** with a postcard receipt stamped from the USPTO, noting that the postcard as submitted in the Petition dates October 30, 2007 as shown in PAIR." However, the Copy of the Power of Attorney said to have been submitted on October 30, 2007 is signed by assignee on **August 25, 2009,** which is after the date of **October 30, 2007.** Also, as stated above, the copy of the Power of Attorney is for Application No. 10/683,821 and not the instant application 11/224,155.

Since the Office is not in receipt of the copies of the Power of Attorney/Revocation and Change of Correspondence Address said to have been submitted on October 30, 2007, the Office have no record of knowing if the Power of Attorney/Revocation was proper. Therefore, the requirements in accordance with MPEP 503 have not been met.

In view of the above, the petition under 37 CFR 1.181 to withdraw holding of abandonment is dismissed.

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 $810.00 (small entity) 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).

Petitioner should note that the petition submitted on April 12, 2010, identified Application No. 11/224,115 instead of Application No. 11/224,155.

Further correspondence with respect to this matter should be delivered through one of the following mediums:

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

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

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

By internet: EFS-Web
www.uspto.gov/ebc/efs_help.html
(for help using EFS-Web call the
Patent Electronic Business Center
at (866) 217-9197)

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/Karen Creasy/
Karen Creasy
Petitions Examiner
Office of Petitions

cc:

FROMMER LAWRENCE & HAUG LLP
745 FIFTH AVENUE,
NEW YORK, NY 10151

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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FROMMER LAWRENCE & HAUG
745 FIFTH AVENUE – 10TH FL.
NEW YORK NY 10151

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DEC 03 2010
OFFICE OF PETITIONS

In re Application of	:	
James D. Burchetta et al	:	
Application No. 11/224,155	:	DECISION ON PETITION
Filed: September 12, 2005	:	
Attorney Docket No. 602097.026	:	

This is a decision on the renewed petition, filed September 13, 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 nonfinal Office action mailed March 6, 2009, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on September 28, 2009.

Petitioner asserts that the Office action dated March 6, 2009 was not received.

A review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner;

2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received;

3. a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable, and

4. a copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition satisfies the above-stated requirements. Accordingly, the application was not abandoned in fact.

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

This application is being referred to the Technology Center technical support staff of Art Unit 3625 for re-mailing the Office action of March 6, 2009. The period for reply will run from the mailing date of the Office action.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions
571-272-3208

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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SMITH PATENT OFFICE
1901 PENNSYLVANIA AVENUE N W
SUITE 901
WASHINGTON, DC 20006

Mail Date: 10/07/2010

Applicant	: Takuma Suzuki	: DECISION ON REQUEST FOR
Patent Number	: 7650048	: RECALCULATION of PATENT
Issue Date	: 01/19/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/224,302	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/13/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **591** 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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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Date: 01/28/11

Patent No. : 7824827 B2
Ser. No. : 11224,367
Inventor(s) : **Op de Beeck**
Issued : **November 2, 2010**
Title : Method and system for improved lithographic processing
Docket No. : **05-744**

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

Lamonte M. Newsome
For Mary Diggs, Supervisor
Decisions & Certificates
Of Correction Branch
(571) 272-3421 or (703) 305-8309

MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP
300 S. WACKER DRIVE
32ND FLOOR
CHICAGO IL 60606

LMN

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MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP
300 S. WACKER DRIVE
32ND FLOOR
CHICAGO IL 60606

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JUN 22 2011

OFFICE OF PETITIONS

Patent No. 7,824,827	:	
Issue Date: November 2, 2010	:	
Application No. 11/224,367	:	ON PETITION
Filed: September 12, 2005	:	
Attorney Docket No. 05-744	:	

This is a decision on the petition filed June 17, 2011, a request under 37 CFR 3.81(b) to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The petition is **GRANTED**.

The patent file is being forwarded to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Telephone inquiries concerning this decision may be directed to the Kimberly Inabinet at (571) 272-4618. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (703) 756-1814.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

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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

In re Patent No.7,650,164	:	
Nguyen, et al.	:	DECISION FOR REQUEST
Issue Date : January 19, 2010	:	FOR RECONSIDERATION
Application No. 11/224,368	:	OF PATENT TERM
Filed: September 12, 2005	:	ADJUSTMENT
Attorney Docket No. **16243US02**	:	

This is a decision on the "Request for Reconsideration of USPTO Recalculation of Patent Term Adjustment in View of *Wyeth*," filed June 7, 2010. Patentees request that the patent term adjustment indicated on the face of the Letters of Patent be corrected from five hundred and twenty-nine (529) days to five hundred and thirty (530) days.

The request for reconsideration of the patent term adjustment under 37 CFR 1.705(d) is **DISMISSED**.

Patentee's are given TWO (2) MONTHS from the mail date of this decision to respond. No extension of time will be granted under 37 CFR 1.136.

On January 19, 2010, the above-identified application matured into U.S. Patent No. 7,650,164, with a revised patent term of 529 days. A Request for Recalculation of Patent Term Adjustment in View of Wyeth was filed on April 29, 2010. A decision was mailed on May 5, 2010, indicating that the patent term adjustment had been determined to be five hundred and twenty-nine (529) days. The instant request for reconsideration filed June 7, 2010, was timely filed within one month of the date the petition recalculation decision was mailed. Patentee asserts that the adjustment under 37 CFR 1.702(b) and 37 CFR 1.703(b, is 270 days and that the patent term adjustment is 530 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 September 13, 2008, and ends on June 8, 2009, the day before the RCE was filed, and is 269 (not 270) days. See 35 U.S.C. 154(b)(1)(B)(i).

In view thereof, the patent term adjustment of 529 days indicated in the patent is correct. Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under

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

Deposit account 13-0017will be charged $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

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

By Mail: Mail Stop Petition
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

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

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

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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Alexandria, VA 22313-1450
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OFFICE OF PETITIONS

MOORE & VAN ALLEN PLLC
P.O. BOX 13706
Research Triangle Park NC 27709

In re Patent No.: 8,052,794
Issue Date: November 8, 2011
Application No.: 11/224,374
Filed: September 12, 2005
Attorney Docket No.: 034643-000047

DECISION ON PETITION
UNDER 37 CFR 3.81

This is a decision on the Request for Correction of Assignee's Name Submitted After Payment of Issue Fee (37 CFR §3.81(b)), filed November 28, 2011, requesting correction on the Title Page of the subject patent, via issuance of a Certificate of Correction under 37 CFR 1.323, to identify the correct name of the assignee. The Request has been treated as a petition under 37 CFR 3.81. A completed Certificate of Correction form (PTO/SB44) accompanied the petition.

The petition under 37 CFR 3.81 is **GRANTED**.

Petitioner requests, in effect, that the Title Page of the above-identified patent be corrected, via issuance of a Certificate of Correction, to correct the name of the assignee identified thereon from "The United States of America as represented by the Secretary of the Navy, Washington, DC (US)" to:

--CREE, Inc., 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 petition was accompanied deposit account authorization to charge required fees. As such, the requisite $100.00 fee (Fee Code 1811), as set forth under in 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 charged as authorized in the petition. A review of the PART B –FEES TRANSMITTAL, submitted with the Issue Fee on September 23, 2011, reveals that "NAVY, SECRETARY OF THE, UNITED STATES OF AMERICA" was erroneously identified as the assignee in Item 3 of the Transmittal. Office assignment records, however, are consistent with the requested correction. Accordingly, as the petition complies with the provisions of 37 CFR 3.81(b), it is appropriate for

the Office to issue a Certificate of Correction in accordance with the content of the Certificate of Correction form filed with the present petition.

Inquiries related to this communication should be directed to Brian W. Brown at (571) 272-5338.

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

The matter is being referred to the Certificate of Corrections Branch for processing of a Certificate of Correction in US Patent 8,052,794.

Brian W. Brown
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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PATTERSON & SHERIDAN, L.L.P.
3040 POST OAK BOULEVARD
SUITE 1500
HOUSTON TX 77056

MAILED

MAY 09 2011

OFFICE OF PETITIONS

In re Patent No. 7,860,766 :
Issue Date: December 28, 2010 :
Application No. 11/224,389 : ON PETITION
Filed: September 12, 2005 :
Attorney Docket No. DEET/0016 :

This is a decision on the petition, filed February 22, 2011, 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 assignee "Terant Enterprises Inc" should be "Teranet Enterprises Inc" and has requested insurance of a Certificate of Correction, however, has not submitted the Certificate of Corrections fee. In this regard, absent the proper Certificate of Correction fee under the provisions of 37 CFR 1.20(a), the request under CFR 3.81(b) cannot be granted.

Inquiries concerning this decision should be directed to Diane Goodwyn at (571) 272-6735. Any questions concerning issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

Thurman K. Page
Petitions Examiner
Office of Petitions

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

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SUITE 1500
HOUSTON TX 77056

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JUL 05 2011

OFFICE OF PETITIONS

In re Patent No. 7,860,766	:	
Issue Date: December 28, 2010	:	
Application No. 11/224,389	:	ON PETITION
Filed: September 12, 2005	:	
Attorney Docket No. DEET/0016	:	

This is a decision on the petition, filed June 1, 2011, 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 **GRANTED**.

Telephone inquiries concerning this decision may be directed to Diane Goodwyn at (571) 272-6735. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

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

Thurman K. Page
Petitions Examiner
Office of Petitions

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

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United States Patent and Trademark Office
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MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C
ONE FINANCIAL CENTER
BOSTON MA 02111

MAILED
MAY 06 2011
OFFICE OF PETITIONS

In re Application of	:	
Kronenthal	:	DECISION ON APPLICATION
Application No. 11/224,650	:	FOR
Filed: September 12, 2005	:	PATENT TERM ADJUSTMENT
Atty Docket No. 37159-502002US	:	

This is a decision on the "APPLICATION FOR ADJUSTMENT OF PATENT TERM UNDER 37 C.F.R. § 1.705(b)," filed March 24, 2011. Applicants request that the initial determination of patent term adjustment be corrected from one hundred seventy-eight (178) days to seven hundred seventeen (717) days.

The application for 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 seven hundred seventeen (717) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On December 27, 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 178 days. On March 24, 2011, applicant timely[1] submitted an application for patent term adjustment. The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

[1] The Issue Fee payment was also received on March 24, 2011.

The application history has been reviewed and it has been determined that the initial patent term adjustment of 178 days is incorrect.

Applicant argues the Office incorrectly attributed 457 days of delay to applicant under 37 CFR 1.704(b) in connection with the first Notice to File Missing Parts of Nonprovisional Application, mailed October 14, 2005. The Office concurs. The October 14, 2005 Notice was mailed to an incorrect representative, despite the fact that a proper, valid correspondence address had been specified when the application was filed. Via communications mailed April 16, 2007, the Office withdrew the October 14, 2005 Notice and issued a second Notice to File Missing Parts of Nonprovisional Application, this time addressed to the proper address. Applicant responded on April 27, 2007, within the three-month period provided for in 37 CFR 1.704(b). Accordingly, there was no failure to engage in reasonable efforts to conclude prosecution of the application in connection with the either pre-exam Notice, and the period of reduction of 457 days is being removed.

Applicant disputes the reduction of 82 days of PTA for applicant's purported failure to engage in filing a supplemental response on July 7, 2010. Applicant states that the response was filed at the request of the examiner and, therefore, no reduction is warranted.

Applicant's argument has been considered, and found persuasive. A restriction requirement was mailed on May 26, 2009. On November 27, 2009, applicant filed a response. On April 16, 2010, applicant filed a response to correct an omission in the November 27, 2009 response. On July 7, 2010, applicant filed a supplemental response. The record supports a conclusion that Examiner Azpuru requested that applicant file a supplemental reply.

Examiner Azpuru initiated an interview on July 7, 2010 where applicant's representative and Examiner Azpuru discussed the claims readable on the elected species and subspecies. See Interview Summary, mailed July 12, 2010. Examiner Azpuru states "It was agreed that a supplemental response would be filed clearly setting out the elected claims." On July 7, 2010, applicant filed a supplemental amendment including remarks concerning the July 7, 2010 Examiner Initiated Interview. The first page of the filing states (in pertinent part), "This response is made at the express request of Examiner Azpuru in a telephonic interview with Muriel Liberto, attorney for

Applicant, on July 7, 2010." It is noted that this statement was never contradicted by Examiner Azpuru in any subsequently mailed Office communication.

There is sufficient evidence in the record to support the conclusion that the July 7, 2010 supplemental reply was expressly requested by the examiner, within the meaning of §1.704(c)(8). Accordingly, no reduction is warranted. The period of reduction of 82 days is being removed

In view thereof, the determination of the patent term adjustment at the time of the mailing of the notice of allowance is seven hundred seventeen (717) days - (950 days Office delay - 233 days Applicant delay).

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

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

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of adjusted PAIR PTA calculation

Patent eBusiness

- Electronic Filing
- Patent Application Information (PAIR)
- Patent Ownership
- Fees
- Supplemental Resources & Support

Patent Information

- Patent Guidance and General Info
- Codes, Rules & Manuals
- Employee & Office Directories
- Resources & Public Notices

Patent Searches

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11/224,650 ABSORBABLE IMPLANTS AND METHODS FOR THEIR USE IN HEMOSTASIS AND IN THE TREATMENT OF OSSEOUS DEFECTS

Select New Case | Application Data | Transaction History | Image File Wrapper | Patent Term Adjustments | Continuity Data | Published Documents | Address & Attorney/Agent

Patent Term Adjustment

Filing or 371(c) Date:	09-12-2005	Overlapping Days Between {A and B} or {A and C}:	0
Issue Date of Patent:	-	Non-Overlapping USPTO Delays:	950
A Delays:	950	PTO Manual Adjustments:	539
B Delays:	0	Applicant Delays:	772
C Delays:	0	Total PTA Adjustments:	717

Patent Term Adjustment History **Explanation Of Calculations**

Number	Date	Contents Description	PTO (Days)	APPL (Days)	Start
85	05-06-2011	Adjustment of PTA Calculation by PTO	539		0
68	12-27-2010	Mail Notice of Allowance			0
67	12-20-2010	Issue Revision Completed			0
66	12-20-2010	Document Verification			0
65	12-20-2010	Notice of Allowance Data Verification Completed			0
64	12-20-2010	Allowability Notice			0
63	10-27-2010	Date Forwarded to Examiner			0
62	10-25-2010	Response after Ex Parte Quayle Action			0
61	09-09-2010	Mail Ex Parte Quayle Action (PTOL - 326)	24		46
60	09-08-2010	Quayle action			0
59	07-06-2010	Information Disclosure Statement considered			0
58	07-06-2010	Information Disclosure Statement considered			0
57	08-18-2010	Case Docketed to Examiner in GAU			0
56	07-10-2010	Date Forwarded to Examiner			0
55	07-07-2010	Supplemental Response		82	46
54	07-12-2010	Mail Examiner Interview Summary (PTOL - 413)			0
53	07-06-2010	Information Disclosure Statement (IDS) Filed			0
52	07-07-2010	Examiner Interview Summary Record (PTOL - 413)			0
51	07-06-2010	Reference capture on IDS			0
50	07-06-	Information Disclosure Statement (IDS) Filed			0

	2010			
49	04-22-2010	Request for Refund		0
48	07-06-2010	Information Disclosure Statement (IDS) Filed		0
47	04-26-2010	Date Forwarded to Examiner		0
46	04-16-2010	Response to Election / Restriction Filed	140	31
45	04-16-2010	Request for Extension of Time - Granted		0
44	03-29-2010	Mail Examiner Interview Summary (PTOL - 413)		0
43	03-26-2010	Examiner Interview Summary Record (PTOL - 413)		0
42	03-16-2010	Mail Notice of Informal or Non-Responsive Amendment		0
41	08-07-2009	Information Disclosure Statement considered		0
40	08-27-2009	Information Disclosure Statement considered		0
39	10-22-2009	Information Disclosure Statement considered		0
38	11-23-2009	Information Disclosure Statement considered		0
37	12-10-2009	Information Disclosure Statement considered		0
36	01-29-2010	Information Disclosure Statement considered		0
35	01-29-2010	Electronic Information Disclosure Statement		0
34	01-29-2010	Information Disclosure Statement (IDS) Filed		0
33	11-23-2009	Electronic Information Disclosure Statement		0
32	01-08-2010	Date Forwarded to Examiner		0
31.1	11-27-2009	Informal or Non-Responsive Amendment after Examiner Action		0
31	11-27-2009	Response to Election / Restriction Filed	93	19
30	11-27-2009	Request for Extension of Time - Granted		0
29	12-10-2009	Electronic Information Disclosure Statement		0
28	12-10-2009	Information Disclosure Statement (IDS) Filed		0
27	11-23-2009	Information Disclosure Statement (IDS) Filed		0
26	10-22-2009	Information Disclosure Statement (IDS) Filed		0
25	08-27-2009	Electronic Information Disclosure Statement		0
24	08-07-2009	Electronic Information Disclosure Statement		0
23	08-27-2009	Information Disclosure Statement (IDS) Filed		0
22	08-07-2009	Information Disclosure Statement (IDS) Filed		0
21	07-07-2009	Change in Power of Attorney (May Include Associate POA)		0

20	07-02-2009	Correspondence Address Change			0
19	05-26-2009	Mail Restriction Requirement	926		0.5
18	05-22-2009	Restriction/Election Requirement			0
17	10-25-2007	Case Docketed to Examiner in GAU			0
16	09-19-2007	IFW TSS Processing by Tech Center Complete			0
15	05-16-2007	Application Dispatched from OIPE			0
14	05-16-2007	Application Is Now Complete			0
13	04-27-2007	Additional Application Filing Fees			0
12	04-16-2007	Notice Mailed--Application Incomplete--Filing Date Assigned			0
11	04-16-2007	Additional Application Filing Fees		457	9
10	10-14-2005	Pre-Exam Office Action Withdrawn			0
9	10-14-2005	Notice Mailed--Application Incomplete--Filing Date Assigned			0
5	10-06-2005	Cleared by L&R (LARS)			0
4	09-29-2005	Referred to Level 2 (LARS) by OIPE CSR			0
3	09-29-2005	CASE CLASSIFIED BY OIPE			0
2	09-19-2005	IFW Scan & PACR Auto Security Review			0
1	09-12-2005	Initial Exam Team nn			0
0.5	09-12-2005	Filing date			0

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MAILED

AUG 09 2010

OFFICE OF PETITIONS

In re Application of	:	DECISION
Struck	:	
Application No. 11/224,731	:	
Filed: 12 September, 2005	:	
Attorney Docket No. (None)	:	

This is a decision on the papers considered as petition filed on 13 July, 2010, for revival of an application abandoned due to unintentional delay pursuant to 37 C.F.R. §1.137(b).

NOTES:

Petitioner continues to ignore the requirements under the Rule.

Petitioner announces, *inter alia*, that there is:

- "no need pay (sic) petition fee. Effect would be repeateous (sic) ask for claims/abs after sent already";
- "Inventors should not have to pay petition fees for applications with allowed dependent claims, claims, abstract previously submitted. Concept would be 'send notice of compliance after patent app receipt (sic) making people resend abstract/claims received/sent previously."

The petition fee is a requirement of the petition. If the fee is not submitted, the Office may not consider the substance of the petition.

The reply (herein: fees due for excess claims and a compliant amendment) is a requirement of the petition.

Once again, the Office describes for Petitioner that the process herein is on e of a petition—requiring a petition, petition fee, reply, statement of unintentional delay and, where applicable, a terminal disclaimer and fee—not a negotiation.

Should Petitioner have further questions in this regard, Petitioner may consult the Office website (www.uspto.gov) and in particular the guidance in the Commentary at MPEP §711.03(c) (http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c).

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

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

Petitioner does not appear to have satisfied the reply requirement (fees for excess claims) and petition fee requirement under the rule.

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(II) as to a petition pursuant to 37 C.F.R. §1.137(b) and the requirements under the Rule.

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the Notice of Non-Compliant Amendment (fees formalities) (copy enclosed) mailed on 17 December, 2008, with reply due under absent an extension of time on or before 17 January, 2009.

The application went abandoned after midnight 17 January, 2009.

The Office mailed a Notice of Abandonment on 8 June, 2009.

On 15 June, 2009, and again on 24 June, 2009, Petitioner filed, *inter alia*, a petition with no fees, but with averments of unavoidable and unintentional delay pursuant to 37 C.F.R. §1.137(a) and §1.137(b), and no apparent replies in the form of fees due (excess claims) and compliant amendment. Petitioner made some statements as to what might be reasons for delay, but no documentation thereof in compliance with the requirements. The petitions were dismissed on 21 September, 2009.

On 24 September, 2009, and again on 28 September, 2009, Petitioner filed, *inter alia*, petitions with no fees, but with averments of unavoidable and unintentional delay pursuant to 37 C.F.R. §1.137(a) and §1.137(b), and no apparent replies in the form of fees due (excess claims) of and a compliant amendment. Further:

- Petitioner made some statements as to what might be reasons for delay, but no documentation thereof in compliance with the requirements. (See below.)

- Petitioner was cautioned against handwriting changes on other papers—Petitioner was directed to the provisions of the Manual of Patent Examining Procedure (MPEP §714, et seq., including but not limited to §714.02, §714.10).

- It was noted that Petitioner submitted a copy of what purported to be a confirmation of FAX transmission dated 18 May, 2007, however, the document to which Petitioner appeared to seek to link this transmission was not a confirmation of receipt, and contained two (2) different and unreadable application numbers. The Rules of Practice (e.g., 37 C.F.R. §1.4(b)) and the provisions of the MPEP (e.g., §501, §502.02, §502.04) specify that every application is a separate application and separate papers must be filed in each application.

- Petitioner averred, *inter alia*, non-receipt of the Office action but failed to: provide a copy of the application docket sheet and the due date calendar for his office; and make the statements of, *inter alia*: non-receipt at the correspondence address of record; search and non-discovery with a description of the docketing system and of its sufficient reliability and failed to evidence a due date docket is that for his office, making it impossible to discern whether other files wherein replies were due for non-final Office actions were reviewed to ensure that the Office action herein had not been misfiled. Petitioner provided no proper reply to the Notice of Non-Compliant Amendment following his reply to the non-final Office action of 6 March, 2008. Moreover, in the absence of documentary support for his averments Petitioner was not in a position to satisfy the requirements of a petition averring unavoidable delay pursuant to 37 C.F.R. §1.137(a). (See: MPEP §711.03(c)(II).

The petitions were dismissed on 5 May, 2010.

On 10 May, 2010, Petitioner filed a petition pursuant to 37 C.F.R. §1.137(b) with a statement of unintentional delay, however, without the petition fee and the required reply in the form of fees due (excess claims) and a compliant amendment. The petition was dismissed on 8 July, 2010.

On 13 July, 2010, Petitioner filed a petition pursuant to 37 C.F.R. §1.137(b)[1] with a statement of unintentional delay, however, without the petition fee and the required reply in the form of fees

[1] With regard to unintentional delay, the guidance in the Commentary at MPEP §711.03(c)(II) provides:

***

... Unintentional Delay

due (excess claims) and a compliant amendment. As noted above, Petitioner announced, *inter alia*, that there is:

- "no need pay (sic) petition fee. Effect would be repeateous (sic) ask for claims/abs after sent already";
- "Inventors should not have to pay petition fees for applications with allowed dependent claims, claims, abstract previously submitted. Concept would be 'send notice of compliance after patent app receipt (sic) making people resend abstract/claims received/sent previously."

Petitioner always must consult the Office website (www.uspto.gov) to determine the then-current fee(s) applicable). Petitioner failed to satisfy the requirements under the Rule, as set forth above.

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]

The legislative history of Public Law 97-247, § 3, 96 Stat. 317 (1982), reveals that the purpose of 35 U.S.C. 41(a)(7) is to permit the Office to have more discretion than in 35 U.S.C. 133 or 151 to revive abandoned applications in appropriate circumstances, but places a limit on this discretion stating that "[u]nder this section a petition accompanied by [the requisite fee] would not be granted where the abandonment or the failure to pay the fee for issuing the patent was intentional as opposed to being unintentional or unavoidable." H.R. Rep. No. 542, 97th Cong., 2d Sess. 6-7 (1982), *reprinted in* 1982 U.S.C.C.A.N. 770-71. A delay resulting from a deliberately chosen course of action on the part of the applicant is not an "unintentional" delay within the meaning of 37 CFR 1.137(b).

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 37 CFR 1.137(b). See *In re Application of G*, 11 USPQ2d 1378, 1380 (Comm'r Pat. 1989). An intentional course of action is not rendered unintentional when, upon reconsideration, the applicant changes his or her mind as to the course of action that should have been taken. See *In re Maldague*, 10 USPQ2d 1477, 1478 (Comm'r Pat. 1988).

A delay resulting from a deliberately chosen course of action on the part of the applicant does not become an "unintentional" delay within the meaning of 37 CFR 1.137(b) because:

(A)the applicant does not consider the claims to be patentable over the references relied upon in an outstanding Office action;
(B)the applicant does not consider the allowed or patentable claims to be of sufficient breadth or scope to justify the financial expense of obtaining a patent;
(C)the applicant does not consider any patent to be of sufficient value to justify the financial expense of obtaining the patent;
(D)the applicant does not consider any patent to be of sufficient value to maintain an interest in obtaining the patent; or
(E)the applicant remains interested in eventually obtaining a patent, but simply seeks to defer patent fees and patent prosecution expenses.

Likewise, a change in circumstances that occurred subsequent to the abandonment of an application does not render "unintentional" the delay resulting from a previous deliberate decision to permit an application to be abandoned. These matters simply confuse the question of whether there was a deliberate decision not to continue the prosecution of an application with why there was a deliberate decision not to continue the prosecution of an application.

In order to expedite treatment, applicants filing a petition under 37 CFR 1.137(b) to revive an abandoned application are advised to include the statement

***

[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).

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).

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

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[3]

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c).

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 Petitioner has not satisfied the petition fee and reply requirements of a petition pursuant to 37 C.F.R. §1.137(b).

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[3] In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

CONCLUSION

Accordingly, the petition pursuant to 37 C.F.R. §1.137(b) is **dismissed**.

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

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

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

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

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[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 attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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CHICAGO IL 60645

MAILED

JAN 31 2011

OFFICE OF PETITIONS

In re Application of :
Struck :
Application No. 11/224,731 :
Filed: 12 September, 2005 :
Attorney Docket No. (None) :

DECISION

This is a decision on the papers considered as petition filed (in pieces) on 20 and 21 December, 2010, and then again on 30 December, 2010, considered as a petition under 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

NOTES:

Petitioner continues to ignore the requirements under the Rule.

Should Petitioner have further questions in this regard, Petitioner may consult the Office website (www.uspto.gov) and in particular the guidance in the Commentary at MPEP §711.03(c) (http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c).

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

Any request for reconsideration of this decision or any petition in the alternative is to be filed **within two (2) months** from the mail date of this decision. *Note* 37 C.F.R. §1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 C.F.R. §1.181 to Withdraw the Holding of Abandonment."

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

Application No. 11/224,731

As to the Request to Withdraw
the Holding of Abandonment

Petitioner is directed to the Commentary at MPEP §711.03(c)(I) for guidance as to the proper showing and timeliness requirements for relief under 37 C.F.R. §1.181.

Petitioner appears not to comply with the guidance in the Commentary at MPEP §711.03(c)(I)—as discussed below, Petitioner has failed to satisfy the showing requirements set forth there. Petitioner may find it beneficial to review that material and move step-wise through that guidance in the effort to satisfy the showing requirements (statements and supporting documentation).

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(I) as to a petition pursuant to 37 C.F.R. §1.181 and the requirements under the Rule.

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the Notice of Non-Compliant Amendment (fees formalities) (copy enclosed) mailed on 17 December, 2008, with reply due under absent an extension of time on or before 17 January, 2009.

The application went abandoned after midnight 17 January, 2009.

The Office mailed a Notice of Abandonment on 8 June, 2009.

On 15 June, 2009, and again on 24 June, 2009, Petitioner filed, *inter alia*, a petition with no fees, but with averments of unavoidable and unintentional delay pursuant to 37 C.F.R. §1.137(a) and §1.137(b), and no apparent replies in the form of fees due (excess claims) and compliant amendment. Petitioner made some statements as to what might be reasons for delay, but no documentation thereof in compliance with the requirements. The petitions were dismissed on 21 September, 2009.

On 24 September, 2009, and again on 28 September, 2009, Petitioner filed, *inter alia*, petitions with no fees, but with averments of unavoidable and unintentional delay pursuant to 37 C.F.R. §1.137(a) and §1.137(b), and no apparent replies in the form of fees due (excess claims) of and a compliant amendment. Further:

- Petitioner made some statements as to what might be reasons for delay, but no documentation thereof in compliance with the requirements. (See below.)
- Petitioner was cautioned against handwriting changes on other papers—Petitioner was directed to the provisions of the Manual of Patent Examining Procedure (MPEP §714, et seq., including but not limited to §714.02, §714.10).

- It was noted that Petitioner submitted a copy of what purported to be a confirmation of FAX transmission dated 18 May, 2007, however, the document to which Petitioner appeared to seek to link this transmission was not a confirmation of receipt, and contained two (2) different and unreadable application numbers. The Rules of Practice (e.g., 37 C.F.R. §1.4(b)) and the provisions of the MPEP (e.g., §501, §502.02, §502.04) specify that every application is a separate application and separate papers must be filed in each application.

- Petitioner averred, *inter alia*, non-receipt of the Office action but failed to: provide a copy of the application docket sheet and the due date calendar for his office; and make the statements of, *inter alia*: non-receipt at the correspondence address of record; search and non-discovery with a description of the docketing system and of its sufficient reliability and failed to evidence a due date docket is that for his office, making it impossible to discern whether other files wherein replies were due for non-final Office actions were reviewed to ensure that the Office action herein had not been misfiled. Petitioner provided no proper reply to the Notice of Non-Compliant Amendment following his reply to the non-final Office action of 6 March, 2008. Moreover, in the absence of documentary support for his averments Petitioner was not in a position to satisfy the requirements of a petition averring unavoidable delay pursuant to 37 C.F.R. §1.137(a). (See: MPEP §711.03(c)(II).

The petitions were dismissed on 5 May, 2010.

On 10 May, 2010, Petitioner filed a petition pursuant to 37 C.F.R. §1.137(b) with a statement of unintentional delay, however, without the petition fee and the required reply in the form of fees due (excess claims) and a compliant amendment. The petition was dismissed on 8 July, 2010.

On 13 July, 2010, Petitioner filed a petition pursuant to 37 C.F.R. §1.137(b) with a statement of unintentional delay, however, without the petition fee and the required reply in the form of fees due (excess claims) and a compliant amendment. As noted above, Petitioner announced, *inter alia*, that there is:

- "no need pay (sic) petition fee. Effect would be repeateous (sic) ask for claims/abs after sent already";

- "Inventors should not have to pay petition fees for applications with allowed dependent claims, claims, abstract previously submitted. Concept would be 'send notice of compliance after patent app receipt (sic) making people resend abstract/claims received/sent previously."

The petition was dismissed on 9 August, 2010, and Petitioner was given two (2) months to reply.

Petitioner ignored that deadline, and on 20 December, 2010, Petitioner commenced to file papers (two (2) on that date)—a process Petitioner continued on 21 December, 2010 (with one (1)

page), and again on 30 December, 2010 (again with one (1) page)—toward the instant petition expressly requesting withdrawal of the holding of abandonment, considered properly as a petition pursuant to 37 C.F.R. §1.181, and, again, failed to satisfy the requirements (as set forth below) for the showing of nonreceipt under the Rule as those requirements are expressly set forth in the guidance in the Commentary at MPEP §711.03(c)(I) requiring: a copy of the firm due-date docket/calendar and a copy of the docket sheet (or file jacket cover) for the instant application and; recitations as to a statement of non-receipt "at the correspondence address of record," a statement of search of the file and non-discovery, a description of the docketing system, a statement of system reliability, and such requirements as set forth in the guidance in the Commentary at MPEP 711.03(c)(I).

Petitioner is directed to in the guidance in the Commentary at MPEP §711.03(c)(I), which provides in pertinent part:

***

> The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.
>
> Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.
>
> A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.[1] (Emphasis supplied.)

***

[1] *See*: MPEP §711.03(c) (I)(A).

On any renewed petition, Petitioner must comply with the required showing expressly set forth in the guidance in the Commentary at MPEP §711.03(c)(I)—as highlighted above for Petitioner's reference.

However, Petitioner may not be able to satisfy those requirements.

In such case, Petitioner may alternatively chose to present a petition pursuant to 37 C.F.R. §1.137(b) with fee, reply, and statement of unintentional delay. (Applicants/Petitioners always are cautioned that the conditions of their failure to reply timely and properly to an Office action, including a decision on petition, may be considered *indicia* of intentional delay.)

Out of an abundance of caution, Petitioners always are reminded that the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (*see*: 37 C.F.R. §1.181(f)); and those registered to practice and all others who make representations before the Office are reminded to inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[2]

Petitioner is requested to review the requirements as set forth in the guidance in the Commentary at MPEP 711.03(c)(I), and then seek to satisfy those requirements. Alternatively, Petitioner may file a petition to revive pursuant to the regulations at 37 C.F.R. §1.137(b).

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).

Allegations as to the Request to Withdraw the Holding of Abandonment

The guidance in the Commentary at MPEP §711.03(c)(I) specifies the showing required and how it is to be made and supported.

Petitioner appears not to have made the showing required.

---

[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).

CONCLUSION

Accordingly, The petition under 37 C.F.R. §1.181 is **dismissed**.

ALTERNATIVE VENUE

Should Petitioner wish to revive the application, Petitioner may wish to properly file a petition to the Commissioner requesting revival of an application abandoned due to unintentional delay under 37 C.F.R. §1.137(b). (See: http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c)

A petition to revive on the grounds of unintentional delay must be filed promptly and such petition must be accompanied by the reply, the petition fee, a terminal disclaimer and fee where appropriate and a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional." (The statement is in the form available online.)

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

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

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

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

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

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

[3] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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RELIGION AND GALAXIES
7333 N. RIDGE BLVD./ APT. 108B
CHICAGO IL 60645

MAILED
APR 08 2011
OFFICE OF PETITIONS

In re Application of	:	
Struck	:	
Application No. 11/224,731	:	DECISION
Filed: 12 September, 2005	:	
Attorney Docket No. (None)	:	

This is a decision on the papers considered as petition filed on 23 March, 2011, considered as a petition under 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

NOTES:

Petitioner has satisfied only some of the requirements under the Rule.

Should Petitioner have further questions in this regard, Petitioner may consult the Office website (www.uspto.gov) and in particular the guidance in the Commentary at MPEP §711.03(c) (http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c).

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

Any request for reconsideration of this decision or any petition in the alternative is to be filed **within two (2) months** from the mail date of this decision. *Note* 37 C.F.R. §1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 C.F.R. §1.181 to Withdraw the Holding of Abandonment."

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

As to the Request to Withdraw
the Holding of Abandonment

Petitioner is directed to the Commentary at MPEP §711.03(c)(I) for guidance as to the proper showing and timeliness requirements for relief under 37 C.F.R. §1.181.

Petitioner appears not to comply with the guidance in the Commentary at MPEP §711.03(c)(I)—as discussed below, Petitioner has failed to satisfy the showing requirements set forth there. Petitioner may find it beneficial to review that material and move step-wise through that guidance in the effort to satisfy the showing requirements (statements and supporting documentation).

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(I) as to a petition pursuant to 37 C.F.R. §1.181 and the requirements under the Rule.

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the Notice of Non-Compliant Amendment (fees formalities) (copy enclosed) mailed on 17 December, 2008, with reply due under absent an extension of time on or before 17 January, 2009.

The application went abandoned after midnight 17 January, 2009.

The Office mailed a Notice of Abandonment on 8 June, 2009.

On 15 June, 2009, and again on 24 June, 2009, Petitioner filed, *inter alia*, a petition with no fees, but with averments of unavoidable and unintentional delay pursuant to 37 C.F.R. §1.137(a) and §1.137(b), and no apparent replies in the form of fees due (excess claims) and compliant amendment. Petitioner made some statements as to what might be reasons for delay, but no documentation thereof in compliance with the requirements. The petitions were dismissed on 21 September, 2009.

On 24 September, 2009, and again on 28 September, 2009, Petitioner filed, *inter alia*, petitions with no fees, but with averments of unavoidable and unintentional delay pursuant to 37 C.F.R. §1.137(a) and §1.137(b), and no apparent replies in the form of fees due (excess claims) of and a compliant amendment. Further:

- Petitioner made some statements as to what might be reasons for delay, but no documentation thereof in compliance with the requirements. (See below.)

- Petitioner was cautioned against handwriting changes on other papers—Petitioner was directed to the provisions of the Manual of Patent Examining Procedure (MPEP §714, et seq., including but not limited to §714.02, §714.10).

- It was noted that Petitioner submitted a copy of what purported to be a confirmation of FAX transmission dated 18 May, 2007, however, the document to which Petitioner appeared to seek to link this transmission was not a confirmation of receipt, and contained two (2) different and unreadable application numbers. The Rules of Practice (e.g., 37 C.F.R. §1.4(b)) and the provisions of the MPEP (e.g., §501, §502.02, §502.04) specify that every application is a separate application and separate papers must be filed in each application.

- Petitioner averred, *inter alia*, non-receipt of the Office action but failed to: provide a copy of the application docket sheet and the due date calendar for his office; and make the statements of, *inter alia*: non-receipt at the correspondence address of record; search and non-discovery with a description of the docketing system and of its sufficient reliability and failed to evidence a due date docket is that for his office, making it impossible to discern whether other files wherein replies were due for non-final Office actions were reviewed to ensure that the Office action herein had not been misfiled. Petitioner provided no proper reply to the Notice of Non-Compliant Amendment following his reply to the non-final Office action of 6 March, 2008. Moreover, in the absence of documentary support for his averments Petitioner was not in a position to satisfy the requirements of a petition averring unavoidable delay pursuant to 37 C.F.R. §1.137(a). (See: MPEP §711.03(c)(II).

The petitions were dismissed on 5 May, 2010.

On 10 May, 2010, Petitioner filed a petition pursuant to 37 C.F.R. §1.137(b) with a statement of unintentional delay, however, without the petition fee and the required reply in the form of fees due (excess claims) and a compliant amendment. The petition was dismissed on 8 July, 2010.

On 13 July, 2010, Petitioner filed a petition pursuant to 37 C.F.R. §1.137(b) with a statement of unintentional delay, however, without the petition fee and the required reply in the form of fees due (excess claims) and a compliant amendment. As noted above, Petitioner announced, *inter alia*, that there is:

- "no need pay (sic) petition fee. Effect would be repeateous (sic) ask for claims/abs after sent already";

- "Inventors should not have to pay petition fees for applications with allowed dependent claims, claims, abstract previously submitted. Concept would be 'send notice of compliance after patent app receipt (sic) making people resend abstract/claims received/sent previously."

The petition was dismissed on 9 August, 2010, and Petitioner was given two (2) months to reply.

Petitioner ignored that deadline, and on 20 December, 2010, Petitioner commenced to file papers (two (2) on that date)—a process Petitioner continued on 21 December, 2010 (with one (1)

page), and again on 30 December, 2010 (again with one (1) page)—toward the instant petition expressly requesting withdrawal of the holding of abandonment, considered properly as a petition pursuant to 37 C.F.R. §1.181, and, again, failed to satisfy the requirements (as set forth below) for the showing of nonreceipt under the Rule as those requirements are expressly set forth in the guidance in the Commentary at MPEP §711.03(c)(I) requiring: a copy of the firm due-date docket/calendar and a copy of the docket sheet (or file jacket cover) for the instant application and; recitations as to a statement of non-receipt "at the correspondence address of record," a statement of search of the file and non-discovery, a description of the docketing system, a statement of system reliability, and such requirements as set forth in the guidance in the Commentary at MPEP 711.03(c)(I). The petition was dismissed on 31 January, 2011.

On 23 March, 2011, Petitioner re-advanced his petition expressly requesting withdrawal of the holding of abandonment, considered properly as a petition pursuant to 37 C.F.R. §1.181, and:

- made statements: that the papers in question were not received at the "address of record"—a statement the Office construes as meaning the "correspondence address of record, and if the Office is mistaken in this matter Petitioner must immediately notify the Office—and of search and non-discovery, along with a description of his somewhat unusual docketing system and an indication that—in lieu of a docket sheet—the due date calendar evidenced what materials were received or not received because of the subsequent due date; and

- provided a copy of his due date calendar.

However, Petitioner failed to make the statement that his docketing system had been found sufficiently reliable.

Petitioner is directed to in the guidance in the Commentary at MPEP §711.03(c)(I), which provides in pertinent part:

***

> The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.
>
> Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

> A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.[1] (Emphasis supplied.)

***

On any renewed petition, Petitioner must comply with the required showing expressly set forth in the guidance in the Commentary at MPEP §711.03(c)(I)—as highlighted above for Petitioner's reference.

However, Petitioner may not be able to satisfy those requirements.

In such case, Petitioner may alternatively chose to present a petition pursuant to 37 C.F.R. §1.137(b) with fee, reply, and statement of unintentional delay. (Applicants/Petitioners always are cautioned that the conditions of their failure to reply timely and properly to an Office action, including a decision on petition, may be considered *indicia* of intentional delay.)

Out of an abundance of caution, Petitioners always are reminded that the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (*see*: 37 C.F.R. §1.181(f)), and those registered to practice and all others who make representations before the Office are reminded to inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[2]

Petitioner is requested to review the requirements as set forth in the guidance in the Commentary at MPEP 711.03(c)(I), and then seek to satisfy those requirements. Alternatively, Petitioner may file a petition to revive pursuant to the regulations at 37 C.F.R. §1.137(b).

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

---

[1] *See*: MPEP §711.03(c) (I)(A).

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

STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).

Allegations as to the Request to Withdraw the Holding of Abandonment

The guidance in the Commentary at MPEP §711.03(c)(I) specifies the showing required and how it is to be made and supported.

Petitioner appears not to have made the showing required.

CONCLUSION

Accordingly, The petition under 37 C.F.R. §1.181 is **dismissed**.

ALTERNATIVE VENUE

Should Petitioner wish to revive the application, Petitioner may wish to properly file a petition to the Commissioner requesting revival of an application abandoned due to unintentional delay under 37 C.F.R. §1.137(b). (See: http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c)

A petition to revive on the grounds of unintentional delay must be filed promptly and such petition must be accompanied by the reply, the petition fee, a terminal disclaimer and fee where appropriate and a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional." (The statement is in the form available online.)

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

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

By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building

401 Dulany Street
Alexandria, VA 22314

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

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

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

[3] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

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MAILED
MAY 26 2011
OFFICE OF PETITIONS

In re Application of	:	
Struck	:	
Application No. 11/224,731	:	DECISION
Filed: 12 September, 2005	:	
Attorney Docket No. (None)	:	

This is a decision on the papers considered as petition filed on 14 April, 2011, considered as a petition pursuant to 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

NOTES:

Petitioner has acknowledged that the paper in question may have been misplaced—Petitioner clearly cannot satisfy the requirements under the Rule.

Should Petitioner have further questions in this regard, Petitioner may consult the Office website (www.uspto.gov) and in particular the guidance in the Commentary at MPEP §711.03(c) (http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c).

Petitioner's continued failure to file timely and properly a petition pursuant to 37 C.F.R. §1.137(b) with fee, reply and the statement of unintentional delay may be considered *indicia* of delay that is other than unintentional.

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

Any request for reconsideration of this decision or any petition in the alternative is to be filed **within two (2) months** from the mail date of this decision. *Note* 37 C.F.R. §1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 C.F.R. §1.181 to Withdraw the Holding of Abandonment."

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

As to the Request to Withdraw
the Holding of Abandonment

Petitioner is directed to the Commentary at MPEP §711.03(c)(I) for guidance as to the proper showing and timeliness requirements for relief under 37 C.F.R. §1.181.

Petitioner appears not to comply with the guidance in the Commentary at MPEP §711.03(c)(I)—as discussed below, Petitioner has failed to satisfy the showing requirements set forth there. Petitioner may find it beneficial to review that material and move step-wise through that guidance in the effort to satisfy the showing requirements (statements and supporting documentation).

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(I) as to a petition pursuant to 37 C.F.R. §1.181 and the requirements under the Rule.

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the Notice of Non-Compliant Amendment (fees formalities) (copy enclosed) mailed on 17 December, 2008, with reply due under absent an extension of time on or before 17 January, 2009.

The application went abandoned after midnight 17 January, 2009.

The Office mailed a Notice of Abandonment on 8 June, 2009.

On 15 June, 2009, and again on 24 June, 2009, Petitioner filed, *inter alia*, a petition with no fees, but with averments of unavoidable and unintentional delay pursuant to 37 C.F.R. §1.137(a) and §1.137(b), and no apparent replies in the form of fees due (excess claims) and compliant amendment. Petitioner made some statements as to what might be reasons for delay, but no documentation thereof in compliance with the requirements. The petitions were dismissed on 21 September, 2009.

On 24 September, 2009, and again on 28 September, 2009, Petitioner filed, *inter alia*, petitions with no fees, but with averments of unavoidable and unintentional delay pursuant to 37 C.F.R. §1.137(a) and §1.137(b), and no apparent replies in the form of fees due (excess claims) of and a compliant amendment. Further:

- Petitioner made some statements as to what might be reasons for delay, but no documentation thereof in compliance with the requirements. (See below.)

- Petitioner was cautioned against handwriting changes on other papers—Petitioner was directed to the provisions of the Manual of Patent Examining Procedure (MPEP §714, et seq., including but not limited to §714.02, §714.10).

- It was noted that Petitioner submitted a copy of what purported to be a confirmation of FAX transmission dated 18 May, 2007, however, the document to which Petitioner appeared to seek to link this transmission was not a confirmation of receipt, and contained two (2) different and unreadable application numbers. The Rules of Practice (e.g., 37 C.F.R. §1.4(b)) and the provisions of the MPEP (e.g., §501, §502.02, §502.04) specify that every application is a separate application and separate papers must be filed in each application.

- Petitioner averred, *inter alia*, non-receipt of the Office action but failed to: provide a copy of the application docket sheet and the due date calendar for his office; and make the statements of, *inter alia*: non-receipt at the correspondence address of record; search and non-discovery with a description of the docketing system and of its sufficient reliability and failed to evidence a due date docket is that for his office, making it impossible to discern whether other files wherein replies were due for non-final Office actions were reviewed to ensure that the Office action herein had not been misfiled. Petitioner provided no proper reply to the Notice of Non-Compliant Amendment following his reply to the non-final Office action of 6 March, 2008. Moreover, in the absence of documentary support for his averments Petitioner was not in a position to satisfy the requirements of a petition averring unavoidable delay pursuant to 37 C.F.R. §1.137(a). (See: MPEP §711.03(c)(II).

The petitions were dismissed on 5 May, 2010.

On 10 May, 2010, Petitioner filed a petition pursuant to 37 C.F.R. §1.137(b) with a statement of unintentional delay, however, without the petition fee and the required reply in the form of fees due (excess claims) and a compliant amendment. The petition was dismissed on 8 July, 2010.

On 13 July, 2010, Petitioner filed a petition pursuant to 37 C.F.R. §1.137(b) with a statement of unintentional delay, however, without the petition fee and the required reply in the form of fees due (excess claims) and a compliant amendment. As noted above, Petitioner announced, *inter alia*, that there is:

- "no need pay (sic) petition fee. Effect would be repeateous (sic) ask for claims/abs after sent already";

- "Inventors should not have to pay petition fees for applications with allowed dependent claims, claims, abstract previously submitted. Concept would be 'send notice of compliance after patent app receipt (sic) making people resend abstract/claims received/sent previously."

The petition was dismissed on 9 August, 2010, and Petitioner was given two (2) months to reply.

Petitioner ignored that deadline, and on 20 December, 2010, Petitioner commenced to file papers (two (2) on that date)—a process Petitioner continued on 21 December, 2010 (with one (1)

page), and again on 30 December, 2010 (again with one (1) page)—toward the instant petition expressly requesting withdrawal of the holding of abandonment, considered properly as a petition pursuant to 37 C.F.R. §1.181, and, again, failed to satisfy the requirements (as set forth below) for the showing of nonreceipt under the Rule as those requirements are expressly set forth in the guidance in the Commentary at MPEP §711.03(c)(I) requiring: a copy of the firm due-date docket/calendar and a copy of the docket sheet (or file jacket cover) for the instant application and; recitations as to a statement of non-receipt "at the correspondence address of record," a statement of search of the file and non-discovery, a description of the docketing system, a statement of system reliability, and such requirements as set forth in the guidance in the Commentary at MPEP 711.03(c)(I). The petition was dismissed on 31 January, 2011.

On 23 March, 2011, Petitioner re-advanced his petition expressly requesting withdrawal of the holding of abandonment, considered properly as a petition pursuant to 37 C.F.R. §1.181, and:

- made statements: that the papers in question were not received at the "address of record"—a statement the Office construes as meaning the "correspondence address of record, and if the Office is mistaken in this matter Petitioner must immediately notify the Office—and of search and non-discovery, along with a description of his somewhat unusual docketing system and an indication that—in lieu of a docket sheet—the due date calendar evidenced what materials were received or not received because of the subsequent due date; and

- provided a copy of his due date calendar.

However, Petitioner failed to make the statement that his docketing system had been found sufficiently reliable. The petition was dismissed on 8 April, 2011.

On 14 April, 2011, Petitioner re-advanced his petition expressly requesting withdrawal of the holding of abandonment, considered properly as a petition pursuant to 37 C.F.R. §1.181, and stated therein that after the paper was received "it was possible that something was misplaced." Thus, Petitioner clearly cannot satisfy the requirements under the Rule. :

Petitioner's continued failure to timely and properly file a petition pursuant to 37 C.F.R. §1.137(b) with fee and reply, with a statement of unintentional delay may be considered indicia of delay that is other than unintentional.

Petitioner is directed to in the guidance in the Commentary at MPEP §711.03(c)(I), which provides in pertinent part:

***

> The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should

establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.[1] (Emphasis supplied.)

***

On any renewed petition, Petitioner must comply with the required showing expressly set forth in the guidance in the Commentary at MPEP §711.03(c)(I)—as highlighted above for Petitioner's reference.

However, Petitioner may not be able to satisfy those requirements.

In such case, Petitioner may alternatively chose to present a petition pursuant to 37 C.F.R. §1.137(b) with fee, reply, and statement of unintentional delay. (Applicants/Petitioners always are cautioned that the conditions of their failure to reply timely and properly to an Office action, including a decision on petition, may be considered *indicia* of intentional delay.)

Out of an abundance of caution, Petitioners always are reminded that the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (*see*: 37 C.F.R. §1.181(f)), and those registered to practice and all others who make representations before the Office are reminded to inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[2]

---

[1] *See*: MPEP §711.03(c) (I)(A).

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

Petitioner is requested to review the requirements as set forth in the guidance in the Commentary at MPEP 711.03(c)(I), and then seek to satisfy those requirements. Alternatively, Petitioner may file a petition to revive pursuant to the regulations at 37 C.F.R. §1.137(b).

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).

Allegations as to the Request to Withdraw the Holding of Abandonment

The guidance in the Commentary at MPEP §711.03(c)(I) specifies the showing required and how it is to be made and supported.

Petitioner appears not to have made the showing required.

CONCLUSION

Accordingly, The petition under 37 C.F.R. §1.181 is **dismissed**.

ALTERNATIVE VENUE

Should Petitioner wish to revive the application, Petitioner may wish to properly file a petition to the Commissioner requesting revival of an application abandoned due to unintentional delay under 37 C.F.R. §1.137(b). (See: http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c)

A petition to revive on the grounds of unintentional delay must be filed promptly and such petition must be accompanied by the reply, the petition fee, a terminal disclaimer and fee where appropriate and a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional." (The statement is in the form available online.)

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

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

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

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

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

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

[3] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE

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RELIGION AND GALAXIES
7333 N. RIDGE BLVD./ APT. 108B
CHICAGO IL 60645

MAILED

JUN 17 2011

OFFICE OF PETITIONS

In re Application of :
Struck :
Application No. 11/224,731 : DECISION
Filed: 12 September, 2005 :
Attorney Docket No. (None) :

This is a decision on the papers considered as petition filed on 7 June, 2011, considered as a petition pursuant to 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

NOTES:

Petitioner has acknowledged that the paper in question may have been misplaced—Petitioner clearly cannot satisfy the requirements under the Rule.

Should Petitioner have further questions in this regard, Petitioner may consult the Office website (www.uspto.gov) and in particular the guidance in the Commentary at MPEP §711.03(c) (http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c).

Petitioner's continued failure to file timely and properly a petition pursuant to 37 C.F.R. §1.137(b) with fee, reply and the statement of unintentional delay may be considered *indicia* of delay that is other than unintentional.

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

Any request for reconsideration of this decision or any petition in the alternative is to be filed **within two (2) months** from the mail date of this decision. *Note* 37 C.F.R. §1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 C.F.R. §1.181 to Withdraw the Holding of Abandonment."

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

As to the Request to Withdraw
the Holding of Abandonment

Petitioner is directed to the Commentary at MPEP §711.03(c)(I) for guidance as to the proper showing and timeliness requirements for relief under 37 C.F.R. §1.181.

Petitioner appears not to comply with the guidance in the Commentary at MPEP §711.03(c)(I)—as discussed below, Petitioner has failed to satisfy the showing requirements set forth there. Petitioner may find it beneficial to review that material and move step-wise through that guidance in the effort to satisfy the showing requirements (statements and supporting documentation).

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(I) as to a petition pursuant to 37 C.F.R. §1.181 and the requirements under the Rule.

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the Notice of Non-Compliant Amendment (fees formalities) (copy enclosed) mailed on 17 December, 2008, with reply due under absent an extension of time on or before 17 January, 2009.

The application went abandoned after midnight 17 January, 2009.

The Office mailed a Notice of Abandonment on 8 June, 2009.

There have been numerous petitions—and because Petitioner has been acting pro se—numerous dismissals, the most recent was the 26 May, 2011, dismissal of the 14 April, 2011, petition.[1]

---

[1] On 15 June, 2009, and again on 24 June, 2009, Petitioner filed, *inter alia*, a petition with no fees, but with averments of unavoidable and unintentional delay pursuant to 37 C.F.R. §1.137(a) and §1.137(b), and no apparent replies in the form of fees due (excess claims) and compliant amendment. Petitioner made some statements as to what might be reasons for delay, but no documentation thereof in compliance with the requirements. The petitions were dismissed on 21 September, 2009.

On 24 September, 2009, and again on 28 September, 2009, Petitioner filed, *inter alia*, petitions with no fees, but with averments of unavoidable and unintentional delay pursuant to 37 C.F.R. §1.137(a) and §1.137(b), and no apparent replies in the form of fees due (excess claims) of and a compliant amendment. Further:

- Petitioner made some statements as to what might be reasons for delay, but no documentation thereof in compliance with the requirements. (See below.)
- Petitioner was cautioned against handwriting changes on other papers—Petitioner was directed to the provisions of the Manual of Patent Examining Procedure (MPEP §714, et seq., including but not limited to §714.02, §714.10).
- It was noted that Petitioner submitted a copy of what purported to be a confirmation of FAX transmission dated 18 May, 2007, however, the document to which Petitioner appeared to seek to link this transmission was not a confirmation of receipt, and contained two (2) different and unreadable application numbers. The Rules of Practice (e.g., 37 C.F.R. §1.4(b)) and the provisions of the MPEP (e.g., §501, §502.02, §502.04) specify that every application is a separate application and separate papers must be filed in each application.

On 7 June, 2011, Petitioner re-advanced his petition pursuant to 37 C.F.R. §1.181. The record is clear—having been made expressly by Petitioner—that after the 17 December, 2008, paper (the Notice of Non-Compliant Amendment was received "it was possible that something was misplaced."[2] Thus, Petitioner clearly cannot satisfy the requirements under the Rule. The statement having been made cannot now be recalled, and no statement thereafter of non-receipt can be considered accurate in light of this history.

- Petitioner averred, *inter alia*, non-receipt of the Office action but failed to: provide a copy of the application docket sheet and the due date calendar for his office; and make the statements of, *inter alia*: non-receipt at the correspondence address of record; search and non-discovery with a description of the docketing system and of its sufficient reliability and failed to evidence a due date docket is that for his office, making it impossible to discern whether other files wherein replies were due for non-final Office actions were reviewed to ensure that the Office action herein had not been misfiled. Petitioner provided no proper reply to the Notice of Non-Compliant Amendment following his reply to the non-final Office action of 6 March, 2008. Moreover, in the absence of documentary support for his averments Petitioner was not in a position to satisfy the requirements of a petition averring unavoidable delay pursuant to 37 C.F.R. §1.137(a). (See: MPEP §711.03(c)(II).

The petitions were dismissed on 5 May, 2010.

On 10 May, 2010, Petitioner filed a petition pursuant to 37 C.F.R. §1.137(b) with a statement of unintentional delay, however, without the petition fee and the required reply in the form of fees due (excess claims) and a compliant amendment. The petition was dismissed on 8 July, 2010.

On 13 July, 2010, Petitioner filed a petition pursuant to 37 C.F.R. §1.137(b) with a statement of unintentional delay, however, without the petition fee and the required reply in the form of fees due (excess claims) and a compliant amendment. As noted above, Petitioner announced, *inter alia*, that there is:

- "no need pay (sic) petition fee. Effect would be repeateous (sic) ask for claims/abs after sent already";
- "Inventors should not have to pay petition fees for applications with allowed dependent claims, claims, abstract previously submitted. Concept would be 'send notice of compliance after patent app receipt (sic) making people resend abstract/claims received/sent previously."

The petition was dismissed on 9 August, 2010, and Petitioner was given two (2) months to reply.

Petitioner ignored that deadline, and on 20 December, 2010, Petitioner commenced to file papers (two (2) on that date)—a process Petitioner continued on 21 December, 2010 (with one (1) page), and again on 30 December, 2010 (again with one (1) page)—toward the instant petition expressly requesting withdrawal of the holding of abandonment, considered properly as a petition pursuant to 37 C.F.R. §1.181, and, again, failed to satisfy the requirements (as set forth below) for the showing of nonreceipt under the Rule as those requirements are expressly set forth in the guidance in the Commentary at MPEP §711.03(c)(I) requiring: a copy of the firm due-date docket/calendar and a copy of the docket sheet (or file jacket cover) for the instant application and; recitations as to a statement of non-receipt "at the correspondence address of record," a statement of search of the file and non-discovery, a description of the docketing system, a statement of system reliability, and such requirements as set forth in the guidance in the Commentary at MPEP 711.03(c)(I). The petition was dismissed on 31 January, 2011.

On 23 March, 2011, Petitioner re-advanced his petition expressly requesting withdrawal of the holding of abandonment, considered properly as a petition pursuant to 37 C.F.R. §1.181, and:

- made statements: that the papers in question were not received at the "address of record"—a statement the Office construes as meaning the "correspondence address of record, and if the Office is mistaken in this matter Petitioner must immediately notify the Office—and of search and non-discovery, along with a description of his somewhat unusual docketing system and an indication that—in lieu of a docket sheet—the due date calendar evidenced what materials were received or not received because of the subsequent due date; and
- provided a copy of his due date calendar.

However, Petitioner failed to make the statement that his docketing system had been found sufficiently reliable. The petition was dismissed on 8 April, 2011.

On 14 April, 2011, Petitioner re-advanced his petition expressly requesting withdrawal of the holding of abandonment, considered properly as a petition pursuant to 37 C.F.R. §1.181, and stated therein that after the paper was received "it was possible that something was misplaced." Thus, Petitioner clearly could not satisfy the requirements under the Rule. And the petition was dismissed on 26 May, 2011.

[2] See: The one- (1-) page Petition of 14 April, 2011, at item 3.

Petitioner's failure to timely and properly file a petition pursuant to 37 C.F.R. §1.137(b) with fee and reply, with a statement of unintentional delay may be considered indicia of delay that is other than unintentional.

Petitioner is directed to in the guidance in the Commentary at MPEP §711.03(c)(I), which provides in pertinent part:

***

> The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.
>
> Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.
>
> A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.[3] (Emphasis supplied.)

***

On any renewed petition, Petitioner must comply with the required showing expressly set forth in the guidance in the Commentary at MPEP §711.03(c)(I)—as highlighted above for Petitioner's reference.

However, Petitioner may not be able to satisfy those requirements.

[3] *See*: MPEP §711.03(c) (I)(A).

In such case, Petitioner may alternatively chose to present a petition pursuant to 37 C.F.R. §1.137(b) with fee, reply, and statement of unintentional delay. (Applicants/Petitioners always are cautioned that the conditions of their failure to reply timely and properly to an Office action, including a decision on petition, may be considered *indicia* of intentional delay.)

Out of an abundance of caution, Petitioners always are reminded that the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (*see*: 37 C.F.R. §1.181(f)), and those registered to practice and all others who make representations before the Office are reminded to inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation– since all owe to the Office the continuing duty to disclose.[4]

Petitioner is requested to review the requirements as set forth in the guidance in the Commentary at MPEP 711.03(c)(I), and then seek to satisfy those requirements. Alternatively, Petitioner may file a petition to revive pursuant to the regulations at 37 C.F.R. §1.137(b).

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).

Allegations as to the Request to Withdraw the Holding of Abandonment

The guidance in the Commentary at MPEP §711.03(c)(I) specifies the showing required and how it is to be made and supported.

Petitioner appears not to have made the showing required.

CONCLUSION

Accordingly, the petition under 37 C.F.R. §1.181 is **dismissed**.

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

ALTERNATIVE VENUE

Should Petitioner wish to revive the application, Petitioner may wish to properly file a petition to the Commissioner requesting revival of an application abandoned due to unintentional delay under 37 C.F.R. §1.137(b). (See: http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c)

A petition to revive on the grounds of unintentional delay must be filed promptly and such petition must be accompanied by the reply, the petition fee, a terminal disclaimer and fee where appropriate and a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional." (The statement is in the form available online.)

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

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

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

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

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[5]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

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

[5] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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7333 N. RIDGE BLVD./ APT. 108B
CHICAGO IL 60645

MAILED

JUN 17 2011

OFFICE OF PETITIONS

In re Application of	:	
Struck	:	
Application No. 11/224,731	:	DECISION
Filed: 12 September, 2005	:	
Attorney Docket No. (None)	:	

This is a decision on the papers considered as petition filed on 7 June, 2011, considered as a petition to make special pursuant to 37 C.F.R. §1.182 in view of the regulations at 37 C.F.R. §1.102(c) (no fee).

NOTES:

Under the Rule, it is the Petitioner's age—not that of some third person—that may present an opportunity for coverage pursuant to the Rule

Thus, the fundamental bar to the relief sought herein by Petitioner is that the Petitioner is the Applicant and it is the Applicant's age that is controlling.

However, the preliminary issue herein is that: **the application presently stands abandoned**. Thus, the petition must be dismissed until Petitioner takes such action as required to revive the application—to wit: the filing of a grantable petition pursuant to the regulations at 37 C.F.R. §1.137(b).

The requirements of a grantable petition are:

- The petition;
- The petition fee;
- The reply; and
- The statement of unintentional delay.

Application No. 11/224,731

The petition pursuant to 37 C.F.R. §1.182 in view of the regulations at 37 C.F.R. §1.102(c) is **DISMISSED**.

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the Notice of Non-Compliant Amendment (fees formalities) mailed on 17 December, 2008, with reply due under absent an extension of time on or before 17 January, 2009.

The application went abandoned after midnight 17 January, 2009.

The Office mailed a Notice of Abandonment on 8 June, 2009.

There have been numerous petitions to withdraw the holding of abandonment pursuant to 37 C.F.R. §1.182 and/or to revive an application abandoned due to unavoidable delay petition pursuant to 37 C.F.R. §1.137(a).

Because Petitioner has been acting *pro se*, there also have been numerous dismissals, with the most recent were:

- The 26 May, 2011, dismissal of the 14 April, 2011, petition,[1] and

---

[1] On 15 June, 2009, and again on 24 June, 2009, Petitioner filed, *inter alia*, a petition with no fees, but with averments of unavoidable and unintentional delay pursuant to 37 C.F.R. §1.137(a) and §1.137(b), and no apparent replies in the form of fees due (excess claims) and compliant amendment. Petitioner made some statements as to what might be reasons for delay, but no documentation thereof in compliance with the requirements. The petitions were dismissed on 21 September, 2009.

On 24 September, 2009, and again on 28 September, 2009, Petitioner filed, *inter alia*, petitions with no fees, but with averments of unavoidable and unintentional delay pursuant to 37 C.F.R. §1.137(a) and §1.137(b), and no apparent replies in the form of fees due (excess claims) of and a compliant amendment. Further:

- Petitioner made some statements as to what might be reasons for delay, but no documentation thereof in compliance with the requirements. (See below.)
- Petitioner was cautioned against handwriting changes on other papers—Petitioner was directed to the provisions of the Manual of Patent Examining Procedure (MPEP §714, et seq., including but not limited to §714.02, §714.10).
- It was noted that Petitioner submitted a copy of what purported to be a confirmation of FAX transmission dated 18 May, 2007, however, the document to which Petitioner appeared to seek to link this transmission was not a confirmation of receipt, and contained two (2) different and unreadable application numbers. The Rules of Practice (e.g., 37 C.F.R. §1.4(b)) and the provisions of the MPEP (e.g., §501, §502.02, §502.04) specify that every application is a separate application and separate papers must be filed in each application.
- Petitioner averred, *inter alia*, non-receipt of the Office action but failed to: provide a copy of the application docket sheet and the due date calendar for his office; and make the statements of, *inter alia*: non-receipt at the correspondence address of record; search and non-discovery with a description of the docketing system and of its sufficient reliability and failed to evidence a due date docket is that for his office, making it impossible to discern whether other files wherein replies were due for non-final Office actions were reviewed to ensure that the Office action herein had not been misfiled. Petitioner provided no proper reply to the Notice of Non-Compliant Amendment following his reply to the non-final Office action of 6 March, 2008. Moreover, in the absence of documentary support for his averments Petitioner was not in a position to satisfy the requirements of a petition averring unavoidable delay pursuant to 37 C.F.R. §1.137(a). (See: MPEP §711.03(c)(II).

The petitions were dismissed on 5 May, 2010.

- The dismissal of the 7 June, 2011, petition pursuant to 37 C.F.R. §1.181.

On 7 June, 2011, Petitioner submitted papers considered as a petition pursuant to 37 C.F.R. §1.182 in view of §1.102. (See: the guidance in the Commentary at MPEP §708.02 outlines the requirements therein: http://www.uspto.gov/web/offices/pac/mpep/mpep_e8r6_0700.pdf .[2])

On 10 May, 2010, Petitioner filed a petition pursuant to 37 C.F.R. §1.137(b) with a statement of unintentional delay, however, without the petition fee and the required reply in the form of fees due (excess claims) and a compliant amendment. The petition was dismissed on 8 July, 2010.

On 13 July, 2010, Petitioner filed a petition pursuant to 37 C.F.R. §1.137(b) with a statement of unintentional delay, however, without the petition fee and the required reply in the form of fees due (excess claims) and a compliant amendment. As noted above, Petitioner announced, *inter alia*, that there is:

- "no need pay (sic) petition fee. Effect would be repeateous (sic) ask for claims/abs after sent already";
- "Inventors should not have to pay petition fees for applications with allowed dependent claims, claims, abstract previously submitted. Concept would be 'send notice of compliance after patent app receipt (sic) making people resend abstract/claims received/sent previously."

The petition was dismissed on 9 August, 2010, and Petitioner was given two (2) months to reply.

Petitioner ignored that deadline, and on 20 December, 2010, Petitioner commenced to file papers (two (2) on that date)—a process Petitioner continued on 21 December, 2010 (with one (1) page), and again on 30 December, 2010 (again with one (1) page)—toward the instant petition expressly requesting withdrawal of the holding of abandonment, considered properly as a petition pursuant to 37 C.F.R. §1.181, and, again, failed to satisfy the requirements (as set forth below) for the showing of nonreceipt under the Rule as those requirements are expressly set forth in the guidance in the Commentary at MPEP §711.03(c)(I) requiring: a copy of the firm due-date docket/calendar and a copy of the docket sheet (or file jacket cover) for the instant application and; recitations as to a statement of non-receipt "at the correspondence address of record," a statement of search of the file and non-discovery, a description of the docketing system, a statement of system reliability, and such requirements as set forth in the guidance in the Commentary at MPEP 711.03(c)(I). The petition was dismissed on 31 January, 2011.

On 23 March, 2011, Petitioner re-advanced his petition expressly requesting withdrawal of the holding of abandonment, considered properly as a petition pursuant to 37 C.F.R. §1.181, and:

- made statements: that the papers in question were not received at the "address of record"—a statement the Office construes as meaning the "correspondence address of record, and if the Office is mistaken in this matter Petitioner must immediately notify the Office—and of search and non-discovery, along with a description of his somewhat unusual docketing system and an indication that—in lieu of a docket sheet—the due date calendar evidenced what materials were received or not received because of the subsequent due date; and
- provided a copy of his due date calendar.

However, Petitioner failed to make the statement that his docketing system had been found sufficiently reliable. The petition was dismissed on 8 April, 2011.

On 14 April, 2011, Petitioner re-advanced his petition expressly requesting withdrawal of the holding of abandonment, considered properly as a petition pursuant to 37 C.F.R. §1.181, and stated therein that after the paper was received "it was possible that something was misplaced." Thus, Petitioner clearly could not satisfy the requirements under the Rule, and the petition was dismissed on 26 May, 2011.

[2] The guidance in the Commentary at MPEP §708.02provides:

> **708.02Petition To Make Special [R-6]**
>
> *37 CFR 1.102. Advancement of examination.*
>
> (a)Applications will not be advanced out of turn for examination or for further action except as provided by this part, or upon order of the Director to expedite the business of the Office, or upon filing of a request under paragraph (b) of this section or upon filing a petition under paragraphs (c) or (d) of this section with a showing which, in the opinion of the Director, will justify so advancing it.
>
> (b)Applications wherein the inventions are deemed of peculiar importance to some branch of the public service and the head of some department of the Government requests immediate action for that reason, may be advanced for examination.
>
> (c)A petition to make an application special may be filed without a fee if the basis for the petition is:
>
> (1)The applicant's age or health; or
>
> (2)That the invention will materially:

However, the application stands abandoned, and the petition must be dismissed.

CONCLUSION

Accordingly, the petition pursuant to 37 C.F.R. §1.182 in view of the regulations at 37 C.F.R. §1.102 is **dismissed without prejudice** while the instant application is in abandoned status.

Petitioner may or may not wish to seek consideration (of the petition pursuant to 37 C.F.R. §1.182 in view of the regulations at 37 C.F.R. §1.102) following revival of the application on submission of a grantable petition pursuant to 37 C.F.R. §1.137(b) with petition, fee, reply and statement of unintentional delay.

(i)Enhance the quality of the environment;
(ii)Contribute to the development or conservation of energy resources; or
(iii)Contribute to countering terrorism.

(d)A petition to make an application special on grounds other than those referred to in paragraph (c) of this section must be accompanied by the fee set forth in § 1.17(h).

New applications ordinarily are taken up for examination in the order of their effective United States filing dates. Certain exceptions are made by way of petitions to make special, which may be granted under the conditions set forth below. Any statement in support of a petition to make special must be based on a good faith belief that the invention in fact qualifies for special status. See 37 CFR 1.56 and 10.18.

Any petition to make special, other than those based on applicant's health or age or the Patent Prosecution Highway (PPH) pilot program, filed on or after August 25, 2006 must meet the requirements for the revised accelerated examination program set forth in MPEP § 708.02(a). See subsections III and IV below for the requirements for filing a petition to make special based on applicant's health or age.

Applications filed prior to August 25, 2006 are not eligible for the revised accelerated examination program set forth in MPEP § 708.02(a). Until August 25, 2006, applicant may file a petition to make special in an application filed prior to August 25, 2006 by complying with the guidelines and requirements set forth in subsections I-II, and V-XII below.

A petition to make special filed on or after August 25, 2006 will only be granted if it is based upon applicant's health or age or is under the PPH pilot program, or if it complies with the requirements set forth in MPEP § 708.02(a).

***

IV.APPLICANT'S AGE

An application may be made special upon filing a petition including any evidence showing that the applicant is 65 years of age, or more, such as **applicant's statement >or a statement from a registered practitioner that he or she has evidence that the applicant is 65 years of age or older<. No fee is required with such a petition. See 37 CFR 1.102(c).

Personal/medical information submitted as evidence to support the petition will be available to the public if the application file and contents are available to the public pursuant to 37 CFR 1.11 or 1.14. If applicant does not wish to have this information become part of the application file record, the information must be submitted pursuant to MPEP § 724.02.

***

FORMAL REQUIREMENTS OF PETITION TO MAKE SPECIAL

Any petition to make special should:

(A)be in writing; and
(B)identify the application by application number and filing date.

***

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

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

[3] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE

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MAILED

AUG 05 2011

OFFICE OF PETITIONS

In re Application of	:	
Struck	:	
Application No. 11/224,731	:	DECISION
Filed: 12 September, 2005	:	
Attorney Docket No. (None)	:	

This is a decision on the papers considered as petition filed on 1 August, 2011, considered as a petition pursuant to 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

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

Any request for reconsideration of this decision or any petition in the alternative is to be filed **within two (2) months** from the mail date of this decision. *Note* 37 C.F.R. §1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 C.F.R. §1.181 to Withdraw the Holding of Abandonment."

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

As to the Request to Withdraw
the Holding of Abandonment

Petitioner is directed to the Commentary at MPEP §711.03(c)(I) for guidance as to the proper showing and timeliness requirements for relief under 37 C.F.R. §1.181.

Petitioner appears not to comply with the guidance in the Commentary at MPEP §711.03(c)(I)—as discussed below, Petitioner has failed to satisfy the showing requirements set forth there. Petitioner may find it beneficial to review that material and move step-wise through that guidance in the effort to satisfy the showing requirements (statements and supporting documentation).

Application No. 11/224,731

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(I) as to a petition pursuant to 37 C.F.R. §1.181 and the requirements under the Rule.

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the Notice of Non-Compliant Amendment (fees formalities) (copy enclosed) mailed on 17 December, 2008, with reply due under absent an extension of time on or before 17 January, 2009.

The application went abandoned after midnight 17 January, 2009.

The Office mailed a Notice of Abandonment on 8 June, 2009.

There have been numerous petitions—and because Petitioner has been acting pro se—numerous dismissals, the most recent was the 17 June, 2011, dismissal of the 6 June, 2011, petition.[1]

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[1] On 15 June, 2009, and again on 24 June, 2009, Petitioner filed, *inter alia*, a petition with no fees, but with averments of unavoidable and unintentional delay pursuant to 37 C.F.R. §1.137(a) and §1.137(b), and no apparent replies in the form of fees due (excess claims) and compliant amendment. Petitioner made some statements as to what might be reasons for delay, but no documentation thereof in compliance with the requirements. The petitions were dismissed on 21 September, 2009.

On 24 September, 2009, and again on 28 September, 2009, Petitioner filed, *inter alia*, petitions with no fees, but with averments of unavoidable and unintentional delay pursuant to 37 C.F.R. §1.137(a) and §1.137(b), and no apparent replies in the form of fees due (excess claims) of and a compliant amendment. Further:

- Petitioner made some statements as to what might be reasons for delay, but no documentation thereof in compliance with the requirements. (See below.)
- Petitioner was cautioned against handwriting changes on other papers—Petitioner was directed to the provisions of the Manual of Patent Examining Procedure (MPEP §714, et seq., including but not limited to §714.02, §714.10).
- It was noted that Petitioner submitted a copy of what purported to be a confirmation of FAX transmission dated 18 May, 2007, however, the document to which Petitioner appeared to seek to link this transmission was not a confirmation of receipt, and contained two (2) different and unreadable application numbers. The Rules of Practice (e.g., 37 C.F.R. §1.4(b)) and the provisions of the MPEP (e.g., §501, §502.02, §502.04) specify that every application is a separate application and separate papers must be filed in each application.
- Petitioner averred, *inter alia*, non-receipt of the Office action but failed to: provide a copy of the application docket sheet and the due date calendar for his office; and make the statements of, *inter alia*: non-receipt at the correspondence address of record; search and non-discovery with a description of the docketing system and of its sufficient reliability and failed to evidence a due date docket is that for his office, making it impossible to discern whether other files wherein replies were due for non-final Office actions were reviewed to ensure that the Office action herein had not been misfiled. Petitioner provided no proper reply to the Notice of Non-Compliant Amendment following his reply to the non-final Office action of 6 March, 2008. Moreover, in the absence of documentary support for his averments Petitioner was not in a position to satisfy the requirements of a petition averring unavoidable delay pursuant to 37 C.F.R. §1.137(a). (See: MPEP §711.03(c)(II).

The petitions were dismissed on 5 May, 2010.

On 10 May, 2010, Petitioner filed a petition pursuant to 37 C.F.R. §1.137(b) with a statement of unintentional delay, however, without the petition fee and the required reply in the form of fees due (excess claims) and a compliant amendment. The petition was dismissed on 8 July, 2010.

On 13 July, 2010, Petitioner filed a petition pursuant to 37 C.F.R. §1.137(b) with a statement of unintentional delay, however, without the petition fee and the required reply in the form of fees due (excess claims) and a compliant amendment. As noted above, Petitioner announced, *inter alia*, that there is:

- "no need pay (sic) petition fee. Effect would be repeateous (sic) ask for claims/abs after sent already";

On 1 August, 2011, Petitioner re-advanced his petition pursuant to 37 C.F.R. §1.181. Petitioner now suggests that he did not misplace the paper in question. The Office requests that Petitioner support this averment with some additional showing.

Petitioners always are directed to in the guidance in the Commentary at MPEP §711.03(c)(I), which provides in pertinent part:

***

> The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.
>
> Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was

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- "Inventors should not have to pay petition fees for applications with allowed dependent claims, claims, abstract previously submitted. Concept would be 'send notice of compliance after patent app receipt (sic) making people resend abstract/claims received/sent previously."

The petition was dismissed on 9 August, 2010, and Petitioner was given two (2) months to reply.

Petitioner ignored that deadline, and on 20 December, 2010, Petitioner commenced to file papers (two (2) on that date)—a process Petitioner continued on 21 December, 2010 (with one (1) page), and again on 30 December, 2010 (again with one (1) page)—toward the instant petition expressly requesting withdrawal of the holding of abandonment, considered properly as a petition pursuant to 37 C.F.R. §1.181, and, again, failed to satisfy the requirements (as set forth below) for the showing of nonreceipt under the Rule as those requirements are expressly set forth in the guidance in the Commentary at MPEP §711.03(c)(I) requiring: a copy of the firm due-date docket/calendar and a copy of the docket sheet (or file jacket cover) for the instant application and; recitations as to a statement of non-receipt "at the correspondence address of record," a statement of search of the file and non-discovery, a description of the docketing system, a statement of system reliability, and such requirements as set forth in the guidance in the Commentary at MPEP 711.03(c)(I). The petition was dismissed on 31 January, 2011.

On 23 March, 2011, Petitioner re-advanced his petition expressly requesting withdrawal of the holding of abandonment, considered properly as a petition pursuant to 37 C.F.R. §1.181, and:

- made statements: that the papers in question were not received at the "address of record"—a statement the Office construes as meaning the "correspondence address of record, and if the Office is mistaken in this matter Petitioner must immediately notify the Office—and of search and non-discovery, along with a description of his somewhat unusual docketing system and an indication that—in lieu of a docket sheet—the due date calendar evidenced what materials were received or not received because of the subsequent due date; and

- provided a copy of his due date calendar.

However, Petitioner failed to make the statement that his docketing system had been found sufficiently reliable. The petition was dismissed on 8 April, 2011.

On 14 April, 2011, Petitioner re-advanced his petition expressly requesting withdrawal of the holding of abandonment, considered properly as a petition pursuant to 37 C.F.R. §1.181, and stated therein that after the paper was received "it was possible that something was misplaced." Thus, Petitioner clearly could not satisfy the requirements under the Rule. And the petition was dismissed on 26 May, 2011.

The 7 June, 2011, petition was dismissed on 17 June, 2011.

> not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.
>
> A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.[2] (Emphasis supplied.)

***

On any renewed petition, Petitioner must comply with the required showing expressly set forth in the guidance in the Commentary at MPEP §711.03(c)(I)—as highlighted above for Petitioner's reference.

However, Petitioner may not be able to satisfy those requirements.

In such case, Petitioner may alternatively chose to present a petition pursuant to 37 C.F.R. §1.137(b) with fee, reply, and statement of unintentional delay. (Applicants/Petitioners always are cautioned that the conditions of their failure to reply timely and properly to an Office action, including a decision on petition, may be considered *indicia* of intentional delay.)

Out of an abundance of caution, Petitioners always are reminded that the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (*see*: 37 C.F.R. §1.181(f)), and those registered to practice and all others who make representations before the Office are reminded to inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[3]

Petitioner is requested to review the requirements as set forth in the guidance in the Commentary at MPEP 711.03(c)(I), and then seek to satisfy those requirements. Alternatively, Petitioner may file a petition to revive pursuant to the regulations at 37 C.F.R. §1.137(b).

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[2] *See*: MPEP §711.03(c) (I)(A).

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

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).

Allegations as to the Request to Withdraw the Holding of Abandonment

The guidance in the Commentary at MPEP §711.03(c)(I) specifies the showing required and how it is to be made and supported.

Petitioner appears not to have made the showing required.

CONCLUSION

Accordingly, the petition under 37 C.F.R. §1.181 is **dismissed**.

ALTERNATIVE VENUE

Should Petitioner wish to revive the application, Petitioner may wish to properly file a petition to the Commissioner requesting revival of an application abandoned due to unintentional delay under 37 C.F.R. §1.137(b). (See: http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c)

A petition to revive on the grounds of unintentional delay must be filed promptly and such petition must be accompanied by the reply, the petition fee, a terminal disclaimer and fee where appropriate and a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional." (The statement is in the form available online.)

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

Application No. 11/224,731

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

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

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

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[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 attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

JAMES T. STRUCK OR
DINOSAURS, TREES,
RELIGION AND GALAXIES
7333 N. RIDGE BLVD./ APT. 108B
CHICAGO IL 60645

MAILED

MAR 19 2012

OFFICE OF PETITIONS

In re Application of :
Struck :
Application No. 11/224,731 : DECISION
Filed: 12 September, 2005 :
Attorney Docket No. (None) :

This is a decision on the papers considered as petition filed on 24 January, 2012, considered as a petition pursuant to 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

NOTE:

Petitioner is cautioned that Petitioner's continued failure to properly and promptly file a petition to revive the application abandoned due to unintentional delay pursuant to 37 C.F.R. §1.137(b) may be considered *indicia* of delay that is other than unintentional.

For information on a petition to revive pursuant to 37 C.F.R. §1.137(b)—*see*: http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03 c)—and provide therewith the requirements of the petition (the petition and the petition fee, the reply, the statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional."and a terminal disclaimer and fee where appropriate. (The statement is in the form available online: http://www.uspto.gov/web/forms/sb0064.pdf .)

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

Any request for reconsideration of this decision or any petition in the alternative is to be filed **within two (2) months** from the mail date of this decision. *Note* 37 C.F.R. §1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 C.F.R. §1.181 to Withdraw the Holding of Abandonment."

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

As to the Request to Withdraw
the Holding of Abandonment

Petitioner is directed to the Commentary at MPEP §711.03(c)(I) for guidance as to the proper showing and timeliness requirements for relief under 37 C.F.R. §1.181.

Petitioner appears not to comply with the guidance in the Commentary at MPEP §711.03(c)(I)—as discussed below, Petitioner has failed to satisfy the showing requirements set forth there. Petitioner may find it beneficial to review that material and move step-wise through that guidance in the effort to satisfy the showing requirements (statements and supporting documentation).

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(I) as to a petition pursuant to 37 C.F.R. §1.181 and the requirements under the Rule.

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the Notice of Non-Compliant Amendment (fees formalities) (copy enclosed) mailed on 17 December, 2008, with reply due under absent an extension of time on or before 17 January, 2009.

The application went abandoned after midnight 17 January, 2009.

The Office mailed a Notice of Abandonment on 8 June, 2009.

There have been numerous petitions and numerous dismissals of the wholly insufficient materials submitted *pro se*. Following the 17 June, 2011, dismissal of the 6 June, 2011, petition.[1]

---

[1] On 15 June, 2009, and again on 24 June, 2009, Petitioner filed, *inter alia*, a petition with no fees, but with averments of unavoidable and unintentional delay pursuant to 37 C.F.R. §1.137(a) and §1.137(b), and no apparent replies in the form of fees due (excess claims) and compliant amendment. Petitioner made some statements as to what might be reasons for delay, but no documentation thereof in compliance with the requirements. The petitions were dismissed on 21 September, 2009.

On 24 September, 2009, and again on 28 September, 2009, Petitioner filed, *inter alia*, petitions with no fees, but with averments of unavoidable and unintentional delay pursuant to 37 C.F.R. §1.137(a) and §1.137(b), and no apparent replies in the form of fees due (excess claims) of and a compliant amendment. Further:

- Petitioner made some statements as to what might be reasons for delay, but no documentation thereof in compliance with the requirements. (See below.)
- Petitioner was cautioned against handwriting changes on other papers—Petitioner was directed to the provisions of the Manual of Patent Examining Procedure (MPEP §714, et seq., including but not limited to §714.02, §714.10).
- It was noted that Petitioner submitted a copy of what purported to be a confirmation of FAX transmission dated 18 May, 2007, however, the document to which Petitioner appeared to seek to link this transmission was not a confirmation of receipt, and contained two (2) different and unreadable application numbers. The Rules of Practice (e.g., 37 C.F.R. §1.4(b)) and the provisions of the MPEP

On 1 August, 2011, Petitioner re-advanced his petition pursuant to 37 C.F.R. §1.181 wherein Petitioner suggested that he did not misplace the paper in question. On 5 August, 2011, the petition was dismissed and Petitioner was given two months to submit a documentary showing in support of the averment.

(e.g., §501, §502.02, §502.04) specify that every application is a separate application and separate papers must be filed in each application.

- Petitioner averred, *inter alia*, non-receipt of the Office action but failed to: provide a copy of the application docket sheet and the due date calendar for his office; and make the statements of, *inter alia*: non-receipt at the correspondence address of record; search and non-discovery with a description of the docketing system and of its sufficient reliability and failed to evidence a due date docket is that for his office, making it impossible to discern whether other files wherein replies were due for non-final Office actions were reviewed to ensure that the Office action herein had not been misfiled. Petitioner provided no proper reply to the Notice of Non-Compliant Amendment following his reply to the non-final Office action of 6 March, 2008. Moreover, in the absence of documentary support for his averments Petitioner was not in a position to satisfy the requirements of a petition averring unavoidable delay pursuant to 37 C.F.R. §1.137(a). (See: MPEP §711.03(c)(II).

The petitions were dismissed on 5 May, 2010.

On 10 May, 2010, Petitioner filed a petition pursuant to 37 C.F.R. §1.137(b) with a statement of unintentional delay, however, without the petition fee and the required reply in the form of fees due (excess claims) and a compliant amendment. The petition was dismissed on 8 July, 2010.

On 13 July, 2010, Petitioner filed a petition pursuant to 37 C.F.R. §1.137(b) with a statement of unintentional delay, however, without the petition fee and the required reply in the form of fees due (excess claims) and a compliant amendment. As noted above, Petitioner announced, *inter alia*, that there is:

- "no need pay (sic) petition fee. Effect would be repeateous (sic) ask for claims/abs after sent already";
- "Inventors should not have to pay petition fees for applications with allowed dependent claims, claims, abstract previously submitted. Concept would be 'send notice of compliance after patent app receipt (sic) making people resend abstract/claims received/sent previously."

The petition was dismissed on 9 August, 2010, and Petitioner was given two (2) months to reply.

Petitioner ignored that deadline, and on 20 December, 2010, Petitioner commenced to file papers (two (2) on that date)—a process Petitioner continued on 21 December, 2010 (with one (1) page), and again on 30 December, 2010 (again with one (1) page)—toward the instant petition expressly requesting withdrawal of the holding of abandonment, considered properly as a petition pursuant to 37 C.F.R. §1.181, and, again, failed to satisfy the requirements (as set forth below) for the showing of nonreceipt under the Rule as those requirements are expressly set forth in the guidance in the Commentary at MPEP §711.03(c)(I) requiring: a copy of the firm due-date docket/calendar and a copy of the docket sheet (or file jacket cover) for the instant application and; recitations as to a statement of non-receipt "at the correspondence address of record," a statement of search of the file and non-discovery, a description of the docketing system, a statement of system reliability, and such requirements as set forth in the guidance in the Commentary at MPEP 711.03(c)(I). The petition was dismissed on 31 January, 2011.

On 23 March, 2011, Petitioner re-advanced his petition expressly requesting withdrawal of the holding of abandonment, considered properly as a petition pursuant to 37 C.F.R. §1.181, and:

- made statements: that the papers in question were not received at the "address of record"—a statement the Office construes as meaning the "correspondence address of record, and if the Office is mistaken in this matter Petitioner must immediately notify the Office—and of search and non-discovery, along with a description of his somewhat unusual docketing system and an indication that—in lieu of a docket sheet—the due date calendar evidenced what materials were received or not received because of the subsequent due date; and
- provided a copy of his due date calendar.

However, Petitioner failed to make the statement that his docketing system had been found sufficiently reliable. The petition was dismissed on 8 April, 2011.

On 14 April, 2011, Petitioner re-advanced his petition expressly requesting withdrawal of the holding of abandonment, considered properly as a petition pursuant to 37 C.F.R. §1.181, and stated therein that after the paper was received "it was possible that something was misplaced." Thus, Petitioner clearly could not satisfy the requirements under the Rule. And the petition was dismissed on 26 May, 2011.

The 7 June, 2011, petition was dismissed on 17 June, 2011.

On 24 January, 2012—more than five months after the dismissal—Petitioner re-advanced the petition, but untimely and without a request and fee for extension of time, and in a one page submission Petitioner made no showing under the Rule and consistent with the in the guidance in the Commentary at MPEP §711.03(c)(I).

Petitioners always are directed to in the guidance in the Commentary at MPEP §711.03(c)(I), which provides in pertinent part:

***

> The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.
>
> Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.
>
> A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.[2] (Emphasis supplied.)

***

On any renewed petition, Petitioner must comply with the required showing expressly set forth in the guidance in the Commentary at MPEP §711.03(c)(I)—as highlighted above for Petitioner's reference.

[2] *See*: MPEP §711.03(c) (I)(A).

However, Petitioner may not be able to satisfy those requirements.

In such case, Petitioner may alternatively chose to present a petition pursuant to 37 C.F.R. §1.137(b) with fee, reply, and statement of unintentional delay. (Applicants/Petitioners always are cautioned that the conditions of their failure to reply timely and properly to an Office action, including a decision on petition, may be considered *indicia* of intentional delay.)

Out of an abundance of caution, Petitioners always are reminded that the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (*see*: 37 C.F.R. §1.181(f)), and those registered to practice and all others who make representations before the Office are reminded to inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation– since all owe to the Office the continuing duty to disclose.[3]

Petitioner is requested to review the requirements as set forth in the guidance in the Commentary at MPEP 711.03(c)(I), and then seek to satisfy those requirements. Alternatively, Petitioner may file a petition to revive pursuant to the regulations at 37 C.F.R. §1.137(b).

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).

Allegations as to the Request to Withdraw the Holding of Abandonment

The guidance in the Commentary at MPEP §711.03(c)(I) specifies the showing required and how it is to be made and supported.

Petitioner appears not to have made the showing required.

[3] See 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).

CONCLUSION

Accordingly, the petition under 37 C.F.R. §1.181 is **dismissed**.

ALTERNATIVE VENUE

Should Petitioner wish to revive the application, Petitioner may wish to properly file a petition to the Commissioner requesting revival of an application abandoned due to unintentional delay under 37 C.F.R. §1.137(b). (See: http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c)

A petition to revive on the grounds of unintentional delay must be filed promptly and such petition must be accompanied by the reply, the petition fee, a terminal disclaimer and fee where appropriate and a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional." (The statement is in the form available online.)

Petitioner again is cautioned that Petitioner's continued failure to properly and promptly file a petition to revive the application abandoned due to unintentional delay pursuant to 37 C.F.R. §1.137(b) may be considered indicia of delay that is other than unintentional.

For information on a petition to revive pursuant to 37 C.F.R. §1.137(b)—*see*: http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c)—and provide therewith the requirements of the petition (the petition and the petition fee, the reply, the statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional."and a terminal disclaimer and fee where appropriate. (The statement is in the form available online: http://www.uspto.gov/web/forms/sb0064.pdf .)

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

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

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

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

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[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 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 : 3/26/2012

TO SPE OF : ART UNIT 1656

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/224759 Patent No.: 7465710 B2

CofC mailroom date: 2/11/2012

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Note: _____

_____

Virginia Tolbert

Certificates of Correction Branch

(571) 272-0460

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: _____

[signature] (M.RAO) (1656)

SPE **Art Unit**

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

UNITED STATES PATENT AND TRADEMARK OFFICE

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www.uspto.gov

SCHUBERT LAW GROUP PLLC
P.O. BOX 90879
AUSTIN TX 78709-0879

MAILED

OCT 21 2010

OFFICE OF PETITIONS

In re Application of	:	
Kevin Daniel Hoberman et al.	:	
Application No. 11/224,762	:	ON PETITION
Filed: September 13, 2005	:	
Attorney Docket No: AMG.4010. PAT	:	

This is a decision on the petition filed September 22, 2010 under 37 CFR 1.137(b),[1] to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the non-Final Office Action mailed August 20, 2009. A shortened statutory period of three months was set for replying to the non-Final Office Action. No response having been timely filed, this application became abandoned November 23, 2009. Accordingly, a Notice of Abandonment was mailed March 16, 2010.

This matter is being referred to Technology Center 3617 for appropriate action on the amendment filed September 22, 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]Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

DEKEL PATENT LTD., DAVID KLEIN
BEIT HAROF'IM
18 MENUHA VENAHALA STREET, ROOM 27
REHOVOT 76209 IL ISRAEL

MAILED

SEP 29 2011

OFFICE OF PETITIONS

In re Application of	:	
Arnin	:	
Application No. 11/224,948	:	DECISION ON PETITION
Filed: September 14, 2005	:	
Attorney Dkt. No. 1584VAS-US	:	

This is a decision on the petition filed under 37 CFR 1.137(b) in the above-identified application filed on September 23, 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 August 9, 2010. The non-final Office Action set a three (3) month shortened statutory period for reply. Accordingly, this application became abandoned on November 10, 2010. A Notice of Abandonment was mailed on February 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 an amendment (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 3733 for appropriate action by the Examiner in the normal course of business on the reply received.

Charlema Grant
Petition Attorney
Office of Petitions

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P.O. Box 1450
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MH2 TECHNOLOGY LAW GROUP, LLP
1951 KIDWELL DRIVE
SUITE 550
TYSONS CORNER, VA 22182

MAILED

OCT 04 2010

OFFICE OF PETITIONS

ON PETITION

In re Patent No. 7,659,536 :
Issue Date: February 9, 2010 :
Application No. 11/225,006 :
Filed: September 14, 2005 :
Attorney Docket No. 0023.0006 :

This is a decision on the petition filed August 19, 2010, which is being treated as a petition under 37 CFR 3.81(b) to correct the name of the assignee on the front page of the above-identified patent by way of a certificate of correction.

The petition is **DISMISSED**.

Petitioner requests issuance of a certificate of correction in the name of "STC.UNM and California Institute of Technology."

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

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 **before issuance of the patent**, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter [emphasis added]. *See also* MPEP 1481.01.

U.S. Patent and Trademark Office assignment records disclose that an assignment from STC.UNM to STC.UNM and CALIFORNIA INSTITUTE OF TECHNOLOGY was recorded on August 5, 2010, **after the date of issuance of this patent**. Accordingly, since the assignment was not submitted for recordation until after issuance of this patent, issuance of a certificate of correction would not be proper.

Telephone inquiries concerning this decision on petition should be directed to April M. Wise at (571) 272-1642.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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POLSINELLI SHUGHART PC
700 WEST 47TH STREET
SUITE 1000
KANSAS CITY, MO 64112

MAILED
JAN 19 2011
OFFICE OF PETITIONS

In re Application of	:	
Michael G. Falbo	:	
Application No. 11/225,510	:	ON PETITION
Filed: September 13, 2005	:	
Attorney Docket No. MED070/113478	:	

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

The petition is **GRANTED**.

The application became abandoned for failure to file a reply within the meaning of 37 CFR 1.113 to the final Office action of March 13, 2009. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that prima facie places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). In view of the three-month extension of time submitted on September 14, 2009, the date of abandonment of this application is September 15, 2009. A Notice of Abandonment was mailed May 6, 2010.

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

Although an attorney of record signed the petition, the registration number provided on the signature page does not correspond with the USPTO records. Nevertheless, in accordance with 37 CFR 1.34, the signature of Richard P. Stitt 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.

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

This application is being referred to Technology Center AU 3673 for processing of the RCE and for appropriate action by the Examiner in the normal course of business in accordance with 37 CFR 1.114.

A. Kelley

Alicia Kelley
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 4-26-11

TO SPE OF : ART UNIT 2192

SUBJECT : Request for Certificate of Correction for Appl. No.: 11225535 Patent No.: 7814472

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: _____

TUAN DAM
SUPERVISORY PATENT EXAMINER
SPE

2192
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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

DATE : October 22, 2010

TO : Director, Office of Patent Publication

FROM : Office of Petitions

SUBJECT : Withdrawal from Issue of **Application No. 11/225,853**

Applicant(s) : Eitan CADOURI, et *al.*
Application No. : 11/225,853
Filed : September 12, 2005

The above-identified application has been assigned Patent No. 7,823,095 and an issue date of October 26, 2010.

It is hereby directed that this application be withdrawn from issue at the request of the applicant. Do not refund the issue fee.

The following erratum should be published in the Official Gazette if the above-identified application is published in the OG of October 26, 2010:

> **"All reference to Patent No. 7,823,095 to Eitan CADOURI, et *al.* of Cupertino, California for METHOD AND SYSTEM FOR IMPLEMENTING PARALLEL PROCESSING OF ELECTRONIC DESIGN AUTOMATION TOOLS appearing in the Official Gazette of October 26, 2010 should be deleted since no patent was granted."**

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

cc: Paul Harrison
Deneise Boyd
Mary Louise McAskill
Niomi Farmer
Mary E. Johnson (Cookie)
Brad Harris
Kimberly Terrell
Lamont Fletcher

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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www.uspto.gov

VISTA IP LAW GROUP LLP
1885 Lundy Avenue, Suite 108
SAN JOSE, CA 95131

MAILED

OCT 25 2010

OFFICE OF PETITIONS

In re Application of	:	
Eitan CADOURI, et *al.*	:	
Application No. 11/225,853	:	DECISION GRANTING PETITION
Filed: September 12, 2005	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **05PA011US01**	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed October 21, 2010, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on September 16, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 2825 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

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

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 10/17/2011

TO SPE OF : ART UNIT 2614

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/225956 Patent No.: 7746985 B2

CofC mailroom date: 10/14/2011

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: _____

_____

_____

_____

_____

SPE

2614
Art Unit

PTOL-306 (REV. 7/03) U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

UNITED STATES PATENT AND TRADEMARK OFFICE

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SIEMENS CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
170 WOOD AVENUE SOUTH
ISELIN NJ 08830

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FEB 10 2011

OFFICE OF PETITIONS

In re Application of
AVRITZER, et al
Application No. 11/225,989
Filed: September 14, 2005
Docket No. 2004P19441 US01

DECISION ON PETITION

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 **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, March 28, 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 June 29, 2008.

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

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

All other inquiries should be directed to the Technology Center at (571) 272-2100.

This application is being referred to Technology Center AU 2113 for appropriate action by the Examiner in the normal course of business.

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

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

MAILED

NOV 08 2010

OFFICE OF PETITIONS

In re Application of	:	
Gene A. Robbins	:	
Application No. 11/225,995	:	DECISION ON PETITION
Filed: September 14, 2005	:	TO WITHDRAW
Attorney Docket No. 116968-007	:	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 19, 2010.

The request is **APPROVED**.

The request was signed by Robert M. Barrett on behalf of the practitioners of record associated with Customer Number 24,573.

Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to assignee Vardex Laser Corporation at the address indicated below.

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

Irvin Dingle
Petitions Examiner
Office of Petitions

cc: Vardex Laser Corporation
65 Burr Oak Drive
Lake Zurich, IL 60047

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	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/225,995	09/14/2005	Gene A. Robbins	116968-007

CONFIRMATION NO. 5283

POWER OF ATTORNEY NOTICE

24573
K&L Gates LLP
P.O. Box 1135
CHICAGO, IL 60690

OC000000044371909

Date Mailed: 11/08/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 10/19/2010.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/idingle/

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/225,995	09/14/2005	Gene A. Robbins	116968-007

CONFIRMATION NO. 5283

Vardex Laser Corporation
65 Burr Oak Drive
Lake Zurich, IL 60047

POA ACCEPTANCE LETTER

OC000000044371914

Date Mailed: 11/08/2010

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 10/19/2010.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

/idingle/

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

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

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NOV 09 2010

OFFICE OF PETITIONS

In re Application of

Gene A. ROBBINS
Application No. 11/226,006
Filed: September 14, 2005
Attorney Docket No. 3715650-00009

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 19, 2010.

The request is **NOT APPROVED.**

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

In this regard, the request to withdraw from record cannot be approved because the request to change the correspondence address is not an assignee of the entire interest who properly became of record under 37 C.F.R 3.71 nor is the correspondence address that of the first named inventor.

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

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

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

Cc: VARDEX LASER CORPORATION
65 BURR OAK DRIVE
LAKE ZURICH IL 60047

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Browdy and Neimark, PLLC
1625 K Street, N.W.
Suite 1100
Washington DC 20006

MAILED
JAN 11 2012
OFFICE OF PETITIONS

In re Application of	:	
Giuseppe Simonazzi	:	
Application No. 11/226256	:	
Filing or 371(c) Date: 09/15/2005	:	ON PETITION
Pat. Num.: 7385487	:	
Issue Date: 06/10/2008	:	
Attorney Docket Number: SIMONAZZI4	:	

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

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

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

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

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

/DLW/

Derek L. Woods
Attorney
Office of Petitions

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Browdy and Neimark, PLLC
1625 K Street, N.W.
Suite 1100
Washington DC 20006

MAILED
JAN 12 2012
OFFICE OF PETITIONS

In re Application of	:	
Giuseppe Simonazzi	:	
Application No. 11/226257	:	
Filing or 371(c) Date: 09/15/2005	:	ON PETITION
Pat. Num.: 7358850	:	
Issue Date: 04/15/2008	:	
Attorney Docket Number: SIMONAZZI5	:	

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

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

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

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

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

/DLW/

Derek L. Woods
Attorney
Office of Petitions

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Fujitsu Patent Center
Fujitsu Management Services of America, Inc.
2318 Mill Road, Suite 1010
Alexandria, VA 22314

Mail Date: 01/12/2011

Applicant	: Takahiro Aoki	: DECISION ON REQUEST FOR
Patent Number	: 7613333	: RECALCULATION of PATENT
Issue Date	: 11/03/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 11/226,306	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/15/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **994** 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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FAY KAPLUN & MARCIN, LLP
150 BROADWAY, SUITE 702
NEW YORK NY 10038

MAILED
OCT 14 2010
OFFICE OF PETITIONS

In re Application of	:	
Cole et al.	:	
Application No. 11/226,785	:	ON PETITION
Filed: September 14, 2005	:	
Attorney Docket No. 40125/01002	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed September 13, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and 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) 272-3206.

This matter is being referred to Technology Center AU 2612 for processing of the RCE filed concurrently with the instant petition.

Liana Walsh
Petitions Examiner
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.
11/226,796	10/27/2005	Andrew C. Sutkowski	2004M014	6337

7590 11/03/2010

Infineum USA L. P.
1900 E. Linden Ave.
P. O. Box 710
Linden, NJ 07036

EXAMINER
HINES, LATOSHA D

ART UNIT	PAPER NUMBER
1797	

MAIL DATE	DELIVERY MODE
11/03/2010	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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NOV 03 2010

wk

In re application of
Sutkowski et al.
Serial No. 11/226,796
Filed: October 27, 2005
For: Improvements In Fuel Cells

: DECISION ON
: PETITION

This is a response to Miscellaneous Motions filed under CFR 41.121 on August 31, 2010. Applicants Motion Request has been forwarded to Technology Center 1700 from the Board of Appeal to be considered as a PETITION UNDER RULE 37 C.F.R. 1.181(a) .

On March 18, 2009, the Examiner issued a Final Rejection. Applicants filed a Notice of Appeal, an Amendment After Final and an Affidavit according to Rule 1.132 on August 24, 2009. The Examiner issued an Advisory Action on September 1, 2009 noting that what was submitted did not place the Application in condition for allowance.

It was determined that the Application had an inventive entity of Andrew Sutkowski and Graham Jackson and the reference had only Graham Jackson. A discrepancy existed between the inventive entity of the Application and the reference and the affidavit submitted by Graham Jackson was not sufficient to overcome the rejection because Andrew Sutkowski was also an inventor of the instant application.

Applicant was informed that the period for reply expires 5 months from the mailing date of the final rejection to avoid abandonment. On December 18, 2009, Applicant filed a Declaration of Prior Invention to be substituted for the previously filed Affidavit. The December 18, 2009 submission was 9 months after the Final rejection of March 18, 2009.

Applicant requests that the Declaration of Prior Invention be substituted for the erroneously filed Affidavit according to Rule 1.132. However Applicant submissions are govern under 1.136 and the period for extensions of time expired prior to the submission of December 18, 2009.

When a reply cannot be filed within the time period set for such reply and the provisions of paragraph 1.136(a) of this section are not available, the period for reply will be extended only for sufficient cause and for a reasonable time specified. Any request for an extension of time under this paragraph must be filed on or before the day on which such reply is due, but the mere filing of such a request will not affect any extension under this paragraph. In no situation can any extension carry the date on which reply is

due beyond the maximum time period set by statute. Applicants did not request an extension of time before the reply was due.

DECISION

The Petition is **DENIED** .

The Declaration of Prior Invention was not timely filed and will not be substituted for the previous Affidavit. The abandonment is not withdrawn. .

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

Jacques B. Miles
Infineum USA L. P.
1900 E. Linden Ave.
P. O. Box 710
Linden NJ 07036

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MAILED
FEB 25 2011
OFFICE OF PETITIONS

INFINEUM USA, LP
1900 E. LINDEN AVE
PO BOX 710
LINDEN, NJ 07036

In re Application of :
Andrew C. Sutkowski, et al. :
Application No. 11/226,796 : ON PETITION
Filed: October 27, 2005 :
Attorney Docket No. 2004M014 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 20, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in 37 CFR 41.37(a)(1). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed August 24, 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 October 25, 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 Request for Continued Examination (RCE) and fee of $810, and the submission required by 37 CFR 1.114; (2) the petition fee of $1620; and (3) a proper statement of unintentional delay.

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

This application is being referred to Technology Center AU 1797 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

April M. Wise
Petitions Examiner
Office of Petitions

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AUG 05 2010

OFFICE OF PETITIONS

AKC PATENTS
215 GROVE ST.
NEWTON, MA 02466

In re Application of	:	
Petrov et al.	:	
Application No. 11/226,823	:	ON PETITION
Filed: September 14, 2005	:	
Attorney Docket No. WS-107	:	

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

The petition is **GRANTED**.

The application became abandoned for failure to file a reply within the meaning of 37 CFR 1.113 to the final Office action of May 28, 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 August 29, 2009. A Notice of Abandonment was mailed December 30, 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), 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.

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

This application is being referred to Technology Center AU 3621 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.

A. Kelley

Alicia Kelley
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 10/24/2011

TO SPE OF : ART UNIT 3625

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/226832 Patent No.: 7908173 B1

CofC mailroom date: 10/19/2011

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: _____

JEFFREY A. SMITH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

SPE

3625
Art Unit

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MORGAN, LEWIS & BOCKIUS LLP (SF)
ONE MARKET, SPEAR STREET TOWER, SUITE 2800
SAN FRANCISCO, CA 94105

MAILED

JUN 01 2011

OFFICE OF PETITIONS

In re Application	:	
Cook et al.	:	DECISION ON PETITION
Application No. 11/226,852	:	TO WITHDRAW
Filed: September 13, 2005	:	FROM RECORD
Attorney Docket No. 061873-5004-US06	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed April 14, 2011.

The request is **DISMISSED** because it is moot.

A review of the file record indicates that Morgan, Lewis & Bockius LLS (SF) was revoked as attorney of record by the applicant on May 6, 2011, by the assignee of record. 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 below-listed address of record until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-6059. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

Alicia Kelley-Collier
Petitions Examiner
Office of Petitions

cc: PATENT CAPITAL GROUP
6119 MCCOMMAS BLVD
DALLAS TX 75214

UNITED STATES PATENT AND TRADEMARK OFFICE

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QUINE INTELLECTUAL PROPERTY LAW GROUP, P.C.
P O BOX 458
ALAMEDA, CA 94501

MAILED
JUN 24 2011
OFFICE OF PETITIONS

In re Application	:	
Cook et al.	:	DECISION ON PETITION
Application No. 11/226,852	:	TO WITHDRAW
Filed: September 13, 2005	:	FROM RECORD
Attorney Docket No. 061873-5004-US06	:	

CORRECTED DECISION

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed April 14, 2011.

The request is **DISMISSED** because it is moot.

A review of the file record indicates that power of attorney was revoked from Quine Intellectual Property Law Group, P.C. on May 6, 2011, by the assignee of record. 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 below-listed address of record until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-6059. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

Alicia Kelley-Collier
Petitions Examiner
Office of Petitions

cc: MORGAN, LEWIS & BOCKIUS LLP (SF)
ONE MARKET, SPEAR STREET TOWER, SUITE 2800
SAN FRANCISCO, CA 94105

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ROSSI, KIMMS & McDOWELL LLP.
20609 Gordon Park Square, Suite 150
Ashburn VA 20147

MAILED

AUG 26 2010

OFFICE OF PETITIONS

In re Patent No. 7,633,122	:	
Issue Date: 12/15/2009	:	
Application No. 11/226,860	:	DECISION ON PETITION
Filed: 09/14/2005	:	
Attorney Docket No. FUJI:357	:	

This is a decision on the petition under 37 CFR 3.81(b) filed March 25, 2010.

Patentees request correction of the front page of the Letters Patent to include the correct assignee data via Certificate of Correction. With the present request, patentees submitted a completed Certificate of Correction form and paid the requisite fees. Furthermore, it is noted that the assignment was recorded with the USPTO prior to the issuance of the patent.

In view of the above, the request under 37 CFR 3.81(b) to correct the assignee data is GRANTED.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3211. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch 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 as to the assignment information.

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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THE SMALL PATENT LAW GROUP LLP
225 S. MERAMEC, STE. 725T
ST. LOUIS, MO 63105

MAILED

NOV 08 2010

OFFICE OF PETITIONS

In re Application of	:	
Martin A. PUTNAM, et *al.*	:	
Application No. 11/226,914	:	DECISION ON PETITIONS UNDER
Filed: September 13, 2005	:	37 CFR 1.78(a)(3) AND 1.78(a)(6)
Attorney Docket No. **IP-0050-US (830-0050US)**	:	

This is a decision on the petitions under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed April 5, 2010, to accept an unintentionally delayed claim under 35 U.S.C. §§120 and 119(e) for the benefit of the prior-filed applications set forth in the concurrently filed amendment.

The petitions are **GRANTED.**

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

(1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

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

All the above requirements having been satisfied, the late claim for benefit of priority under 35 U.S.C. §§ 120 and 119(e) is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) should not be construed as meaning that this application is entitled to the benefit of the filing date of the prior-filed applications. In order for this application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §§120 and 1.78(a)(1) and (a)(2) and under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

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

Also, 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) require 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. Since the statement appearing in the petition varies from the required language, the statement is being construed as the statement required by 37 CFR §§1.78(a)(3) and 1.78(a))(6). If this is not a correct reading of the statement appearing in the petition, petitioner should promptly notify the Office.

There is no indication that the petition is signed by a registered patent attorney of record. However, in accordance with 37 CFR 1.34, the signature of Mr. Jason P. Gross appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party in whose behalf he acts. If, Mr. Gross desires to receive correspondence regarding this file, the appropriate power of attorney documents must be submitted.

Any questions concerning this matter may be directed to Monica A. Graves at (571) 272-7253. 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 1772 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.

Thurman K. Page

Thurman K. Page
Petitions Examiner
Office of Petitions

ATTACHMENT : Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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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
11/226,914	09/13/2005	1772	565	IP-0050-US (830-0050US)	20	2

CONFIRMATION NO. 5920

CORRECTED FILING RECEIPT

38790
THE SMALL PATENT LAW GROUP LLP
225 S. MERAMEC, STE. 725T
ST. LOUIS, MO 63105

OC000000044368962

Date Mailed: 11/05/2010

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

Applicant(s)

Martin A. Putnam, Cheshire, CT;
John A. Moon, Wallingford, CT;
Tuo Li, East Lyme, CT;

Power of Attorney:
William Barber--32720
Gerald DePardo--36121
John Murphy--50583
Stefanie Valentini--52311

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/610,059 09/13/2004
and claims benefit of 60/654,716 02/17/2005
and is a CIP of 10/661,234 09/12/2003 PAT 7,106,513
and is a CIP of 10/661,031 09/12/2003 PAT 7,349,158
which is a CIP of 10/645,686 08/20/2003 ABN
which claims benefit of 60/405,087 08/20/2002
and claims benefit of 60/410,541 09/12/2002
This application 11/226,914
is a CIP of 10/661,082 09/12/2003 PAT 7,126,755
and is a CIP of 10/661,115 09/12/2003 ABN
and said 10/661,234 09/12/2003
claims benefit of 60/410,541 09/12/2002
and is a CIP of 10/645,689 08/20/2003 ABN
which claims benefit of 60/405,087 08/20/2002
and claims benefit of 60/410,541 09/12/2002

Foreign Applications

If Required, Foreign Filing License Granted: 10/13/2005

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/226,914**

Projected Publication Date: Not Applicable

Non-Publication Request: No

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

Diffraction grating-based encoded microparticle assay stick

Preliminary Class

422

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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BAKER BOTTS L.L.P.
2001 ROSS AVENUE
SUITE 600
DALLAS TX 75201-2980

MAILED
MAY 09 2011
OFFICE OF PETITIONS

In re Application of	:	
Smith-Mickelson et al.	:	
Application No. 11/226,927	:	RESPONSE TO PETITION
Filed: September 13, 2005	:	
Attorney Docket No. 062891.2772	:	

This is a response to the petition under 37 CFR 1.59(b), filed March 15 2011, to expunge information from the above identified application.

The petition is dismissed.

Petitioner requests that the Response Under 37 CFR 1.111 filed on March 14, 2011 be expunged from the above identified application. The petition submits that this information was unintentionally submitted in the above identified application.

However, the petition is premature since prosecution of the application has not been closed by way of the allowance of the application, the mailing of an Ex parte Quayle action, or the abandonment of the application. See MPEP 724.06. Accordingly, it is not appropriate to make a final determination of whether or not the material requested to be expunged is "material," with "materiality" being defined as any information which the examiner considers as being important to a determination of patentability of the claims. Thus, the decision on the petition to expunge must be dismissed at this time.

During prosecution on the merits, the examiner will determine whether or not the identified document is considered to be "material." If the information is not considered by the examiner to be material and the conditions related to the expungement of unintentionally submitted information, discussed as A-F in MPEP 724.05 II, are satisfied, the information will be removed from the official file.

After the mailing of a Notice of Allowance, an Ex parte Quayle action or a Notice of Abandonment, the petition to expunge may be renewed by applicants or applicants' representative. No further fee is required for such a second submission of a petition under 37 CFR 1.59 to expunge information. **In addition, the requester is cautioned to renew the petition under 37 CFR 1.59 for reconsideration by the Office prior to the point at which the**

present file, or file claiming priority to the present file, is forwarded for issuance of the patent. This is to be done no later than immediately after the examiner has issued a Notice of Allowance, an Ex parte Quayle action or a Notice of Abandonment. A failure to timely renew the petition to expunge prior to the point at which the file is forwarded for issuance will result in the material being retained in the patented file and thus becoming open to the public.

Telephone inquiries concerning this communication should be directed to the undersigned at (571) 272-6692.

Christopher Bottorff
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 05-07-11

TO SPE OF : ART UNIT 2856

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/226930 Patent No.: 7520171

CofC mailroom date: 06-10-10

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Note: _____

Angela Green 571.272.9005
CofC Branch 703-756-1814

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: _____

HEZRON WILLIAMS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800

SPE Hezron S. Williams **Art Unit** 2856

UNITED STATES PATENT AND TRADEMARK OFFICE

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2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

MAILED

FEB 09 2011

OFFICE OF PETITIONS

In re Application of
Natsuki Kobayashi, et al.
Application No. 11/226,956
Filed: September 15, 2005
Attorney Docket No. UNIU97.058AUS

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

This is a decision on the petition under 37 CFR 1.313(c)(2), filed February 8, 2011, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on January 5, 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 1787 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
www.uspto.gov

Decision Date : October 20,2011

In re Application of :

Masayuki Sakakura

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11227147

Filed : 16-Sep-2005

Attorney Docket No : 0756-7581

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed October 20,2011 , 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 2889 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	11227147
Filing Date	16-Sep-2005
First Named Inventor	Masayuki Sakakura
Art Unit	2889
Examiner Name	FATIMA FAROKHROOZ
Attorney Docket Number	0756-7581
Title	DISPLAY DEVICE AND MANUFACTURING METHOD OF THE SAME

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

J.A. LINDEMAN & CO. PLLC
3190 FAIRVIEW PARK DRIVE
SUITE 480
FALLS CHURCH VA 22042

MAILED
FEB 25 2011
OFFICE OF PETITIONS

In re Application of	:	
Scott et al.	:	
Application No. 11/227,204	:	DECISION ON PETITION
Filed: September 16, 2005	:	
Attorney Docket No. 018.0075-US00	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 18, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2))within the time period provided in 37 CFR 41.37(a)(1). No extensions of time under the provisions of 37 CFR 1.136(b) were obtained. As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal dated April 29, 2010, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on June 30, 2010. See MPEP 1215.04. A Notice of Abandonment was mailed February 1, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Appeal Brief and fee of $540.00; (2) the petition fee of $1,620.00; and (3) a proper statement of unintentional delay.

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

This application is being referred to Technology Center AU 3769 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

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.
11/227,268	09/16/2005	Chang-Heum Byun	49340	8020

1609 7590 08/18/2011
ROYLANCE, ABRAMS, BERDO & GOODMAN, L.L.P.
1300 19TH STREET, N.W.
SUITE 600
WASHINGTON,, DC 20036

EXAMINER
NGUYEN, KHAI MINH

ART UNIT	PAPER NUMBER
2617	

MAIL DATE	DELIVERY MODE
08/18/2011	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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

In re Application of
BYUN, CHANG-HEUM et al.
Application No. 11/227,268
Filed: September 16, 2005
For: SLIDING/HINGE APPARATUS FOR SLIDING/ROTATING TYPE MOBILE TERMINALS

DECISION ON PETITION REQUESTING REFUND

This is a decision on the petition under 37 CFR 1.181 filed July 15, 2010 to request a refund of fee paid for a three-month extension of time filed with Notice of Appeal. No fee is required.

Petitioner alleges non-receipt of the final Office action mailed January 19, 2010. In support of the petition, petitioner has provided a statement that the office communication was not received by the petitioner. Petitioner states "Applicants never received a mailed copy of the January 19, 2010 office action and only became aware of the existence of the January 19, 2010 office action because of a third party inquiry received on July 2, 2010" . A copy of the docket record where the non-received office communication would have been entered had it been received and docketed was also provided. Petitioner further states that a search of the file jacket and the docket records of the application produced no evidence that the final Office action was received.

Although a review of the file finds that the Office action was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing, and there was no irregularity in mailing the Office action on the part of U.S. Patent and Trademark Office, there is a showing of non-receipt of the Office action in view of the supporting documents filed with this instant petition.

In view of the above, the petition is GRANTED.

Since applicants responded to the action (retrieved from the Office's PAIR system) on July 15, 2010 and included a petition and fee for three-month extension of time, the three-month extension fee of $1,110.00 will be refunded, as requested.

The application file is being forwarded to Technology Center 2600 support staff for processing of the refund.

/Doris To/

Doris To
Quality Assurance Specialist
Technology Center 2600

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20120315

DATE : January 23, 2012

TO SPE OF : ART UNIT 2628

SUBJECT : Request for Certificate of Correction on Patent No.: 8077145

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 request to change to Page 3, Column 1 Line 1 is not approved because the request is to insert information from the information disclosure statement considered on 11/17/2008 which was lined through by the Examiner. The information was lined through because applicant did not provide a copy of the reference identified as "United States Patent and Trademark Office, Office Action, Application No. 11,227,610, mailed December 23, 2004" and additionally Application No. 11,227,610 was filed after the alleged date of the Office Action. A review of 11/227,610 shows no Office Action was mailed on December 23, 2004. In addition this request is attempting to add the information at an incorrect location in the Patent.

/XIAO M. WU/
Supervisory Patent Examiner, Art Unit 2628

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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HITT GAINES, PC
ALCATEL-LUCENT
P.O. BOX 83257
RICHARDSON, TX 75083

MAILED
MAR 29 2011
OFFICE OF PETITIONS

In re Application of :
Thomas Nikita Krupenkin et al :
Application No. 11/227,663 : ON PETITION
Filed: September 15, 2005 :
Attorney Docket No. KRUPENKIN 34-24 :

This is a decision on the petition under 37 CFR 1.137(b), filed October 19, 2010, to revive the above-identified application.

The petition is **DISMISSED.**

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

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

As to item (1), the application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of February 8, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). *See* MPEP 711.03(c)(III)(A)(2). The amendment filed April 22, 2010 does not *prima facie* place the application in condition for allowance. A courtesy copy of the September 16, 2010 Advisory action accompanies this decision for petitioner's convenience.

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

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

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

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

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3210.

Irvin Dingle
Petitions Examiner
Office of Petitions

Attachment: A courtesy copy of the Advisory action mailed September 16, 2010.

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.
11/227,663	09/15/2005	Thomas Nikita Krupenkin	KRUPENKIN 34-24	7618

47394 7590 09/16/2010
HITT GAINES, PC
ALCATEL-LUCENT
PO BOX 832570
RICHARDSON, TX 75083

EXAMINER
WEISZ, DAVID G

ART UNIT	PAPER NUMBER
1797	

NOTIFICATION DATE	DELIVERY MODE
09/16/2010	ELECTRONIC

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

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

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

docket@hittgaines.com

Advisory Action Before the Filing of an Appeal Brief	Application No. 11/227,663	Applicant(s) KRUPENKIN ET AL.	
	Examiner DAVID WEISZ	Art Unit 1797	

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

THE REPLY FILED 22 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: *1-5, 7-13,20 and 21*.
   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: _____.

/Yelena G. Gakh/
Primary Examiner, Art Unit 1797

Continuation of 11. does NOT place the application in condition for allowance because: On page 8 of applicants' remarks, it is argued that the Agrawal reference does not teach or suggest a plurality of second zones, that are smaller than the first zone and located proximate to external walls, and defining a central first zone, wherein said first zone occupies a larger area of said closed-cell than any one of said second zones. It is further argued that the microstructures of Agrawal appear to be uniformly distributed and equal spaced apart. It is further argued that the Agrawal reference does not teach or suggest open cells that include a single continuous internal wall. As the specific definition of a zone or the shape of the zones are not recited, the broad limitations recited in the claims are broadly interpreted. In Figure 13, "zones" are interpreted to be the spacing between the parallel microstructures. Each parallel microstructure represents, independently, a single continuous wall. The first zone is interpreted to be the orthogonal walls forming a square around the microstructures. Thus, without further definition of the "zones" and "cells" of the claimed invention, Agrawal obviates the invention as currently claimed. Further, the applicants' focus only on Figure 13, rather than all the illustrated embodiments provided in the Final Rejection (2/8/10).

UNITED STATES PATENT AND TRADEMARK OFFICE

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JORDAN AND HAMBURG LLP
122 EAST 42ND STREET
SUITE 4000
NEW YORK NY 10168

MAILED
FEB 08 2011
OFFICE OF PETITIONS

In re Application of
Takasi Kumagai et al
Application No. 11/227,709
Filed: September 14, 2005
Attorney Docket No. F-8819

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 13, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The 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 a previously filed 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 March 31, 2010, is accepted as having been unintentionally delayed.

Further, the above petition is being treated as being signed by Brian Buck, Registration No. 48,776. If this is an incorrect interpretation, petitioner should notify the Office in writing of such.

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

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

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED

FEB 08 2011

OFFICE OF PETITIONS

LAW OFFICES OF DANIEL L. DAWES
DAWES PATENT LAW GROUP
5200 WARNER BLVD, STE. 106
HUNTINGTON BEACH CA 92649

In re Application:	:	
Nacul et al.	:	
Application No. 11/227,781	:	ON PETITION
Filed: September 14, 2005	:	
Attorney Docket No. UC1.PAU.57	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed December 20, 2010.

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

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

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

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

Telephone 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
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
www.uspto.gov

KUSNER & JAFFE
HIGHLAND PLACE SUITE 310
6151 WILSON MILLS ROAD
HIGHLAND HEIGHTS, OH 44143

Mail Date: 09/07/2010

Applicant	: Maxime Robert	: DECISION ON REQUEST FOR
Patent Number	: 7621285	: RECALCULATION of PATENT
Issue Date	: 11/24/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 11/227,938	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/15/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **661** 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 : 8/23/11

TO SPE OF : ART UNIT: 3754

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/228,000 Patent No. 7,964,834

CofC mailroom date 8/15/11

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Ernest C. White, LIE

Certificates of Correction Branch

703-756-1814 _____

Thank You For Your Assistance

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

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

Comments: _____

/Kevin P. Shaver/ 3754
SPE Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20120323

DATE : February 16, 2011

TO SPE OF : ART UNIT 3727

SUBJECT : Request for Certificate of Correction on Patent No.: 7,661,182

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:

These changes are approved. The changes to the claim are approved because corrections match what is on record. Something must have been missprinted later

/Monica S. Carter/
Supervisory Patent Examiner, Art Unit 3727

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED

NOV 19 2010

OFFICE OF PETITIONS

In re Application of :
Pong :
Application No. 11/228,059 : ON APPLICATION FOR
Filed: September 16, 2005 : PATENT TERM ADJUSTMENT
Attorney Docket No. 16642US02 :

This is in response to the APPLICATION FOR RECONSIDERATION OF THE DETERMINATION OF PATENT TERM ADJUSTMENT UNDER 35 U.S.C. 154(b) ACCOMPANYING THE NOTICE OF ALLOWANCE (37 C.F.R. 1.705), filed September 28, 2010. Applicant submits that the patent term adjustment to be indicated on the patent is ninety-eight (98) days, not ten (10) 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.

In addition, applicant disputes the period of reduction of 2 days, pursuant to 37 CFR 1.704(b), for Applicant delay in filing a response on May 3, 2010 to the non-final Office action, mailed February 1, 2010.

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

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). This is true even in this instance where a request for continued examination (RCE) was filed. The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined.

Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office cannot make a determination on the correctness of the patent term adjustment until the patent has issued.

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

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

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

---

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

On July 9, 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 10 days.

Applicant disputes the period of reduction of 2 days, pursuant to 37 CFR 1.704(b), for Applicant delay in filing a response on May 3, 2010, a Monday, to the non-final Office action, mailed February 1, 2010.

While the May 3, 2010 response was timely with respect to avoiding abandonment, it was not timely for purposes of determining patent term adjustment. Per 37 CFR 1.704(b), an applicant is responsible for replying to an Office action within three months of the date the Office action was mailed or given to him. The date of receipt in the Office is the salient date for purposes of determining patent term adjustment. In the future, applicant may wish to consider the use of the "Express Mail Post Office to Addressee " service of the United States Postal Service (37 CFR 1.10) or facsimile transmission (37 CFR 1.6(d)) for replies to be accorded the earliest possible filing date for patent term adjustment calculations. Alternatively, applicant may choose to mail correspondence with sufficient time to ensure that the correspondence is received in the Office (and stamped with a date of receipt) before the expiration of the three-month period. *See* MPEP 2731.

In view thereof, the determination of patent term adjustment at the time of the mailing of the notice of allowance remains 10 days -- 281 days of Office delay minus 271 days of Applicant delay.

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

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

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

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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CHRISTOPHER C. WINSLADE
McANDREWS, HELD & MALLOY, LTD.
34th Floor
500 West Madison St.
Chicago IL 60661

MAILED
NOV 10 2010
OFFICE OF PETITIONS

In re Patent of Fong Pong	:	DECISION ON REQUEST
Patent No. 7,653,070	:	FOR RECONSIDERATION OF
Issue Date: January 26, 2010	:	PATENT TERM ADJUSTMENT
Application No. 11/228,060	:	AND NOTICE OF INTENT TO
Filing Date: September 16, 2005	:	ISSUE CERTIFICATE OF
Attorney Docket No. 16593US02	:	CORRECTION

This is a decision on the petition filed June 10, 2010, requesting the patent term adjustment indicated on the patent be corrected to indicate the term of the patent is extended or adjusted by one thousand fifty (1050) days.

The request for reconsideration of the patent term adjustment indicated on the patent is **dismissed.**

The Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) on September 17, 2009, advising Patentee of a patent term adjustment to date of 551 days.

If Patentee wished to dispute the 551-day determination, Patentee was required to file a petition under 37 C.F.R. § 1.705(b) no later than payment of the issue fee. Specifically, 37 C.F.R. § 1.705(b) states, with emphasis added,

> Any request for reconsideration of the patent term adjustment indicated in the notice of allowance, ... *must* be by way of an application for patent term adjustment. An application for patent term adjustment under this section *must* be filed no later than the payment of the issue fee.

Patentees did not file an application for patent term adjustment under 37 C.F.R. § 1.705(b) or any other paper disputing the 551-day determination.

The patent issued January 26, 2010. The patent set forth a patent term adjustment determination of 551 days.

The patent term adjustment of 551 days on the patent was the sum of 645 days of delay under 35 U.S.C. § 154(b)(1)(A) ("A Delay") and 497 days of delay under 35 U.S.C. § 154(b)(1)(B) ("B Delay") reduced by 497 days for overlap between the period of A Delay and the period of B Delay and reduced by 94 days of delay under 35 U.S.C. § 154(b)(2)(C) ("Applicant Delay")

Patentees filed a Request for Recalculation of Patent Term Adjustment in View of *Wyeth* ("*Wyeth* Request") on May 5, 2010.

The Office issued a decision in response to the *Wyeth* Request on May 10, 2010. The decision stated a certificate of correction setting forth a patent term adjustment of 1048 days would be issued unless a request for reconsideration of the decision was filed within the longer of longer of one month or 30 days from the issuance date of this decision.

The patent term adjustment of 1048 days set forth in the May 10, 2008 decision is the sum of 645 days of A Delay and 497 days of B Delay reduced by 0 days of overlap between the period of A Delay and the period of B Delay and reduced by 94 days of Applicant Delay.

The instant petition was filed June 10, 2010. The petition asserts the Office miscalculated the number of days of A Delay.

Patentee appears to misunderstand the nature of the *Wyeth* Request filed April 29, 2010. A *Wyeth* Request may only be used if the request is based solely on an allegation the patent term adjustment on the patent is incorrect as a result of the Office's pre-*Wyeth* interpretation of 35 U.S.C. § 154(b)(2)(A).[1] The Office notes the first page of the *Wyeth* Request form submitted by Patentee explicitly states, with emphasis added in bold, "THE PATENTEE'S **SOLE** BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-*WYETH* INTERPRETATION OF 35 U.S.C. 154(b)(2)(A)." The Office also notes the first sentence on the second page of the *Wyeth* Form submitted by Patentee states, with emphasis in the original, "**This form is only [to be used] if the sole basis for requesting the recalculation is the USPTO's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A)**."

The instant petition does not assert the patent term adjustment on the prior decision was based on an improper determination of the number of days of B Delay or the number of days of overlap between the period of A Delay and any other period of Office delay. Instead, the petition argues the Office miscalculated the number of days of A Delay. Patentee's arguments should have been raised in a request under 37 C.F.R. § 1.705(b) filed on or before the date the issue fee was paid, not in a request for reconsideration of a decision issued in response to a *Wyeth* Request.

In view of the prior discussion, Patentee's arguments are untimely and the petition is dismissed.

A certificate of correction will be issued indicating the term of the above-identified patent is extended or adjusted by one thousand forty-eight (1048) days.

---

[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, 5044 (February 1, 2010), 1351 *Off. Gaz. Pat. Office* 204 (February 23, 2010).

Submission of the $200.00 fee set forth in 37 C.F.R. § 1.18(e) is acknowledged. No additional fee is 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 **one thousand forty-eight (1048)** 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

Attached: Draft Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO.	:	7,653,070 B2
APPLICATION NO.	:	11/228,060
DATED	:	January 26, 2010
INVENTOR(S)	:	Fong Pong

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 551 days.

Delete the phrase "by 551 days" and insert -- by 1048 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAILED
MAY 19 2011
OFFICE OF PETITIONS

PATENT LAW & VENTURE GROUP
2424 SE BRISTOL SUITE 300
NEWPORT BEACH CA 92660

In re Application of	:	
Blake Bogdanovich	:	
Application No. 11/228,211	:	ON PETITION
Filed: September 15, 2005	:	
Attorney Docket No. GKBB.001A	:	

This is a decision on the petition to revive under 37 CFR 1.137(b), filed May 5, 2011.

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

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." No additional petition fee is due on renewed petition. This is **not** a final agency decision within the meaning of 5 USC 704.

The above-identified application became abandoned for failure to timely file a reply in response to the non-final Office action mailed August 2, 2007. This Office action set a shortened statutory period for reply of three (3) months. No reply having been received, the application became abandoned on November 8, 2007. The Office mailed a Notice of Abandonment on February 14, 2008.

The application has been abandoned for an extended period of time. Accordingly, on renewed petition, applicant must account for the delay.

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

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

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

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

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

Cliff Congo
Petitions Attorney
Office of Petitions

cc: Knobbe, Martens, Olson & Bear, LLP
2040 Main Street
Fourteenth Floor
Irvine, CA 92614

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED
AUG 01 2011
OFFICE OF PETITIONS

In re Application of	:	
Blake Bogdanovich	:	
Application No. 11/228,211	:	ON PETITION
Filed: September 15, 2005	:	
Attorney Docket No. GKBB.001A	:	

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

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

The above-identified application became abandoned for failure to timely file a reply in response to the non-final Office action mailed August 2, 2007. This Office action set a shortened statutory period for reply of three (3) months. No reply having been received, the application became abandoned on November 8, 2007. The Office mailed a Notice of Abandonment on February 14, 2008. Applicant filed a petition to revive under 37 CFR 1.137(b) on May 5, 2011. However, the petition was dismissed in a decision mailed on May 19, 2011. The decision requested that petitioner account for the delay in filing the petition to revive.

With the instant petition, petitioner has satisfactorily explained the delay in filing the petition to revive. The other requirements for a grantable petition under 37 CFR 1.137(b) were previously satisfied with the petition filed on May 5, 2011.

The Power of Attorney and Change of Correspondence Address, submitted with the instant petition, has been entered.

The application is being forwarded to Group Art Unit 2862 for consideration of the Amendment, filed May 5, 2011.

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

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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DEKEL PATENT LTD., DAVID KLEIN
BEIT HAROF'IM
18 MENUHA VENAHALA STREET, ROOM 27
REHOVOT 76209 IL ISRAEL

MAILED

SEP 29 2011

OFFICE OF PETITIONS

In re Application of
Arnin et al.
Application No 11/228,245
Filed: September 19, 2005
Attorney Docket No. 1585VAS-US

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 23, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of August 27, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is November 28, 2010. A Notice of Abandonment was mailed on March 24, 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 $405.00, and the submission required by 37 CFR 1.114; (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) 272-3215.

This application is being referred to Technology Center AU 3733 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.

Charlema Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Patent No. 7260444
Issue Date: August 21,2007
Application No. 11228361
Filed: September 19,2005
Attorney Docket No. 0941-1330PUS1

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

This is a decision on the electronic petition, filed September 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 September 23,2011 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7,260,444	2007-08-21	11/228,361	2005-09-19	LKSP0077USA

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

SMALL ENTITY
☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

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

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

MAINTENANCE FEE (37 CFR 1.20(e)-(g))
The appropriate maintenance fee must be submitted with this petition.

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

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

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

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

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

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

○ A sole patentee

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

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

○ The assignee of record of the entire interest

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Winston Hsu/	Date (YYYY-MM-DD)	2011-09-23
Name	Winston Hsu	Registration Number	41526

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20100901

DATE : September 1, 2010

TO SPE OF : ART UNIT 3721

SUBJECT : Request for Certificate of Correction on Patent No.: 7,677,426

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:

ML 9/01/10

SPE: Rinaldi Rada **Art Unit** 3721

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Law Office of Jim Zegeer
P.O. Box 25944
Alexandria VA 22313

MAILED

SEP 30 2010

OFFICE OF PETITIONS

In re Application of	:	
Darrell Voss	:	
Application No. 11/228,473	:	DECISION ON PETITION
Filed: September 19, 2005	:	TO WITHDRAW
Attorney Docket No. 3500-Z	:	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 16, 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 Jim Zegeer, sole attorney of record. Jim Zegeer has been withdrawn.

Applicant is reminded that there is no attorney of record at this time.

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: Darrell W. Voss
P.O. Box 61988
Vancouver, WA 98666

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/228,473	09/19/2005	Darrell Voss	3500-Z

CONFIRMATION NO. 7888

POWER OF ATTORNEY NOTICE

Law Office of Jim Zegeer
P.O. Box 25944
Alexandria, VA 22313

OC000000043771154

Date Mailed: 09/29/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 08/16/2010.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/kainabinet/

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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LAW OFFICE OF JIM ZEGEER
SUITE 108
801 NORTH PITT STREET
ALEXANDRIA, VA 22314

MAILED

OCT 12 2010

OFFICE OF PETITIONS

In re Application of	:	
Darrell Voss	:	
Application No. 11/228,474	:	DECISION ON PETITION
Filed: September 19, 2005	:	TO WITHDRAW
Attorney Docket No. 3509-Z	:	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 16, 2010.

The request is **APPROVED**.

The request was signed by Jim Zegeer on behalf of all the practitioners of record.

Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to inventor Darrell Voss at the address indicated below.

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

Irvin Dingle
Petitions Examiner
Office of Petitions

cc: Darrell W. Voss
P.O. Box 61988
Vancouver, WA 98666

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	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/228,474	09/19/2005	Darrell Voss	3509-Z

CONFIRMATION NO. 7886

POWER OF ATTORNEY NOTICE

Law Office of Jim Zegeer
Suite 108
801 North Pitt Street
Alexandria, VA 22314

OC000000043943784

Date Mailed: 10/12/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 08/16/2010.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/idingle/

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/228,474	09/19/2005	Darrell Voss	3509-Z

CONFIRMATION NO. 7886

DARRELL W. VOSS
P.O. BOX 61988
VANCOUVER, WA 98666

POA ACCEPTANCE LETTER

OC000000043943790

Date Mailed: 10/12/2010

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 08/16/2010.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

/idingle/

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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SILVERBROOK RESEARCH PTY LTD
393 DARLING STREET
BALMAIN 2041 AU AUSTRALIA

MAILED
SEP 28 2010
OFFICE OF PETITIONS

In re Application of :
Kia Silverbrook, et al. :
Application No. 11/228,484 : DECISION ON PETITION
Filed: September 19, 2005 :
Attorney Docket No. MCE016US :

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**.

This application became abandoned for failure to timely corrected formal drawings on or before October 6, 2009, as required by the Notice of Allowance and Fee(s) Due and the Notice of Allowability, mailed July 6, 2009. Accordingly, the date of abandonment of this application is October 7, 2009.

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

The drawings have been approved by the USPTO draftsperson.

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

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MORRISON & FOERSTER LLP
12531 HIGH BLUFF DRIVE
SUITE 100
SAN DIEGO, CA 92130

MAILED

SEP 03 2010

OFFICE OF PETITIONS

In re Application of	:	
Whitten et al.	:	DECISION ON PETITION
Application No. 11/228,636	:	TO WITHDRAW
Filed: September 16, 2005	:	FROM RECORD
Attorney Docket No. CYLE-020US	:	

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 3, 2010.

The request is **DISMISSED** as involving a moot issue.

A review of the file record indicates that the power of attorney to the attorneys/agents associated with Customer Number 25225 was revoked by the assignee of the patent application on August 6, 2010. 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 properly notified.

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.

T. Page for
Liana Walsh
Petitions Examiner
Office of Petitions

cc: COOLEY LLP
ATTN: PATENT GROUP
SUITE 1100
777 - 6TH STREET, NW
WASHINGTON DC 20001

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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APR 26 2011
OFFICE OF PETITIONS

SABIC - 08CU - ULTEM
SABIC INNOVATIVE PLASTICS - IP LEGAL
ONE PLASTICS AVENUE
PITTSFIELD MA 01201-3697

In re Application of	:	
Gallucci, et al.	:	
Application No. 11/228,728	:	ON PETITION
Filed: September 16, 2005	:	
Attorney Docket No. 179272-1	:	

This is in response to petition to revive an unintentionally abandoned application under 37 CFR 1.137(b), filed April 1, 2011.

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

The above-identified application became abandoned for failure to timely file a proper response to the final Office action, mailed June 10, 2010, which set a shortened statutory period for reply of three months. No reply having been received, the application became abandoned on September 11, 2010. The Office mailed a Notice of Abandonment on January 4, 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 Request for Continued Examination (RCE).

Pursuant to 37 CFR 1.136, an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Accordingly, since the $1110.00 extension of time fee submitted with the petition on April 1, 2011 was subsequent to the maximum period obtainable for reply (December 10, 2010), this fee has been refunded to petitioner's Deposit Account 06-1130.

The application is being forwarded to Group Art Unit 1767 for consideration of the RCE, filed April 1, 2011.

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

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

OCT 29 2010

OFFICE OF PETITIONS

ERNEST D. BUFF
ERNEST D. BUFF AND ASSOCIATES, LLC.
231 SOMERVILLE ROAD
BEDMINSTER NJ 07921

In re Application of :
Sidebotham :
Application No.: 11/228,807 : ON PETITION
Filing Date: September 16, 2005 :
Attorney Docket No. 0146-9 :

This is in response to the petition under 37 CFR 1.137(b) filed May 24, 2010.

The petition is DISMISSED.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition" under 37 CFR 1.137(b)."

This application became abandoned for failure to respond in a timely and proper manner to the final Office action mailed May 22, 2009. The notice set a shortened statutory period for reply of three-months from its mailing date. Extensions of time were available pursuant to 37 CFR 1.136(a). The application became abandoned on August 23, 2009. A Notice of Abandonment was mailed on January 27, 2010.

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

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

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

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

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

The instant petition does not satisfy the requirements of item (1) above.

Examiner Elana Fisher has reviewed the response filed May 24, 2010, and determined that the response does not place the application in condition for allowance. The petition must, therefore, be dismissed.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petitions
Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

Questions regarding a proper response to be filed with any renewed petition must be addressed to Examiner Fisher. Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

ERNEST D. BUFF
ERNEST D. BUFF AND ASSOCIATES, LLC.
231 SOMERVILLE ROAD
BEDMINSTER NJ 07921

MAILED

JAN 31 2011

OFFICE OF PETITIONS

In re Application of :
Sidebotham :
Application No. 11/228,807 : ON PETITION
Filed: September 16, 2005 :
Attorney Docket No. 0146-9

This is a decision on the petition under 37 CFR 1.137(b), filed December 7, 2010 to revive the above-identified application.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The above-identified application became abandoned for failure to file a proper reply to the final Office action mailed May 22, 2009, which set a shortened statutory period for reply of three (3) months from its mailing date. A Notice of Abandonment was mailed January 27, 2010.

The Request for Continued Examination and amendment filed December 7, 2010, are noted.

It is noted that the petition fee was paid twice. The amount of $810.00 will be refunded in due course

The application file is being forwarded to Technology Center, GAU 3733 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

JACQUES M. DULIN, ESQ. DBA
INNOVATION LAW GROUP, LTD.
237 NORTH SEQUIM AVENUE
SEQUIM WA 98382-3456

MAILED
AUG 23 2011
OFFICE OF PETITIONS

In re Patent No. 7,277,018	:	
Issued: 10/02/2007	:	
Application No. 11/228,817	:	NOTICE
Filed: 09/16/2005	:	
Attorney Docket No. 7220-004US	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed August 5, 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) 272-3211.

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Pearne & Gordon LLP
1801 East 9th Street
Suite 1200
Cleveland OH 44114-3108

MAILED
MAY 06 2011
OFFICE OF PETITIONS

In re Application of	:	
Cavassini et al.	:	
Application No. 11/228818	:	ON PETITION
Filing or 371(c) Date: 09/16/2005	:	
Attorney Docket Number: BUG5-38445	:	

This is a decision on the "Petition Under § 1.47(a);" on the "Request to Correct Inventorship of Non-Provisional Application Under 37 C.F.R. § 1.48(a)," and on the "Petition Under 37 C.F.R. § 1.183 to Waive the Requirement Under 37 C.F.R. § 1.48(a)(2) to Include a Statement from an Added Inventor that the Error in Inventorship Occurred Without Deceptive Intent," filed March 28, 2011. The petition under 37 C.F.R. § 1.47(a) is properly treated as a petition under 37 C.F.R. § 1.183 to waive 37 C.F.R. § 1.67(a)(3), which requires that all of the inventors sign a supplemental declaration.

The petition under 37 C.F.R. § 1.183 to waive 37 C.F.R. § 1.48(a)(2) is granted.

The petition under 37 C.F.R. § 1.183 to waive 37 C.F.R. § 1.67(a)(3) is granted.

The petition under 37 C.F.R. § 1.48(a) is granted.

The application as-filed identified as inventors Paolo Cavassini and Paolo Cicognani only. Applicant files the present petition pursuant to 37 CFR 1.183 requesting correction of inventorship to add as an inventor Jean Antoine Meiners. Petitioner submits a supplemental declaration executed by inventors Paolo Cavassini and Paolo Cicognani only, and provides that inventor Jean Antoine Meiners refuses to provide a statement that the error occurred without deceptive intention on his part, as required by 37 CFR 1.48(a)(2), and refuses to execute the new (supplemental) declaration.

Applicable Law

As to correction of inventorship, 37 CFR 1.48(a), Correction of inventorship in a patent application, other than a reissue application, pursuant to 35 U.S.C. 116, requires that the amendment of inventorship to 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 and from each person being deleted as an inventor that the error occurred without deceptive intention on his or her part;
>
> (3) an oath or declaration by each actual inventor or inventors as required by 37 CFR 1.63 or as permitted by 37 CFR 1.42, 1.43 or 1.47;
>
> (4) the fee set forth in 37 CFR 1.17 (i); and
>
> (5) the written consent of any existing assignee, if any of the originally named inventors has executed an assignment.

As to the new (supplemental) declaration, 37 CFR 1.67 states, in pertinent part:

> (a) 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.
>
> > (1) Deficiencies or inaccuracies relating to all the inventors or applicants (§§ 1.42, 1.43, or § 1.47) may be corrected with a supplemental oath or declaration signed by all the inventors or applicants.

Suspension of the rules under 37 CFR 1.183 may be granted in an "extraordinary situation, when justice requires."

The MPEP further provides that:

> [i]n those situations where an inventor to be added refuses to submit a statement supporting the addition or such party cannot be reached, waiver under 37 CFR 1.183 of the requirement for a statement from that party would be appropriate upon a showing of such refusal or inability to reach the inventor. Every existing assignee of the original named inventors must give its consent to the requested correction. Where there is more than one assignee giving its consent, the extent of that interest (percentage) should be shown. Where no assignment has been executed by the inventors, or if deletion of a refusing inventor is requested, waiver will not be granted absent unequivocal support for the correction sought.

> Petitions under 37 CFR 1.47 are not applicable to the requirement for statements from each originally named inventor[1]. (Emphasis supplied).

MPEP 201.03

Petition under 37 C.F.R. § 1.183 to waive 37 C.F.R. § 1.48(a)(2)

Applicant has demonstrated that a *bona fide* effort was made to secure a statement from inventor Meiners, that the error occurred without deceptive intention on his part, as required by 37 CFR 1.48(a)(2). As such, it is concluded that petitioner has demonstrated that this is an extraordinary situation, requiring waiver of the 37 CFR 1.48(a)(2).

The present petition under 37 CFR 1.48(a) includes: (1) a request to correct the inventorship that sets forth the desired inventorship change; (2) waiver of the requirement to provide a statement from each person being added and from each person being deleted as an inventor that the error occurred without deceptive intention on his or her part; (3) an oath or declaration by each actual inventor or inventors as required by 37 CFR 1.63 or as permitted by 37 CFR 1.42, 1.43 or 1.47; (4) the fee set forth in 37 CFR 1.17(i), and (5) the written consent of the assignee.

Accordingly, the petition under 37 CFR 1.48 is granted.

Petition under 37 C.F.R. § 1.183 to waive 37 C.F.R. § 1.67(a)(3)

Applicant has demonstrated that a *bona fide* effort was made to secure the signature of inventor Jean Antoine Meiners on the supplemental declaration. As such, it is concluded that petitioner has demonstrated that this is an extraordinary situation, requiring waiver of the rules.

The petition under 37 CFR 1.183 to waive the requirement of 37 CFR 1.67 is also granted.

The newly executed declaration, filed on August 17, 2010, will be entered, despite the fact that the requirement set forth in 37 CFR 1.67(a)(1) that all the inventors sign a supplemental oath or declaration has not been satisfied.

The petition under 37 CFR 1.47(a) was treated as a petition under 37 C.F.R. § 1.183 to waive 37 C.F.R. § 1.67(a)(3), which requires that all of the inventors sign a supplemental declaration. The petition fee, $200.00, has been applied to the petition under 37 C.F.R. § 1.183 to waive 37 C.F.R. § 1.67(a)(3), and the balance, $200.00, has been charged to Petitioner's deposit account.

---

[1] There is no requirement for a showing under 37 CFR 1.47. This application bears an original Declaration executed by all joint inventors, and thus, the provisions of 37 CFR 1.47 do not apply in this instance. Nevertheless, it is appropriate to apply the principles thereof to the present situation in deciding whether this is an extraordinary situation.

A corrected Filing Receipt identifying the inventorship of the application is enclosed herewith. The application is being referred to Technology Center Art Unit 1611 for further processing.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

Enclosure: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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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
11/228,818	09/16/2005	1611	643	BUG5-38445	20	1

CONFIRMATION NO. 9337

CORRECTED FILING RECEIPT

86378
Pearne & Gordon LLP
1801 East 9th Street
Suite 1200
Cleveland, OH 44114-3108

OC000000047467130

Date Mailed: 05/03/2011

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)

Paolo Cavassini, Ravenna, ITALY;
Paolo Cicognani, Predappio, ITALY;
Jean Antoine Meiners, Cormondreche, SWITZERLAND;

Power of Attorney: The patent practitioners associated with Customer Number 000116

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.)
ITALY MI2004A001820 09/24/2004

If Required, Foreign Filing License Granted: 10/05/2005

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/228,818**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No
**** SMALL ENTITY ****

Title

Composition in micro-pellets with controlled release of physiologically active substances, procedure for their preparation and use in the zootechnical sector

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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PEARNE & GORDON LLP
1801 EAST 9TH STREET
SUITE 1200
CLEVELAND OH 44114-3108

In re Application of	:	
Cheng Chen et al	:	
Application No. ~~12/228,818~~ **11/228,818**	:	DECISION ON REQUEST FOR REFUND
Filed: June 28, 2011	:	
Attorney Docket No. P125399	:	

This is a decision on the Request For Refund filed August 10, 2011.

The request is **DISMISSED**.

Applicant files the above request for refund and states that "On March 28, 2011, Applicants filed a Petition under § 1.47(a) to request that the Office accept the Declaration and Power of Attorney executed by two of the named inventors in this application on behalf of a non-signing inventor. Applicants paid the $200 petition fee set forth in 37 CFR 1.17(g) when filing this petition. ..."

Applicant further states that "On May 5, 2011, the Office credited our Deposit Account for this $200 payment, then charged our Deposit Account $400. ...."

Applicant also states that "The fee for filing a Petition under 37 CFR § 1.47(a) is set forth in § 1.17(g). The fee amount set forth in § 1.17(g) is $200, not $400, and Applicants' original payment of $200 was the correct amount due for this petition. Accordingly, Applicants respectfully request that $400 be refunded to its Deposit Account 16-0820, Order No. BUG5-38445, and the correct payment of $200 be charged to the Deposit Account 16-0820, Order No. BUG5-38445."

However, Applicant was notified in the decision mailed on May 6, 2011 that "... The petition under 37 CFR 1.47(a) was treated as a petition under 37 C.F.R. § 1.183 to waive 37 C.F.R. § 1.67(a)(3), which requires that all of the inventors sign a supplemental declaration. The petition fee, $200.00, has been applied to the petition under 37 C.F.R. § 1.183 to waive 37 C.F.R. § 1.67(a)(3), and the balance, $200.00, has been charged to Petitioner's deposit account."

In view of the above, the request for refund is dismissed.

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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SEAGER, TUFTE & WICKHEM, LLC
1221 NICOLLET AVENUE
SUITE 800
MINNEAPOLIS MN 55403

In re Application of	:	
Khairkhahan et al.	:	
Application No. 11/228,988	:	DECISION ON PETITION
Filed: 09/16/2005	:	
Attorney Docket No.	:	
1001.2710103	:	

This is a decision on the "PETITION FOR ACCEPTANCE OF DECLARATION IN CONTINUATION APPLICATION UNDER 37 CFR 1.182," filed on October 26, 2011.

The petition is **DISMISSED**.

On September 16, 2005, the subject application was filed as a continuation of Application No. 10/100,270. The papers received on September 16, 2005 included a copy of the declaration under 37 CFR 1.63 from the prior-filed application. On July 26, 2011, a final Office action was mailed stating, *inter alia*, that the oath or declaration is defective because non-initialed and/or non-dated alterations have been made to the oath or declaration.

On October 26, 2011, the subject petition was filed, whereby petitioners request that the Office accept the declaration despite the non-initialed and/or non-dated alteration on the basis that the declaration is a copy of the declaration that was accepted in a prior-filed application.

Specifically, petitioners assert:

> Because the Declaration meets the requirements of 37 CFR 1.63(d), the Examiner's reliance on 37 CFR 1.52(c) is misplaced. The Patent Office has no power to reject, in a continuation application, an identical copy of a declaration accepted in the parent

> application when the conditions of 37 CFR 1.63(d) are met. 37 CFR 1.63(d) states that "A newly executed oath or declaration *is not required*" provided certain conditions are met. Emphasis added. These conditions were met in this case.

Petitioner further argues, in the alternative, that 37 CFR 1.52(c):

> [D]oes not require such alterations to have a signature separate from that authenticating the oath or declaration, apart from the requirement that the dating and signature be on the same sheet of paper. Because the alteration was dated and signed by the applicant on the same sheet of paper, the requirement of 37 CFR 1.52(c) was met.

Petitioners' argument has been considered, but is not persuasive.

At the outset, 37 CFR 1.52(c) states, in pertinent part, that any interlineation, erasure, cancellation or other alteration of the application papers filed must be made before the signing of any accompanying oath or declaration pursuant to § 1.63 referring to those application papers and should be dated and initialed or signed by the applicant on the same sheet of paper.

It is undisputed that the declaration filed on September 16, 2005 contained an non-initialed and/or non-dated alteration. As such, the declaration is defective, and a new oath or declaration must be filed when required by the Office.

As such, § 1.52(c) requires that the alteration be initialed and dated. Simply put, the signature which executed the declaration, and the date of that signature, are insufficient to remedy an alteration in the declaration.

Furthermore, if the Office inadvertently accepted the defective declaration in the parent application, the Office is not required to repeat that mistake. In *In re Boulevard Entertainment Inc.*, 67 USPQ2d 1475 (Fed. Cir. 2003), the court stated:

> Even if the PTO had previously allowed a mark similar to Boulevard's marks to be registered, that would not give Boulevard an equal protection right to have its mark registered unless the agency acted pursuant to some impermissible or arbitrary standard. *See In re Int'l Flavors & Fragrances*, 183 F.3d 1361, 1368 183

> F.3d 1361, 1368, 51 USPQ2d 1513, (Fed. Cir. 1999). The fact that, whether because of administrative error or otherwise, some marks have been registered even though they may be in violation of the governing statutory standard does not mean that the agency must forgo applying that standard in all other cases. The TTAB's decision in this case therefore does not violate the constitutional principles that Boulevard invokes.

As such, a new oath or declaration is required. The petition is therefore **dismissed**.

Petitioner should note that 37 CFR 1.67(a)(2) states that deficiencies or inaccuracies relating to fewer than all of the inventor(s) or applicant(s) (§§ 1.42, 1.43 or § 1.47) may be corrected with a supplemental oath or declaration identifying the entire inventive entity but signed only by the inventor(s) or applicant(s) to whom the error or deficiency relates. As such, the supplemental oath or declaration only needs to be signed by inventor Alan R. Klenk, as the non-signed and non-dated alteration is in inventor Alan R. Klenk's signature block.

As the present petition was not necessitated by an error on the part of the USPTO, the petition fee will not be refunded.

The application file is being returned to the Office of Initial Patent Examination to await response of a supplemental oath or declaration in compliance with 37 CFR §§ 1.63 and 1.67. The period for reply set in the non-final Office action mailed on July 26, 2011, continues to run.[1]

Telephone inquiries should be directed to the undersigned at 571-272-3231.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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[1] See 37 CFR 1.181(f). The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Id.

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QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO, CA 92121

Mail Date: 08/04/2010

Applicant	: Michael Luby	: DECISION ON REQUEST FOR
Patent Number	: 7660245	: RECALCULATION of PATENT
Issue Date	: 02/09/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/229,009	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/16/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **941** 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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APR 18 2011
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In re Application of	:	
LAROIA et al.	:	
Application No. 11/229,019	:	DECISION ON PETITION
Filed: September 16, 2005	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 060617U2	:	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed March 22, 2011, 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 **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition does not satisfy item (1) above.

The reference to add the above-noted, prior-filed applications on page 1, line 5 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).

Also, in the amendment, the filing date of provisional application 60/464,823 is incomplete.

In regards to item (3), the rule at 37 CFR § 1.78(a)(3) requires a statement that the entire delay between the date the claim was due under 37 CFR § 1.78(a)(2)(ii) and the date the claim was filed was unintentional. Since the statement appearing in the petition varies from the required language, the statement is being construed as the statement required by 37 CFR §1.78(a)(3). If this is not a correct reading of the statement appearing in the petition, petitioner should promptly notify the Office.

Also, 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.

If reconsideration of this decision is desired, a renewed petition under 37 CFR § 1.78(a)(3) and an Application Data Sheet or an amendment (complying with the provisions of 37 CFR 1.121 and 37 CFR 1.76(b)(5)) to correct the above matters are required.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

Any questions concerning this matter may be directed to Jose' G Dees at (571) 272-1569.

Christopher Bottorff
Petitions Examiner
Office of Petitions

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QUALCOMM INCORPORATED
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SAN DIEGO CA 92121

In re Application of	:
LAROIA et al.	:
Application No. 11/229, 019	: DECISION ON PETITIONS
Filed: September 16, 2005	: UNDER 37 CFR 1.78(a)(3) AND (a)(6)
Attorney Docket No. 060617U2	:

This is a decision on the renewed petitions under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed July 7, 2011, to accept an unintentionally delayed claim under 35 U.S.C. §§120 and 119(e) for the benefit of the prior-filed applications set forth in the concurrently filed amendment.

The petitions are **GRANTED.**

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

(1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;

(2) the surcharge set forth in § 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

Additionally, the instant nonprovisional application must be pending at the time of filing of the reference to the prior-filed provisional application as required by 37 CFR 1.78(a)(5)(ii). Further, the nonprovisional application claiming the benefit of the prior-filed provisional application must have been filed within twelve months of the filing date of the prior-filed provisional application.

In regards to item (2), the $1410.00 petition fee submitted with the renewed petition is unnecessary. Upon request, petitioner's deposit account will be refunded the fee. Further, the $130.00 one month extension of time fee submitted with the amendment is unnecessary. Upon request, petitioner's deposit account will be refunded the fee.

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.

The $1410.00 petition fee submitted with this renewed petition is unnecessary and will be refunded to petitioner's deposit account in due course.

Any questions concerning this matter 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 2617 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.

David Bucci
Petitions Examiner
Office of Petitions

ATTACHMENT : Corrected Filing Receipt

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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
11/229,019	09/16/2005	2617	2682	060617U2	36	2

CONFIRMATION NO. 8709

CORRECTED FILING RECEIPT

23696
QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO, CA 92121

OC000000049324946

Date Mailed: 08/16/2011

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

Rajiv Laroia, Basking Ridge, NJ;
Hui Jin, Annandale, NJ;
Junyi Li, Bedminster, NJ;
Frank A. Lane, Asbury, NJ;
Tom Richardson, South Orange, NJ;

Power of Attorney: The patent practitioners associated with Customer Number 23696

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/701,313 07/20/2005
and is a CIP of 10/830,976 04/23/2004 PAT 7,142,864
which claims benefit of 60/464,823 04/23/2003

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: 11/09/2005

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/229,019**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

In-band rate indicator methods and apparatus

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).

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PALO ALTO CA 94304-1050

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In re Application of :
Jovanovich, et al. :
Application No. 11/229,065 :
Filed: September 15, 2005 :
Atty Dckt No. 35232-701.201 :

ON PETITION

This is a decision on the "Petition Pursuant to Rule 1.47(a) to Make Application on Behalf of Non-Signing Inventor" filed May 4, 2011. The petition will be treated as: (a) a petition under 37 CFR 1.48(a)(1) requesting that persons be added as inventors and (b) under 37 CFR 1.183 waiver of the requirement under 37 CFR 1.48 that each actual inventor execute a declaration under 37 CFR 1.63.

The petition under 37 CFR 1.48(a) is **GRANTED**.

The petition under 37 CFR 1.183 to waive the requirement of 37 CFR 1.48 that an oath or declaration by each actual inventor or inventors as required by 37 CFR 1.63 or as permitted by 37 CFR 1.42, 1.43 or 1.47 be filed is also **GRANTED**.

On September 15, 2005, the above-identified application was filed. A declaration under3 7 CFR 1.63 was filed on May 12, 2006, executed by the original three joint inventors Jovanovich, Blaga, and Rank.

On May 4, 2011, the instant petitions was filed, whereby petitioners sought to add Alan Boronkay as a joint inventor. It is noted that a petition under 37 CFR 1.47 is not appropriate under the circumstances of this application. Section 201.03(II)(B) of the *Manual of Patent Examining Procedure* provides guidance on this point. Specifically, it states that:

> 37 CFR 1.47 is available to meet the requirement for an oath or declaration under 37 CFR 1.63 as for example where A, B, and C were originally named as inventors and D who refuses to cooperate is to be later added as an inventor. The oath or declaration under 37 CFR 1.63 of inventor D may be supplied pursuant to 37 CFR 1.47(a), but note that the required 37 CFR 1.48(a)(2) statement must still be supplied by inventor D (an unlikely event in view of the inability to obtain the executed oath or declaration under 37 CFR 1.63), or waiver thereof petitioned

> under 37 CFR 1.183. Alternatively, where D is to be added as an inventor (where inventors A, B, and C have previously executed the application under 37 CFR 1.63) and it is original inventor A who refuses to cooperate, the statement under 37 CFR 1.48(a)(2) is only required to be signed by inventor D. Originally named inventor A is merely required to reexecute an oath or declaration in compliance with 37 CFR 1.63. Petitions under 37 CFR 1.47 are only applicable to an original oath or declaration and are not applicable to the reexecution of another oath or declaration by A. In such circumstances, a petition under 37 CFR 1.183 should be considered requesting waiver of the requirement of 37 CFR 1.64 that each of the actual inventors, i.e., inventor A, execute the oath or declaration, particularly where assignee consent is given to the requested correction. Absent assignee consent, the petition under 37 CFR 1.183 requesting waiver of the reexecution of the oath or declaration will be evaluated as to whether the nonsigning inventor was actually given the opportunity to reexecute the oath or declaration, or whether the nonsigning inventor could not be reached.

In this instance, petitioner has secured the signatures of all but one of the original joint inventors, and secured the signature of the joint inventor to be added. It is also noted that petitioner has secured the consent of the assignee to add inventor Boronkay to the application. Accordingly, this petition is most appropriately treated as a petition under 37 CFR 1.48(a) to add Mr. Boronkay as a joint inventor and, as to inventor Rank, a petition under 37 CFR 1.183 to waive the requirement of 37 CFR 1.48 that an oath or declaration by each actual inventor or inventors as required by 37 CFR 1.63 be filed. The petitions under 37 CFR 1.48(a)(1) requesting that persons be added as inventors and under 37 CFR 1.183 waiver of the requirement under 37 CFR 1.48 that each actual inventor execute a declaration under 37 CFR 1.63 are granted.

The fee for the instant petition is $400.00. Deposit account 50-4952 will be charged an additional $200.00 accordingly.

A corrected filing receipt including inventor Boronkay is enclosed.

The application file is being directed to Technology Center GAU 1634 further processing.

Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: 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
11/229,065	09/15/2005	1634	1172	35232-701.201	31	4

CONFIRMATION NO. 8823

CORRECTED FILING RECEIPT

21971
WILSON, SONSINI, GOODRICH & ROSATI
650 PAGE MILL ROAD
PALO ALTO, CA 94304-1050

OC000000048408250

Date Mailed: 06/24/2011

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

Stevan Bogdan Jovanovich, Livermore, CA;
Iuliu Ioan Blaga, Fremont, CA;
David Rank, Palo Alto, CA;
Allen Boronkay, San Jose, CA;

Assignment For Published Patent Application

Microchip Biotechnologies, Inc., Dublin, CA

Power of Attorney: The patent practitioners associated with Customer Number 21971

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/609,970 09/15/2004

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: 06/23/2011

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/229,065**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No
**** SMALL ENTITY ****

Title

Microfluidic devices

Preliminary Class

435

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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WORKMAN NYDEGGER
/SMITH MICRO SOFTWARE, INC.
60 EAST SOUTH TEMPLE
1000 EAGLE GATE TOWER
SALT LAKE CITY UT 84111

MAILED
MAY 27 2011
OFFICE OF PETITIONS

In re Patent No. 7,130,651 :
Issue Date: 31 October, 2006 :
Application No. 11/229,242 : DECISION
Filed: 16 September, 2005 :
Attorney Docket No. 15814.13.2

This is a decision on the petition filed on 18 January, 2011, under 37 C.F.R. §1.27(g)(2) requesting that status as a Small Entity be removed.

NOTE:

In view of their duty of candor to the Office to properly inquire to ascertain the accuracy of representations made before the Office (*see*: 37 C.F.R. §1.4, §10.18, MPEP §410), Petitioners always are reminded of the responsibility to review their records and submit accurate information to the Office.

Petitioner's submission is **ACCEPTED**.

In accordance with the request, status as a Small Entity will be removed, and Petitioner is required to pay fees at the schedule set forth for not-small entities. **The additional fees were charged as authorized**.

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 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]

The instant application is released to IFW Files Repository in due course.

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 J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

[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] 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 : **6-14-11**

TO SPE OF : ART UNIT **2168**

SUBJECT : Request for Certificate of Correction for Appl. No.: **11229340** Patent No.: **7917468**

CofC mailroom date: 6-8-11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D40-E
Palm Location 7580

Note: _____

_____

Omega Lewis
Certificates of Correction Branch
703-756-1814 _____

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ **Approved** — All changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments:_____

TIM VO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

SPE

2168
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

SENNIGER POWERS LLP
100 NORTH BROADWAY
17TH FLOOR
ST LOUIS MO 63102

MAILED
AUG 05 2010
OFFICE OF PETITIONS

In re Application of	:	
Koch et al.	:	DECISION ON PETITION
Application No. 11/229,369	:	TO WITHDRAW
Filed: September 16, 2005	:	FROM RECORD
Attorney Docket No. ECD 6752.1	:	

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 17, 2010.

The request is **NOT APPROVED**.

The Office will only accept correspondence address changes to the most current address information provided for the assignee of the entire interest who properly became of record under 37 CFR 3.71, or, if no assignee of the entire interest has properly been made of record, the most current address information provided for the first named inventor.

The Office will not 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). This includes address changes to law firms where no new power of attorney has been filed in the application. If the applicants wish future correspondence to be mailed to a new law firm, a new power of attorney should be submitted in the application and should include the desired change of correspondence address. Accordingly, as the Request to Withdraw specified a law firm as the new correspondence address of record, the request cannot be granted at this time.

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.

There is an outstanding Office action, mailed March 18, 2010, which requires a reply. Failure to timely and properly do so will result in abandonment of the 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

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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PFIZER INC.
PATENT DEPARTMENT
BLD 114 M/S 9114
EASTERN POINT ROAD
GROTON CT 06340

MAILED

FEB 08 2011

OFFICE OF PETITIONS

In re Application of	:	
BAILEY, et al	:	
Application No. 11/229,395	:	DECISION ON PETITION
Filed: September 16, 2005	:	
Attorney Docket No. PC22066C	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 25, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, October 3, 2007, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on January 4, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment; (2) the petition fee of $1540; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

This application is being referred to Technology Center AU 1625 for appropriate action by the Examiner in the normal course of business.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 10/08/10

TO SPE OF : ART UNIT 2461

SUBJECT : Request for Certificate of Correction for Appl. No.: 11229422 Patent No.: 7801030

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.

- [x] **Approved** — **All** changes apply.
- [ ] **Approved in Part** — Specify below which changes **do not** apply.
- [ ] **Denied** — State the reasons for denial below.

Comments: _____

Huy Vu
SPE

2461
Art Unit

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450

MAILED

NOV 16 2011

OFFICE OF PETITIONS

STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

In re Application of :
Takeshi YASUIE et al. : ON PETITION
Application No. 11/229,717 :
Filed: September 20, 2005 :
Atty. Docket No.: 1081.1314

This is a decision on the petition under 37 CFR 1.181 filed October 31, 2011, to withdraw the holding of abandonment.

The petition is **GRANTED**.

The application was held abandoned for failure to reply in a timely manner to the Notice of Non-compliant Amendment, mailed January 21, 2011 (Notice), which set a shortened period for reply of one (1) month. A Notice of Abandonment was mailed August 31, 2011.

In the petition filed October 31, 2011, Petitioner asserts that the Notice was not received.

In the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not, in fact, received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

(1) a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

(2) Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received.

(3) A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required. A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the **master docket report** showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question. See MPEP §711.03(c)(I)(A).

As the instant petition satisfies the indicated requirements, the holding of abandonment is withdrawn and the application is restored to pending status.

Telephone inquiries relating to this decision should be directed to Robert DeWitty, Petitions Examiner, Office of Petitions (571-272-8427).

The application file will be referred to the Technology Center Art Unit 2474 for consideration of the Response included with the petition.

Ramesh Krishnamurthy

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MAILED

SEP 13 2010

OFFICE OF PETITIONS

SIMPSON & SIMPSON, PLLC
5555 MAIN STREET
WILLIAMSVILLE NY 14221-5406

In re Application of	:	
Alessandro De Matteis	:	
Application No. 11/229,877	:	DECISION ON PETITION
Filed: September 19, 2005	:	TO WITHDRAW
Attorney Docket No. AGZP.118US	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 11, 2010.

The request is **NOT APPROVED.**

The 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.

The request can not be approved because there was no forwarding address provided.

Furthermore, the request to change the correspondence address should be that of: (1) the first named inventor; or (2) an assignee of the entire interest under 37 C.F.R 3.71. If an assignee has ownership in this application, then a Statement under 37 CFR 3.73(b) or a copy of the actual assignment must be provided with a renewed request.

All future communications from the Office will continue to be directed to the above-identified address until otherwise properly notified.

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272- 4618.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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CLIENT 240 C/O
GREENLEE SULLIVAN P.C.
4875 PEARL EAST CIRCLE
SUITE 200
BOULDER CO 80301

MAILED
OCT 18 2011
OFFICE OF PETITIONS

In re Patent No: 7,317,129	:	
Issued: January 8, 2008	:	
Application No. 11/229,926	:	NOTICE
Filed: September 19, 2005	:	
Attorney Docket No. 70-02A	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed September 20, 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 petition that is directed to the deficiency payment is not signed by the proper party. 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).

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: Amy Kruse
Wisconsin Alumni Research Foundation
PO Box 7365
Madison, WI 53707

UNITED STATES 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 : January 9, 2012

Patent No. :7591413
Ser. No. :11229944
Inventor(s) :James Block, et al
Issued :September 22, 2009
Title :CASH DISPENSING AUTOMATED BANKING MACHINE WITH GPS

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.

Any inquiry concerning this communication should be directed to Ms. A. Green at 571.272.9005.

A. Green

For Mary Diggs
Decisions & Certificates
of Correction Branch
(703) 756-1580 or (571) 272-9005

Ralph E. Jocke
231 South Broadway
Medina, OH 44256

/arg

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Walker & Jocke
a legal professional association

Ralph E. Jocke
Patent
&
Trademark Law

Certificate
MAR 1 3 2012
of Correction

FACSIMILE TRANSMISSION COVER SHEET

TRANSMITTING: 16 PAGES (INCLUDING THIS PAGE)

NAME: **Mail Stop Petitions**
Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450

FAX NUMBER: (571) 273-8300

DATE: March 11, 2012

SENDER: Ralph E. Jocke, Esq.

FAX OF SENDER (330) 722-6446

In re application of: **James Block, et al.** Docket: **D-1262 R1**
Application No.: **11/229,944**
Confirmation No.: **2416**
Filed: **September 19, 2005**
For: **Cash Dispensing Automated Banking Machine with GPS**

Sir:

Please find attached Applicants' Petition to Correct Name of Assignee on Issued Patent and re-submission of the Certificate of Correction for filing in the above case. Please charge Deposit Account No. 09-0428 of Diebold Self-Service Systems $130 for fees due under C.F.R. § 1.17(f) and please charge an additional $100 in connection with re-submitting the Certificate of Correction. Please charge any addition fees or issue any credits to Deposit Account 09-0428.

Respectfully,

Ralph E. Jocke Reg. No. 31,029

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this document and the documents indicated as enclosed herewith are being sent by facsimile transmission to the U.S. Patent and Trademark Office this 11 day of March 2012.

Ralph E. Jocke

330 • 721 • 0000 MEDINA | 330 • 225 • 1669 CLEVELAND | 330 • 722 • 6446 FACSIMILE | rej@walkerandjocke.com E-MAIL

231 South Broadway, Medina, Ohio U.S.A. 44256-2601

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Practitioner's Docket No. D-1262 R1 *PATENT*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent No.: **7,591,413**
Issued: **September 22, 2009**
Inventor: **James Block, et al.**
Title: **Cash Dispensing Automated Banking Machine with GPS**

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

PETITION TO CORRECT NAME OF ASSIGNEE ON ISSUED PATENT

Sir:

1. Petition is hereby made to correct/supply the name of the assignee that was incorrectly named in Item 3 of the Issue Fee Transmittal form (PTOL-85b).

2. The correct name of the assignee is: **Diebold Self-Service Systems division of Diebold, Incorporated.**

3. Proof of the correct name of the assignee is established by the assignment document submitted to the Office on February 23, 2010 and recorded in the Office at Reel/Frame 023974/0187 on February 23, 2010. A copy of this assignment document is attached.

4. The petition fee (37 C.F.R. § 1.17(f)) is hereby authorized to be charged to Deposit Account 09-0428. Please charge any additional fees required by this paper or credit any overpayment in the manner authorized above.

5. If the petition is granted, please forward the file to the Certificate of Correction Branch for issuance of a Certificate of Correction. A copy of the previously submitted Certificate of Correction paperwork is attached.

Ralph E. Jocke
Reg. No. 31,029
Attorney of Record

Walker & Jocke
231 South Broadway
Medina, Ohio 44256
(330)721-0000
(330)722-6446
iplaw@walkerandjocke.com

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Walker & Jocke
a legal professional association

Ralph E. Jocke
Patent
&
Trademark Law

December 19, 2011

Office of Patent Publication
Attn: Certificate of Correction Branch
P.O. Box 1450
Alexandria, Virginia 22313-1450

Re: **Patent No.: 7,591,413**
Issued: September 22, 2009
Name of Patentee: Diebold Self-Service Systems division of Diebold, Incorporated
Docket No.: D-1262 R1

Sir:

An error in the Assignee name was noted in the above patent.

A request for a Certificate of Correction is enclosed which details this error. Please correct the Patent as requested.

If you have any questions, please contact me.

Very truly yours,

/Ralph E. Jocke/

Ralph E. Jocke

03/12/2012 APEREZAM 00000022 090428 7591413
01 FC:1811 100.00 DA

330 • 721 • 0000 MEDINA | 330 • 225 • 1669 CLEVELAND | 330 • 722 • 6446 FACSIMILE | rej@walkerandjocke.com E-MAIL
231 South Broadway, Medina, Ohio U.S.A. 44256-2601

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Practitioner's Docket No. D-1262 R1 *PATENT*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent No.: 7,591,413
Issued: September 22, 2009
Name of Patentee: Diebold Self-Service Systems division of Diebold, Incorporated
Title of Invention: Cash Dispensing Automated Banking Machine with GPS

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

REQUEST FOR CERTIFICATE OF CORRECTION OF PATENT FOR PTO MISTAKE (37 C.F.R. § 1.322 (a))

1. Attached is form PTO/SB/44 suitable for printing.

2. The following errors were noted in the printed patent:

   a.) On the Cover Page in the Assignee Field: the Assignee's name, "Diebold SCLF-Service Systems division of Diebold, Incorporated," should be replaced with -- Diebold Self-Service Systems division of Diebold, Incorporated--. The basis for this correction is that the Assignee name as printed on the cover of the patent is the result of an obvious typographical error. The proper identification of the Assignee's name can be found on the Issue Fee Transmittal form, the Application Data Sheet, and the recorded assignment.

3. Please send the Certificate to:

   Name: Ralph E. Jocke

   Address: Walker & Jocke
   231 South Broadway
   Medina, Ohio 44256
   U.S.A.

4. Please charge any necessary fees associated with this request to Deposit Account 09-0428.

03/12/2012 APEREZAM 00000022 090428 7591413
02 FC:1464 130.00 DA

/Ralph E. Jocke/
Ralph E. Jocke
Reg. No. 31,029
Attorney of Record

PTO/SB/44 (09-07)
Approved for use through 08/31/2010. OMB 0651-0033
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,591,413

APPLICATION NO.: 11/229,944

ISSUE DATE : September 22, 2009

INVENTOR(S) : James Block, 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:

On the Cover Page in the Assignee Field - "Diebold SCLF-Service Systems division of Diebold, Incoroporated," has been replaced by --Diebold Self-Service Systems division of Diebold, Incorporated--.

MAILING ADDRESS OF SENDER (Please do not use customer number below):

Ralph E. Jocke
231 South Broadway
Medina, OH 44256

This collection of information is required by 37 CFR 1.322, 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: **Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

501099378A

FEBRUARY 23, 2010

PTAS

RALPH E. JOCKE
231 SOUTH BROADWAY
MEDINA, OH 44256

UNITED STATES PATENT AND TRADEMARK OFFICE
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 571-272-3350. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, MAIL STOP: ASSIGNMENT SERVICES BRANCH, P.O. BOX 1450, ALEXANDRIA, VA 22313.

RECORDATION DATE: 02/23/2010 REEL/FRAME: 023974/0187
NUMBER OF PAGES: 8

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).
DOCKET NUMBER: D-1262 R1

ASSIGNOR:
BLOCK, JAMES DOC DATE: 08/30/2005

ASSIGNOR:
GRAEF, H. THOMAS DOC DATE: 08/30/2005

ASSIGNOR:
RAMACHANDRAN, NATARAJAN DOC DATE: 08/30/2005

ASSIGNOR:
ENRIGHT, JEFFERY M. DOC DATE: 08/30/2005

ASSIGNOR:
BLACKSON, DALE H. DOC DATE: 08/30/2005

PAGE 3/16 * RCVD AT 3/11/2012 7:11:04 PM [Eastern Daylight Time] * SVR:W-PTOFAX-001/41 * DNIS:2738300 * CSID:3307226446 * DURATION (mm-ss):04-10

PH E. JOCKE COMPANY:231 SOUTH BROADWAY

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MAR 1 2 2012

023974/0187 PAGE 2

ASSIGNEE:
DIEBOLD SELF-SERVICE SYSTEMS
DIVISION OF DIEBOLD,
INCORPORATED
5995 MAYFAIR ROAD
NORTH CANTON, OHIO 44720

SERIAL NUMBER: 11229944 FILING DATE: 09/19/2005
PATENT NUMBER: 7591413 ISSUE DATE: 09/22/2009
TITLE: CASH DISPENSING AUTOMATED BANKING MACHINE WITH GPS

SERIAL NUMBER: 60611815 FILING DATE: 09/20/2004
PATENT NUMBER: ISSUE DATE:
TITLE: CASH DISPENSING AUTOMATED BANKING MACHINE WITH GPS

ASSIGNMENT SERVICES BRANCH
PUBLIC RECORDS DIVISION

PATENT ASSIGNMENT

Electronic Version v1.1
Stylesheet Version v1.1

02/23/2010
501099378

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SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT

CONVEYING PARTY DATA

Name	Execution Date
James Block	08/30/2005
H. Thomas Graef	08/30/2005
Natarajan Ramachandran	08/30/2005
Jeffery M. Enright	08/30/2005
Dale H. Blackson	08/30/2005

RECEIVING PARTY DATA

Name:	Diebold Self-Service Systems division of Diebold, Incorporated
Street Address:	5995 Mayfair Road
City:	North Canton
State/Country:	OHIO
Postal Code:	44720

PROPERTY NUMBERS Total: 2

Property Type	Number
Application Number:	11229944
Application Number:	60611815

CH $80.00 11229944

CORRESPONDENCE DATA

Fax Number: (330)722-6446
Correspondence will be sent via US Mail when the fax attempt is unsuccessful.
Phone: 330-721-0000
Email: iplaw@walkerandjocke.com
Correspondent Name: Ralph E. Jocke
Address Line 1: 231 South Broadway
Address Line 4: Medina, OHIO 44256

ATTORNEY DOCKET NUMBER:	D-1262 R1
NAME OF SUBMITTER:	Ralph E. Jocke

):RALPH E. JOCKE COMPANY:231 SOUTH BROADWAY

Total Attachments: 6
source=Assignment#page1.tif
source=Assignment#page2.tif
source=Assignment#page3.tif
source=Assignment#page4.tif
source=Assignment#page5.tif
source=Assignment#page6.tif

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Practitioner's Docket No. D-1262 R1 *PATENT*

For: U.S. Rights
For: U.S. Applications
By: Inventor(s)

ASSIGNMENT OF INVENTION

In consideration of the payment by ASSIGNEE to ASSIGNORS of the sum of One Dollar ($1.00), the receipt of which is hereby acknowledged, and for other good and valuable consideration,

ASSIGNORS: James Block, H. Thomas Graef, Natarajan Ramachandran, Jeffery M. Enright, and Dale H. Blackson hereby sells, assigns and transfers to

ASSIGNEE: Diebold Self-Service Systems
division of Diebold, Incorporated
5995 Mayfair Road
North Canton, OH 44720
Nationality: U.S.

and the successors, assigns and legal representatives of the ASSIGNEE the entire right, title and interest for the United States and its territorial possessions, including all rights to claim priority, in and to any and all improvements in the inventions which are disclosed in the applications entitled:

CASH DISPENSING AUTOMATED BANKING MACHINE WITH GPS

and which are found in (37 C.F.R. Section 3.21)

U.S. application no.*: 11/229,944 Filing Date *: 09/15/2005

and U.S. provisional application no. 60/611,815 filed September 20, 2004 and any legal equivalents thereof, including the right to claim priority and, in and to, all Letters Patents to be obtained for said inventions by the above applications or any continuations, divisions, renewals, or substitutes thereof, and as to letters patents any reissues or re-examinations thereof.

* To comply with 37 C.F.R. Section 3.21 for recordal of this assignment, I, an ASSIGNOR signing below, hereby authorize and request the attorneys of record to insert the application number and filing date above when they become known.

PAGE 7/16 * RCVD AT 3/11/2012 7:11:04 PM [Eastern Daylight Time] * SVR:W-PTOFAX-001/41 * DNIS:2738300 * CSID:3307226446 * DURATION (mm-ss):04-10

ASSIGNOR hereby covenants that no assignment, sale, agreement or encumbrance has been or will be made or entered into which would conflict with this assignment.

ASSIGNOR further covenants that ASSIGNEE will, upon its request, be provided promptly with all pertinent facts and documents relating to said inventions and said Letters Patents and legal equivalents as may be known and accessible to ASSIGNOR and will testify as to the same in any interference, litigation or proceeding related thereto and will promptly execute and deliver to ASSIGNEE or its legal representatives any and all papers, instruments or affidavits required to apply for, obtain, maintain, issue and enforce said applications, said inventions and said Letters Patents and said equivalents thereof which may be necessary or desirable to carry out the purposes thereof.

IN WITNESS WHEREOF, I have hereunto set hand and seal this 30th day of August 2005.

James Block

Signature of James Block
5871 Alabama Avenue, NW
North Lawrence, OH 44666 US
Nationality: U.S.

PAGE 8/16 * RCVD AT 3/11/2012 7:11:04 PM [Eastern Daylight Time] * SVR:W-PTOFAX-001/41 * DNIS:2738300 * CSID:3307226446 * DURATION (mm-ss):04-10

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IN WITNESS WHEREOF, I have hereunto set hand and seal this 30th day of August 2005.

H Thomas Graef

Signature of H. Thomas Graef
Box 287
Bolivar, OH 44612 US
Nationality: U.S.

PAGE 9/16 * RCVD AT 3/11/2012 7:11:04 PM [Eastern Daylight Time] * SVR:W-PTOFAX-001/41 * DNIS:2738300 * CSID:3307226446 * DURATION (mm-ss):04-10

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IN WITNESS WHEREOF, I have hereunto set hand and seal this 30th day of August 2005.

Natarajan Ramachandran

Signature of Natarajan Ramachandran
2424 Lyndon Drive
Uniontown, OH 44685 US
Nationality: U.S.

PAGE 10/16 * RCVD AT 3/11/2012 7:11:04 PM [Eastern Daylight Time] * SVR:W-PTOFAX-001/41 * DNIS:2738300 * CSID:3307226446 * DURATION (mm-ss):04-10

ASSIGNOR hereby covenants that no assignment, sale, agreement or encumbrance has been or will be made or entered into which would conflict with this assignment.

ASSIGNOR further covenants that ASSIGNEE will, upon its request, be provided promptly with all pertinent facts and documents relating to said inventions and said Letters Patents and legal equivalents as may be known and accessible to ASSIGNOR and will testify as to the same in any interference, litigation or proceeding related thereto and will promptly execute and deliver to ASSIGNEE or its legal representatives any and all papers, instruments or affidavits required to apply for, obtain, maintain, issue and enforce said applications, said inventions and said Letters Patents and said equivalents thereof which may be necessary or desirable to carry out the purposes thereof.

IN WITNESS WHEREOF, I have hereunto set hand and seal this 30th day of August 2005.

Jeffery M. Enright

Signature of Jeffery M. Enright
4496 Rex Lake Drive
Akron, OH 44319 US
Nationality: U.S.

PAGE 11/16 * RCVD AT 3/11/2012 7:11:04 PM [Eastern Daylight Time] * SVR:W-PTOFAX-001/41 * DNIS:2738300 * CSID:3307226446 * DURATION (mm-ss):04-10

ASSIGNOR hereby covenants that no assignment, sale, agreement or encumbrance has been or will be made or entered into which would conflict with this assignment.

ASSIGNOR further covenants that ASSIGNEE will, upon its request, be provided promptly with all pertinent facts and documents relating to said inventions and said Letters Patents and legal equivalents as may be known and accessible to ASSIGNOR and will testify as to the same in any interference, litigation or proceeding related thereto and will promptly execute and deliver to ASSIGNEE or its legal representatives any and all papers, instruments or affidavits required to apply for, obtain, maintain, issue and enforce said applications, said inventions and said Letters Patents and said equivalents thereof which may be necessary or desirable to carry out the purposes thereof.

IN WITNESS WHEREOF, I have hereunto set hand and seal this 30th day of August 2005.

Dale H Blackson

Signature of Dale H. Blackson
5056 Paddington Down St NW
Canton, OH 44718 US
Nationality: U.S.

PAGE 12/16 * RCVD AT 3/11/2012 7:11:04 PM [Eastern Daylight Time] * SVR:W-PTOFAX-001/41 * DNIS:2738300 * CSID:3307226446 * DURATION (mm-ss):04-10

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

SPRINKLE IP LAW GROUP / ZIMMER
1301 W. 25TH STREET
SUITE 408
AUSTIN, TX 78705

MAILED
MAR 05 2012
OFFICE OF PETITIONS

In re Application of
James Freid, et al.
Application No. 11/230,011
Filed: September 19, 2005
Attorney Docket No. 1292.1435103

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 24, 2012.

The request is **DISMISSED** as moot.

A review of the file record indicates that the power of attorney to Sprinkle IP Law Group / Zimmer has been revoked by the assignee of the patent application on February 22, 2012. 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 undersigned at 571-272-1642.

/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

AT&T Legal Department - PK
Attn: Patent Docketing
One AT&T Way
Room 2A-207
Bedminster, NJ 07921

MAILED

OCT 21 2010

OFFICE OF PETITIONS

In re Application of
Robert A. Koch, et. al.
Application No. 11/230,018
Filed: September 19,2005
Attorney Docket No. 20009.0110USC1 (BS01-082C)

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed September 8, 2010, to revive the above-identified application.

The application became abandoned for failure to file a proper reply to the final Office action mailed April 16, 2009. A Notice of Abandonment was mailed on December 22, 2009.

The instant petition is not signed by an attorney of record. However, in accordance with 37 CFR 1.34(a), the signature of Jennifer Pearson Medlin appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that she is authorized to represent the particular party on whose behalf she acts.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) along with the $810 fee and the submission under 37 CFR 1.114; (2) the petition fee of $1,620; and (3) a proper statement of unintentional delay. Therefore, the petition is **GRANTED**.

If petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. A courtesy copy of this decision is being mailed to petitioner. Nevertheless, all future correspondence regarding this application file will be directed solely to the address of record until otherwise instructed.

This application file is being referred to Technology Center Art Unit 2453 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

cc: Jennifer Pearson Medlin
1117 Perimeter Center West, Suite E402
Atlanta, GA 30338

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

BASF AG
CARL-BOSCH-STRASSE 38
6700 LUDWIGSHAFEN
RHEINLAND-PFATZ D-67056 67056 DE
GERMANY

MAILED

SEP 28 2010

OFFICE OF PETITIONS

In re Application of	:	
Janmaat, et al.	:	
Application No. 11/230,114	:	ON REQUEST FOR
Filed: September 19, 2005	:	RECONSIDERATION OF
Attorney Docket Number: 018894-0274	:	PATENT TERM ADJUSTMENT

This is a decision on the petition under 37 CFR 1.705(b), filed September 1, 2010. Applicants believe that they should be accorded additional PTA of 310 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 **five hundred fifty (550) days** (582 days of PTO delay, reduced by 32 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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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/230,114	09/19/2005	Rein J. Janmaat	JD-338A US	3976

54308 7590 02/11/2011
BASF AG
CARL-BOSCH-STRASSE 38
6700 LUDWIGSHAFEN
RHEINLAND-PFATZ D-67056, 67056
GERMANY

EXAMINER
NILAND, PATRICK DENNIS

ART UNIT	PAPER NUMBER
1796	

NOTIFICATION DATE	DELIVERY MODE
02/11/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

MARJORIE.ELLIS@BASF.COM
global-ip@basf.com
madisonipdocketing@foley.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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February 11, 2011

BASF AG
CARL-BOSCH-STRASSE 38
6700 LUDWIGSHAFEN
RHEINLAND-PFATZ D-67056 67056 DE GERMANY

In re Application of	:	
Rein J. Janmaat et al.	:	**DECISION ON PETITION**
Application No. 11230114	:	
Filed: 9/19/2005	:	
Attorney Docket No. JD-338A US	:	

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) September 19, 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 ☐

A renewed petition filed under 37 C.F.R. 1.84(a)(2) must be filed within TWO (2) MONTHS of this decision. If a renewed petition is not filed within the TWO (2) Months of this decision the drawings will be printed in black and white.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

/Don Fairchild/
Office of Data Management
Publications Branch

UNITED STATES PATENT AND TRADEMARK OFFICE

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April 21, 2011

BASF AG
CARL-BOSCH-STRASSE 38
6700 LUDWIGSHAFEN
RHEINLAND-PFATZ D-67056 67056 DE GERMANY

In re Application of	:	
Rein J. Janmaat et al.	:	**DECISION ON PETITION**
Application No. 11230114	:	
Filed: 9/19/2005	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. JD-338A US	:	***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 7, 2011.

The petition is **GRANTED**.

A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

1. The fee set forth under 37 C.F.R. 1.17(h),
2. Three (3) sets of the color drawings in question, or (1) set if filed via EFS, and
3. The specification contains appropriate language referring to the color drawings as the first paragraph in that portion of the specification relating to the brief description of the drawings.

The petition was accompanied by all of the required fees and drawings. The specification contains the appropriate language. Therefore, the petition is GRANTED.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

/Don Fairchild/
Office of Data Management
Publications Branch

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/230,114	09/19/2005	Rein J. Janmaat	JD-338A US	3976

7590 04/21/2011

BASF AG
CARL-BOSCH-STRASSE 38
6700 LUDWIGSHAFEN
RHEINLAND-PFATZ D-67056, 67056
GERMANY

EXAMINER
NILAND, PATRICK DENNIS

ART UNIT	PAPER NUMBER
1796	

NOTIFICATION DATE	DELIVERY MODE
04/21/2011	ELECTRONIC

ACKNOWLEDGEMENT OF REQUEST

Notice of Allowance/Allowability Mailed

The request to print a color drawing reference as the first paragraph in the portion of the specification containing a brief description of the drawings as required by 37 CFR 1.84 and MPEP § 608.02 has been received by the United States Patent and Trademark Office and will be entered into the specification.

571-272-4200 or 1-888-786-0101
Application Assistance Unit
Office of Data Management

FORM PTOM327-5 (Rev. 02/08)

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BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, IL 60610

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SEP 27 2010

OFFICE OF PETITIONS

In re Application of
Harry N. GOTTLIEB
Application No. 11/230,219
Filed: September 19, 2005
Attorney Docket No. **10342/27**

DECISION GRANTING PETITION
UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition under 37 CFR 1.313(c)(2), filed September 22, 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 14, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-7253.

This application is being referred to Technology Center AU 3625 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Monica A. Graves/
Petitions Examiner, Office of Petitions

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form* ***must*** *be completed and timely submitted to avoid abandonment of the application.*

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ANTONELLI TERRY STOUT & KRAUS LLP
1300 NORTH SEVENTEENTH STREET
SUITE 1800
ARLINGTON VA 22209-3873

MAILED
FEB 06 2012
OFFICE OF PETITIONS

In re Application of	:	
Masao Kishi et al	:	
Application No. 11/230,567	:	DECISION GRANTING PETITION
Filed: September 21, 2005	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 1478.48108X00	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, February 2, 2012 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on January 3, 2012 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 3679 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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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/230,645	09/21/2005	Tadmor Shalon	11121-700.200	5132

7590 01/20/2011

SHAY GLENN LLP
2755 CAMPUS DRIVE
SUITE 210
SAN MATEO, CA 94403

EXAMINER
EISEMAN, ADAM JARED

ART UNIT	PAPER NUMBER
3736	

MAIL DATE	DELIVERY MODE
01/20/2011	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

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January 20, 2011

PVF -- ORACLE AMERICA, INC.
C/O PARK, VAUGHAN, FLEMING & DOWLER LLP
2820 FIFTH STREET
DAVIS CA 95618-7759

In re Application of	: **DECISION ON PETITION**
SHALON, TADMOR, ET AL.,	:
Application No.**11/230645**	: **ACCEPTANCE OF COLOR**
Filed: **09/21/2005**	: **DRAWINGS**
Attorney Docket: **11121-700.200**	:

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 12, 2009.

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

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KATTEN MUCHIN ROSENMAN LLP
(C/O PATENT ADMINISTRATOR)
2900 K STREET NW, SUITE 200
WASHINGTON DC 20007-5118

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NOV 03 2010
OFFICE OF PETITIONS

In re Application of	:	
Satoshi Hayano et al.	:	
Application No. 11/230,922	:	DECISION ON PETITION
Filed: September 21, 2005	:	
Attorney Docket No. 334559.00015	:	

This is a decision on the petition under 37 CFR 1.59(b), filed July 26, 2010, to expunge information from the above identified application.

The petition is **dismissed**.

Petitioner requests that the Request for Continued Examination (RCE) filed on July 19, 2010, be expunged from the record.

The petition is deficient because there is no statement that:

(B) 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;
(C) the information has not otherwise been made public;
(D) there is a commitment on the part of the petitioner to retain such information for the period of any patent with regard to which such information is submitted.

Petitioner is directed to MPEP 724.05(II) and (III).

Telephone inquiries concerning this communication should be directed to Carl Friedman at (571) 272-6842.

Carl Friedman
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

BARNES & THORNBURG LLP
11 SOUTH MERIDIAN
INDIANAPOLIS IN 46204

In re Application :
William Allen Bastian II et al. :
Application No. 11/230,962 : DECISION ON APPLICATION
Filed: September 20, 2005 : FOR PATENT TERM ADJUSTMENT
Attorney Docket No. **38519-76326** :

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT" filed May 19, 2010. Applicant requests that the determination of patent term adjustment be corrected to 597 days. Applicant requests this correction in part on the basis that the Office will take in excess of three years to issue this patent and is considered in light of the recent court decision in light of the Court of Appeals for the Federal Circuit's decision in *Wyeth v. Kappos*, 2009-1120 (Fed. Cir. 1-7-2010).

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within three years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentees are entitled to for Office failure to issue the patent within three years. See 37 CFR 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under 37 CFR 1.702(a)(4) or applicant delay under 37 CFR 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office cannot make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss such a request as premature.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicants must timely file an application for patent term adjustment prior to the payment of the issue fee.[1]

To the extent that applicant otherwise requests correction of the patent term adjustment at the time of the mailing of the Notice of Allowance, the application for patent term adjustment is **DISMISSED**.

On November 28, 2009 applicants filed a response to the non-final Office action mailed October 27, 2009. Then on December 17, 2009, applicants filed a Supplemental Response. Pursuant to 37 CFR § 1.704(c)(8), the submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, is a failure to engage in reasonable efforts to conclude prosecution.

Applicants dispute the reduction of 19 days for the filing of the Supplemental Information Disclosure Statement (IDS) filed December 17, 2009 arguing that the IDS was filed at the request of the examiner and thus no loss of PTA should have occurred.

Applicant's arguments have been considered, but not found to be persuasive. Pursuant to 37 CFR § 1.704(c), circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

---

[1] For example, if applicants dispute both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed, and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicants must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the § 1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

(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, is a failure to engage in reasonable efforts to conclude prosecution.

The record does not support a conclusion that the IDS was requested by the examiner. There is no statement from the examiner that such an IDS was necessary. Moreover, it would appear that the original IDS was defective it did not include the dates for the references and the correction of this defect contributed to the delay. Accordingly, the filing of the IDS as a supplemental response on December 17, 2009 may be considered a failure to engage and a proper basis for reduction.

In view thereof, the determination of patent term adjustment at the time of the mailing of the notice of allowance remains 416 days.

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 the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.

Anthony Knight
Director
Office of Petitions

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OPX BIOTECHNOLOGIES, INC.
2425 55TH STREET, STE.
#100
BOULDER CO 80301

MAILED
APR 11 2011
OFFICE OF PETITIONS

In re Application of	:	
GILL, et al	:	
Application No. 11/231,018	:	NOTICE
Filed: September 20, 2005	:	
Attorney Docket No. 322004	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to Diane Goodwyn at (571) 272-6735.

Thurman K. Page
Petitions Examiner
Office of Petitions

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Paper No.

ISIS PHARMACEUTICALS INC
1896 RUTHERFORD RD.
CARLSBAD CA 92008

MAILED
FEB 22 2011
OFFICE OF PETITIONS

In re Application of	:	
Monia et al.	:	DECISION
Application No. 11/231,243	:	ON APPLICATION FOR
Filed: September 19, 2005	:	PATENT TERM ADJUSTMENT
Atty Docket No. CORE0051US	:	
Title: ENHANCED ANTISENSE	:	
OLIGONUCLEOTIDES	:	

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed January 19, 2011. Applicant submits that the correct patent term adjustment to be indicated on the patent is three hundred and eighty-six (386) days, not zero (0) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction solely on the basis that the Office will take in excess of three years to issue this patent.

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 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

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

QUINE INTELLECTUAL PROPERTY LAW GROUP, P.C.
P O BOX 458
ALAMEDA CA 94501

MAILED
MAR 20 2012
OFFICE OF PETITIONS

In re Application of
Dong et al.
Application No. 11/231,309
Filed: September 19, 2005
Attorney Docket Number: 318-002410US
Title: PRINTING LIQUID SOLUTION ARRAYS FOR INORGANIC COMBINATORIAL LIBRARIES

DECISION ON PETITION PURSUANT TO 37 C.F.R. § 1.137(B)

This is a decision on the petition pursuant to 37 C.F.R. § 1.137(b), filed February 15, 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 24, 2010, which set a shortened statutory period for reply of three months. An after-final amendment was received on July 28, 2010. No extensions of time under the provisions of 37 C.F.R § 1.136(a) were requested, and no further responses were received. Accordingly, the above-identified application became abandoned on August 25, 2010. A notice of abandonment was mailed on February 2, 2011.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in 37 C.F.R. § 1.17(m);
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition

pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;

(4) Any terminal disclaimer (and fee as set forth in 37 C.F.R. § 1.20(d)) required pursuant to paragraph (d) of this section.

With this petition, Petitioner has submitted the petition fee, both a notice of appeal and the associated fee, and the proper statement of unintentional delay.

The first three requirements of Rule 1.137(b) have been met. The fourth requirement of Rule 1.137(b) is not applicable, as a terminal disclaimer is not required.[1]

The Technology Center will be notified of this decision. The Technology Center's support staff will notify the Examiner of this decision, so that the notice of appeal that was received on February 15, 2012 can be processed.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the present decision to ensure that the revival has been acknowledged by the Technology Center in response to this decision. It is noted that all inquiries with regard to any failure of that change in status should be directed to the Technology Center where that change of status must be effected - **the Office of Petitions cannot effectuate a change of status.**

The Notice of Appeal filed on February 15, 2012, has been entered and made of record. Accordingly, **the two-month period for filing the Appeal Brief, accompanied by the fee required by law, runs from the mailing date of this decision.**

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 application, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to Petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence

1 See Rule 1.137(d).

related to this application unless Change of Correspondence Address, Patent Form (PTO/SB/122) is submitted for the above-identified application. For Petitioner's convenience, a blank Change of Correspondence Address, Patent Form (PTO/SB/122), may be found at http://www.uspto.gov/web/forms/sb0122.pdf.

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

cc: GARY BAKER
2033 CLEMENT AVENUE
SUITE 200
ALAMEDA, CA 94501

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).

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Alexandria, VA 22313-1450
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PETERS VERNY, L.L.P.
425 SHERMAN AVENUE
SUITE 230
PALO ALTO, CA 94306

MAILED
MAR 24 2011
OFFICE OF PETITIONS

In re Application of :
Ken Prayoon Cheng, et. al. :
Application No. 11/231,353 : ON PETITION
Filed: September 19, 2005 :
Attorney Docket No. 5330.07 (SMC) :

This is a decision on the petition under 37 CFR 1.137(b), filed February 1, 2011, to revive the above-identified application.

The application became abandoned for failure to file a reply to the non-final Office action mailed May 13, 2010. A Notice of Abandonment was mailed on December 27, 2010.

Since the petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment; (2) the petition fee of $810; and (3) a proper statement of unintentional delay, the petition is **GRANTED**.

This application file is being referred to Technology Center Art Unit 2625 for review of the amendment submitted with the present petition.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 6-25-11

TO SPE OF : ART UNIT 2431

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/231 355 Patent No.: 7844835

CofC mailroom date: 6-11-11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES: Check claims

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

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: _____

William Korzeniowski
SPE

2431
Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: __01112011

DATE : **01/11/11**

TO SPE OF : ART UNIT: **3635 Attn: LILLIS EILEEN D (SPE)**

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/231440 Patent No.: **7802409**

CofC Mailroom date: 12/28/10

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Tasneem Siddiqui
Certificates of Correction Branch
703-756-1593 or 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: _____

_____

_____

/Eileen Lillis/ ___3635____
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

TODD N. HATHAWAY
119 N. COMMERCIAL ST. #620
BELLINGHAM WA 98225

MAILED

JAN 13 2011

OFFICE OF PETITIONS

In re Patent No. 7,645,766	:	
Issue Date: January 12, 2010	:	
Application No. 11/231,442	:	DECISION GRANTING PETITION
Filed: September 20, 2005	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. P04103	:	

This is a decision on the petition, filed October 4, 2010, which is being treated as a petition under 37 CFR 1.137(b) to accept an unintentionally delayed notification to the U.S. Patent and Trademark Office (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 under 37 CFR 1.137(b) is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen-month publication country on June 12, 2007. 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. Therefore, pursuant to the provisions of 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c), petitioner failed to timely notify the USPTO of the filing of a counterpart application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing.

A petition under 37 CFR 1.137(b) to accept an unintentionally delayed notification to the USPTO of the filing of a counterpart application in an eighteen-month publication country 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 as provided by 35 U.S.C. § 122(b)(2)(B)(iii) is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

LEE, HONG, DEGERMAN, KANG & WAIMEY
660 S. FIGUEROA STREET
SUITE 2300
LOS ANGELES CA 90017

MAILED
AUG 05 2010
OFFICE OF PETITIONS

In re Application of	:	
Kim et al.	:	
Application No. 11/231,464	:	ON PETITION
Filed: September 20, 2005	:	
Attorney Docket No. 2101-3179	:	

This is a decision on the petition under 37 CFR 1.78(a)(6), filed June 8, 2010, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of prior-filed provisional Application No. 60/611,787, filed September 20, 2004, as set forth in the concurrently filed amendment.

The petition is **DISMISSED AS MOOT**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000.

Along with the instant petition under 37 CFR 1.78(a)(6), petitioner has submitted an amendment to the first sentence of the specification following the title to include a reference to the above-noted, prior-filed application.

The instant pending nonprovisional application was filed on September 20, 2005, and was pending at the time of filing of the instant petition. While a reference to the prior-filed applications was not included in an ADS or in the first sentence of the specification following the title, reference nevertheless was made in the Oath/Declaration filed on December 12, 2005 in the above-identified application.

The current procedure where a claim for priority under 37 CFR § 1.78(a)(6) is not included in the first sentence of the specification or in an ADS but does appear either in the oath or declaration or a transmittal letter filed with the application and the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information concerning the claim submitted elsewhere in the application within the time period set forth in 37 CFR § 1.78(a)(5)(ii). However, on the other hand, if the USPTO does not note the claim for priority to the prior-filed application(s) set forth in the oath or declaration or transmittal letter submitted with the application, a petition will be required to accept a late claim for priority under 37 CFR § 1.78(a)(6).[1] In the instant case, the Office noted

[1] *Note* MPEP 201.11 (V), page 200-75 (Rev. 1. Feb. 2004 and 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.

the claim for priority of above-noted, prior-filed provisional application in the Oath/Declaration filed December 12, 2005 in the above-identified application, as shown by its inclusion on the filing receipt issued December 22, 2005.

In view of the above, the $1,410 petition fee submitted is unnecessary and will be refunded to petitioner's deposit account in due course.

Any questions concerning this decision on petition may be directed to Paralegal Alicia Kelley at (571) 272-6059. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to the Examiner of Technology Center AU 2462 for appropriate action on the Amendment after Notice of Allowance filed June 8, 2010

/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
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Paper No.

MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED
JUL 21 2011
OFFICE OF PETITIONS

In re Patent No. 7,899,421	:	DECISION ON REQUEST
Zheng et al.	:	FOR
Issue Date: March 1, 2011	:	RECONSIDERATION OF
Application No. 11/231,501	:	PATENT TERM ADJUSTMENT
Filed: September 21, 2005	:	and
Attorney Docket No. 17023US01	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on April 28, 2011, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand two hundred sixty-two (1262) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein**. The patent term adjustment is corrected to indicate that the term of the above-identified patent is extended or adjusted by **one thousand one hundred ninety-two (1192)** days.

Receipt of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

Patentees again dispute the period of reduction of 1 day entered for applicant delay, pursuant to 35 U.S.C. § 154(b)(2)(C) and 37 CFR 1.704(b). This reduction has been reconsidered, and it is determined that entry of a reduction for this reply timely filed

pursuant to 35 U.S.C. §21(b) is not warranted. Accordingly, the period of reduction of 1 day is being removed.

Patentees also dispute the period of time excluded from B delay for appellate review. Patentees' argument has been considered, but not found persuasive. The period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). An appeal to the Board of Patent Appeals and Interferences commences with the filing of a notice of appeal. See 35 U.S.C. 134(a). Generally, an appeal to the Board of Patent Appeals and Interferences ends with either 1) a Board decision, 2) the examiner reopening prosecution and issuing another Office action, or 3) the applicant filing a request to withdraw the appeal and reopen prosecution (e.g. the filing of a request for continued examination). In this instance the period consumed by appellate review is (141) days, beginning on October 1, 2008, the date of filing of the notice of appeal and ending on February 18, 2009, the subsequent date of the mailing of a non-final Office action. The time consumed by appellate review does not, as argued by patentee, end on the date of the Notice of Panel Decision from Pre-Appeal Brief Review, but rather ends on the actual date of mailing of the new Office action. Accordingly, it is concluded that the B delay was properly entered as 750 (891 - 141) days, with 9 days being subtracted for 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.

With respect to correction of the applicant delay, the Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one**

(1) month or thirty (30) days, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one thousand one hundred ninety-two (1192) days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,899,421 B2

DATED : **March 1, 2011** **DRAFT**

INVENTOR(S) : Zheng 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 1191 days

Delete the phrase "by 1191 days" and insert – by 1192 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Foley & Lardner LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON WI 53701-1497

MAILED

JUL 19 2011

OFFICE OF PETITIONS

In re Application of	:	
RHOADS, GEOFFREY B.	:	
Application No. 11/231,553	:	ON APPLICATION FOR
Filed: 09/20/2005	:	PATENT TERM ADJUSTMENT
Attorney Docket No. 098888-1010	:	

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 June 28, 2011. Applicants submit that the correct patent term adjustment to be indicated on the patent is 965 days, not 707 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants seek this correction solely on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within three years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentees are entitled to for Office failure to issue the patent within three years. See 37 CFR 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under 37 CFR 1.702(a)(4) or applicant delay under 37 CFR 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office cannot make a

determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss such a request as premature.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicants must timely file an application for patent term adjustment prior to the payment of the issue fee.[1]

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within two months

---

[1] For example, if applicants dispute both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed, and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicants must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the § 1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Paper No.

MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED
JUL 19 2011
OFFICE OF PETITIONS

In re Patent No. 7,917,100	:	DECISION ON REQUEST
Zheng et al.	:	FOR
Issue Date: March 29, 2011	:	RECONSIDERATION OF
Application No. 11/231,586	:	PATENT TERM ADJUSTMENT
Filed: September 21, 2005	:	and
Atty Docket No. 17025US01	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on May 25, 2011, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand two hundred eighty **(1280)** days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein**. The patent term adjustment is corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand two hundred twenty-nine (1229) days.

Receipt of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

Patentees dispute the period of reduction of 1 day entered for applicant delay, pursuant to 35 U.S.C. § 154(b)(2)(C) and 37 CFR 1.704(b). This reduction has been reconsidered, and it is determined that entry of a reduction for this reply timely filed pursuant to 35 U.S.C. §21(b) is not warranted. Accordingly, the period of reduction of 1 day is being removed.

Patentees also dispute the period of time excluded from B delay for appellate review. Patentees' argument has been considered, but not found persuasive. The period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). An appeal to the Board of Patent Appeals and Interferences commences with the filing of a notice of appeal. See 35 U.S.C. 134(a). Generally, an appeal to the Board of Patent Appeals and Interferences ends with either 1) a Board decision, 2) the examiner reopening prosecution and issuing another Office action, or 3) the applicant filing a request to withdraw the appeal and reopen prosecution (e.g. the filing of a request for continued examination). In this instance the period consumed by appellate review is (329) days, beginning on September 23, 2008, the date of filing of the notice of appeal and ending on August 17, 2009, the subsequent date of the mailing of a non-final Office action. The time consumed by appellate review does not, as argued by patentee, end on the date of the Notice of Panel Decision from Pre-Appeal Brief Review, but rather ends on the actual date of mailing of the new Office action. Accordingly, it is concluded that the B delay was properly entered as 590 (919 - 329) days, with 1 day being subtracted for 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.

With respect to correction of the applicant delay, the Office will sua sponte issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given one (1) month or thirty (30) days, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one thousand two hundred twenty-nine (1229) days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,917,100 B2

DATED : **March 29, 2011** **DRAFT**

INVENTOR(S) : Zheng 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 1228 days

Delete the phrase "by 1228 days" and insert – by 1229 days--

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INTEL/BSTZ
BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP
1279 OAKMEAD PARKWAY
SUNNYVALE, CA 94085-4040

Mail Date: 08/02/2010

Applicant	: Ron Gabor	: DECISION ON REQUEST FOR
Patent Number	: 7650273	: RECALCULATION of PATENT
Issue Date	: 01/19/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/231,619	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/21/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **0** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/231,683	09/20/2005	Goro Terao	091793-0113[6552-110]	5642

23392 7590 02/16/2011
FOLEY & LARDNER
555 South Flower Street
SUITE 3500
LOS ANGELES, CA 90071-2411

EXAMINER
GORDON, STEPHEN T

ART UNIT	PAPER NUMBER
3612	

MAIL DATE	DELIVERY MODE
02/16/2011	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 16 2011

FOLEY & LARDNER
555 South Flower Street
SUITE 3500
LOS ANGELES, CA 90071-2411

In re Application of TERAO ET AL. Appl. No.: 11/231,683 Patent No.: 7,381,021 Filed: September 20, 2005 For: METHOD OF LOADING TUBE BUNDLES ON RAILCARS	**DECISION ON PETITON TO CORRECT INVENTORSHIP** *37 CFR 1.324*

This is a decision on the petition filed October 19, 2010 to correct inventorship under 37 CFR 1.324.

The petition is **Granted**.

A petition to correct inventorship as provided by 37 CFR 1.324 requires:

> (**1**) a statement from each person who is being added as an inventor and from each person who is being deleted as an inventor that the inventorship error occurred without any deceptive intention on their part,
> (**2**) a statement from the current named inventors who have not submitted a statement as per "(1)" either agreeing to the change of inventorship or stating that they have no disagreement in regard to the requested change,
> (**3**) a statement from all assignees of the parties submitting a statement under "(1)" and "(2)" agreeing to the change of inventorship in the patent; such statement must comply with the requirements of 37 CFR 3.73(b); and
> (**4**) the fee set forth in 37 CFR 1.20(b).

This petition satisfies all of the items above, and the petition is granted. The patent is being forwarded to Certificates of Corrections Branch for issuance of a certificate naming the actual inventors.

Telephone inquiries regarding this decision should be directed to D. Glenn Dayoan, Supervisory Patent Examiner for Art Unit 3612, at (571) 272-6659.

D. Glenn Dayoan
SPE, Art Unit 3612

DGD: 2/16/11

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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DATE: February 16, 2011
TO: Certificates of Correction Branch
FROM: D. Glenn Dayoan
SPE, Art Unit 3612
SUBJECT: REQUEST FOR CERTIFICATE OF CORRECTION

Please issue a Certificate of Correction in U. S. Letters Patent No. 7,381,021 as specified on the attached Certificate.

D. Glenn Dayoan, SPE
Art Unit 3612

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE

Patent No. 7,381,021
Patented: June 3, 2008

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:

Efren Ramirez, Whittier, CA
Stanley Curtis Whittemore, La Habra, CA

D. Glenn Dayoan
Supervisory Patent Examiner
Art Unit 3612

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Paper No.

MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED

AUG 30 2010

OFFICE OF PETITIONS

In re Application of :
Zhang et al. :
Application No. 11/231,699 :
Filed: September 21, 2005 :
Atty Docket No. 17024US01 :
Title: METHOD AND SYSTEM FOR :
A RANGE REDUCTION SCHEME FOR :
USER SELECTION IN A MULTIUSER :
MIMO DOWNLINK TRANSMISSION :

ON APPLICATION FOR
PATENT TERM ADJUSTMENT

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 July 30, 2010. Applicant submits that the correct patent term adjustment to be indicated on the patent is three hundred and sixty-nine (369) days, not two hundred and thirty-five (235) 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 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.

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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.

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries regarding this decision should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.

Anthony Knight
Director
Office of Petitions

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OFFICE OF PETITIONS

MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

In re Patent No. 7,917,101	:	DECISION ON REQUEST
Zhang, et al.	:	FOR
Issue Date: March 29, 2011	:	RECONSIDERATION OF
Application No. 11/231,701	:	PATENT TERM ADJUSTMENT
Filed: September 21, 2005	:	and
Atty Docket No. **17027US01**	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on May 26, 2011, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand, two hundred and eighty-three (1,283) 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 twenty-eight (1,228)** days is **GRANTED to the extent indicated herein.**

Patentees dispute the period of time excluded from B delay for appellate review. Patentee's argument has been considered, but not found persuasive. The period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). An appeal to the Board of Patent Appeals and Interferences commences with the filing of a notice of appeal. See 35 U.S.C. 134(a). Generally, an appeal to the Board of Patent Appeals and Interferences ends with either 1) a Board decision, 2) the examiner reopening prosecution and issuing another Office action, or 3) the applicant filing a request to withdraw the appeal and reopen prosecution (e.g. the filing of a request for continued examination). In this instance the period consumed by appellate review is 149 days, beginning on the date of filing of the

notice of appeal, September 24, 2008, and ending on February 19, 2009, the subsequent date of the mailing of a non-final Office action. Thus, B delay is 770 (919 - 149) days.

Patentees dispute the period of reduction of 1 day entered for applicant delay, pursuant to 35 U.S.C. § 154(b)(2)(C) and 37 CFR 1.704(b). This reduction has been reconsidered, and it is determined that entry of a reduction for this reply timely filed pursuant to 35 U.S.C. §21(b) is not warranted. **Accordingly, the period of reduction of 1 day is being removed.**

The period of overlap between the "A" delay and the "B" delay is 2 days, not 26 days as patentees calculate. It is 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 period of "A" delay that overlaps the period of "B" delay began February 17, 2009, and ended February 19, 2009—a total of 2 days.

In view thereof, the revised patent term adjustment is 1228 days (770 "B" delay + 460 "A" delay - 2 days of overlap - 0 days of applicant delay.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand, two hundred and twenty-eight (1,228)** 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 : 7,917,101 B2

DATED : Mar. 29, 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 (1227) days

Delete the phrase "by 1227 days" and insert – by 1228 days--

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SUITE 3400
CHICAGO IL 60661

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SEP 27 2011
OFFICE OF PETITIONS

In re Patent No.7,917,101 :
Zhang, et al. : DECISION FOR REQUEST
Issue Date : March 29, 2011 : FOR RECONSIDERATION
Application No. 11/231,701 : OF PATENT TERM
Filed: September 21, 2005 : ADJUSTMENT
Attorney Docket No. **17027US01** :

This is a decision on the petition filed on August 17, 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, three hundred and fifty-three (1,353) days.

The petition is **dismissed**.

Patentees dispute the period of time excluded from B delay for appellate review and assert that the period between the filing of the Notice of Appeal on July 22, 2008, and the mailing of the non-final Office action on February 19, 20009, is a successful appeal warranting an adjustment to the patent term under 37 CFR 1.702(e) and 1.703(e). Patentee's argument has been considered, but not found persuasive. This period is not deemed a successful appeal under the current interpretation of 37 CFR 1.702(e). Thus, no adjustment to the patent term is warranted under 37 CFR 1.703(e). Notwithstanding, the period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). An appeal to the Board of Patent Appeals and Interferences commences with the filing of a notice of appeal. See 35 U.S.C. 134(a). Generally, an appeal to the Board of Patent Appeals and Interferences ends with either 1) a Board decision, 2) the examiner reopening prosecution and issuing another Office action, or 3) the applicant filing a request to withdraw the appeal and reopen prosecution (e.g. the filing of a request for continued examination). In this instance the period consumed by

appellate review is 149 days, beginning on the date of filing of the notice of appeal, September 24, 2008, and ending on February 19, 2009, the subsequent date of the mailing of the non-final Office action. Thus, B delay is 770 (919 - 149) days.

It is further noted that patentees argue that the period of overlap between the periods of "A" delay and "B" delay is 26 days rather than 2 days as the Office calculates. The relevant period of "B" delay for determining periods of overlap began February 17, 2009, and ended March 29, 2011. The relevant period of "A" delay began February 18, 2009, and ended February 19, 2009. Accordingly, the period overlap between the "A" delay and "B" delay periods is 2 days.

No change to the patent term adjustment is warranted.

It is noted that the Office issued a Notice of proposed rulemaking entitled *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review and Information Disclosure Statements*, 76 FR 18990 (April 6, 2011). To the extent that the final rule on *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review* revises the interpretation of appellate review applied in this decision, Patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the date of the final rule to file a request for reconsideration. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

BIRCH STEWART KOLASCJ & BIRCH
PO BOX 747
FALLS CHURCH VA 22040-0747

In re Patent No. 7,243,985	:	
Issue Date: July 17, 2007	:	
Application No. 11/231,892	:	ON PETITION
Filed: September 22, 2005	:	
Attorney Docket No. 1602-0198PUS1	:	

This is a decision on the petition filed December 8, 2009, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The Office apologizes for the delay in replying to the above matter.

The request is **GRANTED**.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3208. 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.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

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Louis J. Wille
Bristol Myers Squibb Company
Patent Department
PO Box 4000
Princeton NJ 08543-4000

MAILED

AUG 03 2010

OFFICE OF PETITIONS

In re Patent No. 7,429,611	:
Weinstein et al.	: DECISION UPON REMAND AND
Issue Date: September 30, 2008	: RECONSIDERATION OF
Application No. 11/232,063	: PATENT TERM ADJUSTMENT
Filed: September 21,2005	: AND NOTICE OF INTENT
Attorney Docket No. 10302 NP	: TO ISSUE CERTIFICATE OF
Title: Indole Inhibitors of 15-	: CORRECTION
Lipoxygenase	:

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 two hundred forty-five (245) 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 two hundred forty-five (245) days.

Telephone inquiries specific to this matter should be directed to Senior Legal Advisor, Kery A. Fries at (571) 272-7757.

/Kery A. Fries/

Kery Fries

Senior Legal Advisor Attorney
Office of Patent Legal Administration
Office of Associate Commissioner
For Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction
Copy of Adjusted PTA calculation

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,429,611

DATED : **September 30, 2008** **DRAFT**

INVENTOR(S) : Weinstein 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 236 days

Delete the phrase "by 236 days" and insert – by 245 days--

Day : Tuesday
Date: 7/27/2010

PALM INTRANET

Time: 08:25:54

PTA Calculations for Application: 11/232063			
Application Filing Date:	09/21/2005	PTO Delay (PTO):	236
Issue Date of Patent:	09/30/2008	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	0
Post-Issue Petitions:	0	Total PTA (days):	245
PTO Delay Adjustment:	9		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
58	07/27/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	9		
52.5	09/10/2008	PTA 36 MONTHS			
52	09/30/2008	PATENT ISSUE DATE USED IN PTA CALCULATION			
51	08/21/2008	EXPORT TO FINAL DATA CAPTURE			
50	08/20/2008	DISPATCH TO FDC			
49	08/20/2008	APPLICATION IS CONSIDERED READY FOR ISSUE			
48	08/19/2008	ISSUE FEE PAYMENT VERIFIED			
47	08/19/2008	ISSUE FEE PAYMENT RECEIVED			
46	06/25/2008	FINISHED INITIAL DATA CAPTURE			
45	05/23/2008	EXPORT TO INITIAL DATA CAPTURE			
44	05/23/2008	ELECTRONIC REVIEW			
40	05/22/2008	MAIL NOTICE OF ALLOWANCE			
39	05/20/2008	ISSUE REVISION COMPLETED			
38	05/20/2008	DOCUMENT VERIFICATION			
37	05/20/2008	EXAMINER'S AMENDMENT COMMUNICATION			
36	05/20/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
35	05/20/2008	CASE DOCKETED TO EXAMINER IN GAU			
34	05/20/2008	NOTICE OF ALLOWABILITY			
31	04/24/2008	DATE FORWARDED TO EXAMINER			
30	04/02/2008	AMENDMENT AFTER FINAL REJECTION			
29	02/14/2008	ELECTRONIC REVIEW			
28	02/13/2008	EMAIL NOTIFICATION			
27	02/12/2008	MAIL FINAL REJECTION (PTOL - 326)	32		22
26	02/04/2008	FINAL REJECTION			

23	11/29/2007	DATE FORWARDED TO EXAMINER			
22	09/11/2007	RESPONSE AFTER NON-FINAL ACTION			
21	06/13/2007	MAIL NON-FINAL REJECTION	204		-1
20	06/11/2007	NON-FINAL REJECTION			
19	06/19/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
18	12/15/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
17	12/15/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16.7	06/19/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16	06/19/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15	02/01/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
14	01/31/2006	CASE DOCKETED TO EXAMINER IN GAU			
13	12/14/2005	REFERENCE CAPTURE ON IDS			
11	11/09/2005	APPLICATION DISPATCHED FROM OIPE			
10	11/09/2005	APPLICATION IS NOW COMPLETE			
9	11/03/2005	ADDITIONAL APPLICATION FILING FEES			
8	11/03/2005	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
7	10/22/2005	CLEARED BY L&R (LARS)			
6	10/20/2005	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
4	10/04/2005	REFERRED TO LEVEL 2 (LARS) BY OIPE CSR			
3	10/04/2005	CASE CLASSIFIED BY OIPE			
2	09/28/2005	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	09/21/2005	INITIAL EXAM TEAM NN			

Search Another: Application# Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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THE WEBB LAW FIRM, P.C.
700 KOPPERS BUILDING
436 SEVENTH AVENUE
PITTSBURGH, PA 15219

In re Patent No. 7,073,982 Issue Date: July 11, 2006 Appl No.: 11/232,163 Filed: September 21, 2005 For: POINT ANCHOR COATED MINE ROOF BOLT	**DECISION GRANTING PETITION** *37 CFR 1.324*

This is a decision on the renewed petition filed September 2, 2009 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.

David J. Bagnell
Supervisory Patent Examiner
Art Unit 3672
Technology Center 3600

DJB: 11/12/10

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DATE: November 12, 2010
TO: Certificates of Correction Branch
FROM: David J. Bagnell
SPE, Art Unit 3672
SUBJECT: REQUEST FOR CERTIFICATE OF CORRECTION

Please issue a Certificate of Correction in U. S. Letters Patent No. 7,073,982 as specified on the attached Certificate.

David J. Bagnell, SPE
Art Unit 3672

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE

Patent No. 7,073,982
Patented: July 11, 2006

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:

JOHN STANKUS	Canonsburg, PA
JOHN OLDSEN	Butler, PA
WALTER J. SIMMONS	Martinsburg, WV
W. NEAL SIMMONS	Durham, NC

David J. Bagnell
Supervisory Patent Examiner
Art Unit 3672

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GARDERE WYNNE SEWELL LLP
INTELLECTUAL PROPERTY SECTION
3000 THANKSGIVING TOWER
1601 ELM ST
DALLAS, TX 75201-4761

MAILED

OCT 19 2010

OFFICE OF PETITIONS

In re Application of	:	
Fred E. Schubert	:	
Application No. 11/232,177	:	DECISION ON PETITION
Filed: September 21, 2005	:	
Attorney Docket No. 61908-1021	:	

This is a decision on the petition, filed August 24, 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 Non-final Office action mailed January 19, 2010, which set a three (3) month statutory period for reply. A Notice of Abandonment was mailed on August 16, 2010.

Petitioner asserts that the Office action dated January 19, 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 3635 for re-mailing the Office action of January 19, 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

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PROTEOGENIX, INC.
3181 SW SAM JACKSON PARK ROAD
PORTLAND OR 97239

MAILED

DEC 06 2010

OFFICE OF PETITIONS

In re Application of	:	
Ron ROSENFELD et al.	:	
Application No. 11/232,335	:	DECISION ON PETITION
Filed: September 20, 2005	:	
Attorney Docket No. PTX-0004	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 15, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of January 29, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is April 30, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810.00, and the submission required by 37 CFR 1.114; (2) the petition fee of $1.620.00; 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) 272-4231.

This application is being referred to Technology Center AU 1647 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.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

cc: **JAMES A. FOX**
555 TWELFTH, STREET, NW
WASHINGTON, D.C. 20004-1206

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500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

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SEP 27 2010

OFFICE OF PETITIONS

In re Application of	:	
Zheng, et al.	:	
Application No. 11/232,340	:	ON REQUEST FOR
Filed: September 21, 2005	:	RECONSIDERATION OF
Attorney Docket Number: 17021US01	:	PATENT TERM ADJUSTMENT

This is a decision on the petition under 37 CFR 1.705(b), filed July 29, 2010. Applicants believe that they should be accorded additional PTA of 600 days. Applicants request this correction in part on the basis that the Office will take in excess of three years to issue this patent.

Insofar as the instant application for patent term adjustment requests reconsideration of the patent term adjustment solely as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file a request for reconsideration of patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

In addition, Applicants argue that they should not have been assessed delay of two (2) days for filing a reply to an October 24, 2008 Office action on January 26, 2009. Applicants assert that January 26, 2009 fell on a Monday, and because it was the first business day after the January 24, 2009 deadline date, they should not be assessed any delay. Applicants' argument has been considered, but is not persuasive. As set forth in MPEP 2731, the date of filing pursuant to 37 CFR 1.6 is used for patent term adjustment calculations. 37 CFR 1.7(a) is only applicable for establishing whether correspondence is timely for purposes of avoiding abandonment.

In view thereof, the correct determination of PTA prior to issuance is **seven hundred one (701) days** (703 days of PTO delay, reduced by 2 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

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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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SEP 20 2010

OFFICE OF PETITIONS

In re Patent No. 7,636,553	:	DECISION ON REQUEST
Zhang et al.	:	FOR
Issue Date: 12/22/2009	:	RECONSIDERATION OF
Application No. 11/232,369	:	PATENT TERM ADJUSTMENT
Filed: 09/21/2005	:	
Atty Docket No.	:	
17026US01	:	

This is a decision on the petition filed on June 3, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand one hundred two (1102) days.

The petition to correct the patent term adjustment is **DISMISSED** with respect to making any change in the patent term adjustment determination under 35 U.S.C. § 154(b) of one thousand one hundred (1100) days.

Patentees assert that the two (2) day reduction for applicant delay in connection with the filing of the issue fee on November 9, 2009, in response to the Notice of Allowance and Fee(s) Due mailed on August 7, 2009, is incorrect. Specifically, patentees assert that because November 7, 2009, fell on a Saturday, the issue fee payment was not due until Monday, August 9, 2009, pursuant to 37 CFR 1.7(a), and, therefore, the two (2) day reduction for applicant delay for filing the reply on Monday, August 9, 2009, is not warranted and should be removed.

37 CFR 1.704(b) states 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**.
>
> (emphasis added)

As stated above, 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 37 CFR 1.704(b). 37 CFR 1.7(a) governs the period for reply to the Notice of Allowance and Issue Fee Due, not the determination of patent term adjustment. *See also*, Comment 10, *Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term*; *Final Rule*, 65 Fed. Reg. 56366 (September 18, 2000). Accordingly, patentees' argument on application for patent term adjustment is not found persuasive.

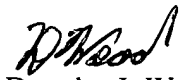
It is undisputed that on November 9, 2009, then applicants submitted payment of the issue and publication fee, three months and two (2) days after the mailing of the Notice of Allowance mailed on August 7, 2009. As such, the reduction of two (2) days for applicant delay is warranted and will not be removed.

Accordingly, no change will be made to the patent term adjustment of 1100 days (645 days Office delay + 457 days three years delay – 2 days of applicant delay) days indicated in the Decision on Request for Recalculation of Patent Term Adjustment in View of *Wyeth* and Notice of Intent to Issue Certificate of Correction, mailed on May 4, 2010.

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) 272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Decision Date : November 17,2011

In re Application of :

Amr Salahieh

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11232441

Filed : 20-Sep-2005

Attorney Docket No : S63.2H-15127-US01

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed November 17,2011 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid in this application cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

This application file is being referred to Technology Center AU 3738 for processing of the request for continuing examination under 37 CFR 1.114 .

Office of Petitions

Doc Code: PET.AUTO Document Description: Petition automatically granted by EFS-Web	PTO/SB/140 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	**PETITION TO WITHDRAW AN APPLICATION FROM ISSUE AFTER PAYMENT OF THE ISSUE FEE UNDER 37 CFR 1.313(c)**
Application Number	11232441
Filing Date	20-Sep-2005
First Named Inventor	Amr Salahieh
Art Unit	3738
Examiner Name	REBECCA STRASZHEIM
Attorney Docket Number	S63.2H-15127-US01
Title	METHODS AND APPARATUS FOR ENDOVASCULAR HEART VALVE REPLACEMENT COMPRISING TISSUE GRASPING ELEMENTS

An application may be withdrawn from issue for further action upon petition by the applicant. To request that the Office withdraw an application from issue, applicant must file a petition under this section including the fee set forth in § 1.17(h) and a showing of good and sufficient reasons why withdrawal of the application from issue is necessary.

APPLICANT HEREBY PETITIONS TO WITHDRAW THIS APPLICATION FROM ISSUE UNDER 37 CFR 1.313(c).

A grantable petition requires the following items:
(1) Petition fee; and
(2) One of the following reasons:
(a) Unpatentability of one or more claims, which must be accompanied by an unequivocal statement that one or more claims are unpatentable, an amendment to such claim or claims, and an explanation as to how the amendment causes such claim or claims to be patentable;
(b) Consideration of a request for continued examination in compliance with § 1.114 (for a utility or plant application only); or
(c) Express abandonment of the application. Such express abandonment may be in favor of a continuing application, but not a CPA under 37 CFR 1.53(d).

Petition Fee

☐ Applicant claims SMALL ENTITY status. See 37 CFR 1.27.

☐ Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

☐ Applicant(s) status remains as SMALL ENTITY.

☒ Applicant(s) status remains as other than SMALL ENTITY

Reason for withdrawal from issue

○ One or more claims are unpatentable

◉ Consideration of a request for continued examination (RCE) (List of Required Documents and Fees)

○ Applicant hereby expressly abandons the instant application (any attorney/agent signing for this reason must have power of attorney pursuant to 37 CFR 1.32(b)).

RCE request,submission, and fee.

☐ I certify, in accordance with 37 CFR 1.4(d)(4) that : The RCE request ,submission, and fee have already been filed in the above-identified application on

☒ Are attached.

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

I certify, in accordance with 37 CFR 1.4(d)(4) that I am:

◉ An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application.

○ An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity.

○ A sole inventor

○ A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors

○ A joint inventor; all of whom are signing this e-petition

○ The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71

Signature	/Martha J. Engel/
Name	Martha Engel
Registration Number	61534

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600 CONGRESS AVE.
SUITE 2400
AUSTIN TX 78701

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SEP 08 2010

OFFICE OF PETITIONS

In re Patent No. 7,626,693	:	DECISION ON REQUEST
Carl Dirk	:	FOR
Issue Date: December 1, 2009	:	RECONSIDERATION OF
Application No. 11/232,442	:	PATENT TERM ADJUSTMENT
Filed: September 21, 2005	:	and
Atty Docket No. UTSE:108US/	:	NOTICE OF INTENT TO ISSUE
10510225	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on January 27, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by seven hundred thirty-eight (738) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.** The patent term adjustment is corrected to indicate that the term of the above-identified patent is extended or adjusted by six hundred twenty-eight (628) days.

The B delay is 194 days, not 195 days. As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the period of B delay, the over three year period began on September 22, 2008, and ended on April 5, 2009, *the day before* the RCE was filed, and is 196 (not 197) days. *See* 35 U.S.C. § 154(b)(1)(B)(i). Considering the agreed 2 days of overlap, the period of Office

delay for taking in excess of three years to issue the patent is 194, not 195 days.

Further, a review of the record reveal that applicant delay is not 0 days. A period of reduction should have been entered for applicant's failure to engage pursuant to 37 CFR 1.704(c)(10). A Notice of Allowance was mailed on December 16, 2008. Applicant filed a Petition to Withdraw from Issue, a Request for Continued Examination (RCE) and Information Disclosure Statement (IDS) on September 21, 2006. Prior to filing the RCE, applicant paid the Issue Fee. This set the calculation of the period of reduction pursuant to 37 CFR 1.704(b), if any, for applicant delay. The filing of the Petition, RCE and IDS after the mailing of the Notice of Allowance on December 16, 2006 constituted a failure to engage pursuant to 37 CFR 1.704(c)(10). This period is 109 days, counting the number of days in the period beginning on April 6, 2009 and ending on July 23, 2009, the date of mailing of the Notice of Allowance in response. (The 4 day period for the petition to withdraw from issue filed on April 6, 2009 to the April 9, 2009, decision on petition, completely overlaps with the 109 period, and thus, does not result in a separate applicant delay under 37 CFR 1.704(c)(10)).

In view thereof, the revised patent term adjustment has been corrected to six hundred twenty-eight (543 + 194 (- 109 days of applicant delay)) days.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

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 six hundred twenty-eight **(628)** days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,626,693 B2

DATED : **December 1, 2009** **DRAFT**

INVENTOR(S) : Dirk

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 543 days

Delete the phrase "by 543 days" and insert – by 628 days--

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: 60014-003001	
Application Number: 11/232,467	Filing Date (or 371(b) or (f) Date): 9/20/2005
Patent Number: 7,666,666	Issue Date: 2/23/2010
First Named Inventor: Chi-Chung Chou	
Title: Fuel Production	

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 Y. Rocky Tsao	Date August 20, 2010
Name (Print/Typed) Y. Rocky Tsao	Registration Number 34,053

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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10 FAWCETT STREET
CAMBRIDGE, MA 02138

Mail Date: 09/07/2010

Applicant	: Chih-Chung Chou	: DECISION ON REQUEST FOR
Patent Number	: 7666666	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/232,467	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/20/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1135** 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

DON J. PELTO
SHEPPARD, MULLIN, RICHTER & HAMILTON LLP
1300 I STREET, NW
11TH FLOOR EAST
WASHINGTON, DC 20005

MAILED

DEC 20 2010

OFFICE OF PETITIONS

In re Application of	:	
David A. **PETERSEN**	:	
Application No. 11/232,519	:	RESPONSE TO PETITION
Filed: September 22, 2005	:	
Attorney Docket No. 14XL-133293	:	

This is a response to the petition under 37 CFR 1.59(b), filed May 10, 2010, to expunge information from the above identified application.

The petition **DISMISSED**.

Petitioner has request expungement of information received by the Office, and entered into the file on April 30, 2010.

It would be the responsibility of petitioner to have filed this request after the mailing of a Notice of Allowance, an Ex parte Quayle action or a Notice of Abandonment. This is to be done no later than immediately after the examiner has issued a Notice of Allowance, an Ex parte Quayle action or a Notice of Abandonment. A failure to timely file the petition to expunge prior to the point at which the file is forwarded for issuance results in the material being retained in the patented file and thus becoming open to the public.

A review of the file here indicates that this application has issued as US Patent No. 7,708,761, on April 4, 2010, hence making the information public. Therefore the information cannot be expunged.

Telephone inquiries concerning this communication should be directed to the undersigned at 571-272-0502.

Thurman K. Page
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C
ONE FINANCIAL CENTER
BOSTON MA 02111

In re Patent No. 7,563,785	: DECISION ON PATENT TERM
Issued: July 21, 2009	: ADJUSTMENT and NOTICE OF INTENT
Application No. 11/232,565	: TO ISSUE CERTIFICATE OF
Filed: September 21, 2005	: CORRECTION
Dkt. No.: 20712-513	:

This is a decision on the petition filed on January 15, 2010 requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by 877 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 877 days is **GRANTED**.

The Office acknowledges the submission of the $200.00 fee set forth in 37 CFR 1.18(e). The Office acknowledges the submission of the $400.00 petition fee set forth in 37 CFR 1.17(f).

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 **877** days.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,563,785

DATED : July 21, 2009 **DRAFT**

INVENTOR(S) : Edgar, 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 574 days

Delete the phrase "by 574 days" and insert – by 877 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

In re Patent of	:
Ananthakrishnan et al.	: DECISION ON REQUEST FOR
Patent No. 8,000,339	: RECONSIDERATION OF
Issue Date: August 16, 2011	: PATENT TERM ADJUSTMENT
Application No. 11/232,721	:
Filed: September 21, 2005	:
Attorney Docket No. 26310-0107001 / 585561	:

This is a decision on the petition filed on Monday, October 17, 2011, 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 sixty-seven (1067) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED TO THE EXTENT INDICATED HEREIN.**

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **nine hundred thirty (930)** days.

BACKGROUND

On August 16, 2011, the above-identified application matured into U.S. Patent No. 8,000,339, with a revised patent term adjustment of 925 days. On Monday, October 17, 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 1067.

Patentees argue the Office miscalculated a number of reductions based on an asserted misinterpretation of 35 U.S.C. 154(b)(2)(C)(ii). Patentees argue a three month date should be calculated from the first business day after a weekend or a holiday, regardless of the date a reply is actually filed. Accordingly, patentees argue their replies filed on August 10, 2009 and January 18, 2011 were timely filed and no reductions should be accorded and the reply filed on February 3, 2009 should merit a 29, rather than a 31, day reduction.

Further, patentees assert 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 April 4, 2011, thereby closing examination of the application on that date. Thus, Patentees argue no continued examination took place during the 135 day period from April 4, 2011 (the mailing date of the Notice of Allowance) until August 16, 2011 (the date the patent was issued).

As such, Patentees maintain that the "B delay" should include the 135 days from April 4, 2011 until August 16, 2011 and the total B delay be increased from 322 to 457 days.

Patentees conclude that the correct patent term adjustment is 1067 days (the sum of 682 days of "A delay" and 457 days of "B delay" minus 12 overlapping days minus 60 days of Applicant delay).

RELEVANT STATUTE AND REGULATIONS

With respect to applicant delay, 35 U.S.C. 154(b)(2)(C)(ii) provides that:

> With respect to adjustments to patent term made under the authority of paragraph (1)(B), an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of 3 months that are taken to respond to a notice from the Office making any rejection, objection, argument, or other request, measuring such

3-month period from the date the notice was given or mailed to the applicant.

37 CFR 1.704(b) provides in pertinent part that:

> …, 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.

35 U.S.C. 21(b) provides that:

> When the day, or the last day, for taking any action or paying any fee in the United States Patent and Trademark Office falls on Saturday, Sunday, or a Federal holiday within the District of Columbia, the action may be taken, or fee paid, on the next succeeding secular or business day.

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

With respect to the replies filed on August 10, 2009 and January 18, 2011, patentees are correct that no reductions are warranted. Since three month due date (37 CFR 1.704(b)) fell on Saturday, August 8, 2009, and applicants responded on the first business day following the weekend, August 10, 2009, the 2 day reduction is being removed. Since the three month due date (37 CFR 1.704(b)) fell on a weekend, January 17, 2011 was a federal holiday, and applicants responded on the first business day following the holiday, January 18, 2011, the 3 day reduction is being removed.

Patentees are incorrect that the reduction assessed in connection with the February 3, 2009 reply should be 29 days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 CFR 1.704(b). The weekend exception does not apply to the period of applicant delay at issue. The Office action with mailed October 3, 2008, with a shortened statutory period for reply of three (3) months,

with extensions of time obtainable under 37 CFR 1.136(a). It is recognized that the three-month deadline, January 3, 2009, ended on a Saturday. However, in this instance, applicants did not exercise the 21(b) weekend exception to file a timely response under 133 on the following business day. Applicant timely filed a reply on February 3, 2009 with an extension of time. In other words, the February 3, 2009 reply was not timely filed pursuant to 35 U.S.C. 21(b). Thus, the period of reduction was properly calculated as 31 days, counting the number of days beginning on the day after the date that is three months after the date of mailing of the Office action, January 4, 2009, and ending on the date the reply was filed, February 3, 2009. Accordingly, the period of reduction of 31 days will be retained.

Consideration now turns to patentees' arguments with respect to the Office's B delay calculation. The Office calculated the maximum period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 322 days based on the application having been filed under 35 U.S.C. 111(a) on September 21, 2005 and the patent not having issued as of the day after the three year date, September 22, 2008, and a request for continued examination under 132(b) having been filed on August 10, 2009. In other words, the 135 day period beginning on the date of mailing of the notice of allowance to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the maximum "B delay" calculation.

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

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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 (§

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 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").

1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F.Supp.2d 138 (D.D.C., September 30, 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)[2]. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. *Websters Collegiate Dictionary*, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-

[2] Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such

information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[3] permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

[3] Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, a request for continued examination was filed on August 10, 2009, and the patent issued by virtue of that request on August 16, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on April 4, 2011 and ending on August 16, 2011 is not included in calculating Office delay.

CONCLUSION

In view thereof, 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 nine hundred thirty (930) days, which is 682 days of A delay + 322 days of B delay - 12 overlapping days - 62 (31 +31) days of Applicant delay.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a

certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges receipt of the required $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 thirty (930)** days.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 8,000,339 B2

DATED : **August 16, 2011** **DRAFT**

INVENTOR(S) : Ananthakrishnan 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 925 days

Delete the phrase "by 925 days" and insert – by 930 days--

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STEVENS & SHOWALTER, L.L.P.
Attorneys at Law

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FACSIMILE TRANSMISSION

TO:	Name:	Supervisory Patent Examiner, Art Unit 2129		
	Company:	US Patent and Trademark Office		
	Fax No.:	571/273-8300	Phone No.:	
FROM:	Name:	Robert L. Showalter, Reg. No. 33,579		
	Date:	March 30, 2012		
	Our. Ref.:	Serial No.111/232,839; Patent No. 7,475,051; Docket RSW920065011US1/IBM052PA	Trans. No.:	
# Pages (incl. cover):		12		

REMARKS:

OFFICIAL

REQUEST FOR CORRECTION OF INVENTORSHIP IN PATENT including FEE TRANSMITTAL (2 copies for charge to deposit account)

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Document Description: Transmittal Letter

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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission	11

Application Number	11/232,839
Filing Date	09/22/2005
First Named Inventor	Chaitanya Laxminarayan
Art Unit	2129
Examiner Name	Borman, Melissa J.
Attorney Docket Number	RSW920065011US1/IBM052PA

ENCLOSURES *(Check all that apply)*

- [✓] Fee Transmittal Form
  - [ ] Fee Attached
- [ ] Amendment/Reply
  - [ ] After Final
  - [ ] Affidavits/declaration(s)
- [ ] Extension of Time Request
- [ ] Express Abandonment Request
- [ ] Information Disclosure Statement
- [ ] Certified Copy of Priority Document(s)
- [ ] Reply to Missing Parts/ Incomplete Application
  - [ ] Reply to Missing Parts under 37 CFR 1.52 or 1.53
- [ ] Drawing(s)
- [ ] Licensing-related Papers
- [ ] Petition
- [ ] Petition to Convert to a Provisional Application
- [ ] Power of Attorney, Revocation Change of Correspondence Address
- [ ] Terminal Disclaimer
- [ ] Request for Refund
- [ ] CD, Number of CD(s) _____
  - [ ] Landscape Table on CD
- [ ] After Allowance Communication to TC
- [ ] Appeal Communication to Board of Appeals and Interferences
- [ ] Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
- [ ] Proprietary Information
- [ ] Status Letter
- [✓] Other Enclosure(s) (please identify below):
  Request for Correction of Inventorship in Patent; Statement of Sanjay Francis Kottaram; Statement of Chaitanya Laxminarayan; CONTINUED IN REMARKS

Remarks

Statement of Gopal Krishnan; Statement of Assignee; Statement Under 37 CFR 3.73(b)

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Stevens & Showalter LLP		
Signature			
Printed name	Robert L. Showalter		
Date	March 30, 2012	Reg. No.	33,579

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature			
Typed or printed name	Robert L. Showalter	Date	March 30, 2012

This collection of information is required by 37 CFR 1.5. 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 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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FEE TRANSMITTAL

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT ($) 130

Complete If Known	
Application Number	11/232,839
Filing Date	09/22/2005
First Named Inventor	Chaitanya Laxminarayan
Examiner Name	Berman, Melissa J.
Art Unit	2129
Attorney Docket No.	RSW920065011US1/IBM052PA

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☑ Deposit Account Deposit Account Number: 090461 Deposit Account Name: IBM Corporation

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☑ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee

☐ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☐ Credit any overpayments

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FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES Fee ($)	FILING FEES Small Entity Fee ($)	SEARCH FEES Fee ($)	SEARCH FEES Small Entity Fee ($)	EXAMINATION FEES Fee ($)	EXAMINATION FEES Small Entity Fee ($)	Fees Paid ($)
Utility	380	190	620	310	250	125	
Design	250	125	120	60	160	80	
Plant	250	125	380	190	200	100	
Reissue	380	190	620	310	750	375	
Provisional	250	125	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee ($)	Small Entity Fee ($)
Each claim over 20 (including Reissues)	60	30
Each independent claim over 3 (including Reissues)	250	125
Multiple dependent claims	450	225

Total Claims _____ - 20 or HP = _____ x Fee ($) _____ = Fee Paid ($) _____

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims _____ - 3 or HP = _____ x Fee ($) _____ = Fee Paid ($) _____

HP = highest number of independent claims paid for, if greater than 3.

Multiple Dependent Claims Fee ($) _____ Fee Paid ($) _____

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is $310 ($155 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets _____ - 100 = Extra Sheets _____ / 50 = Number of each additional 50 or fraction thereof _____ (round up to a whole number) x Fee ($) _____ = Fee Paid ($) _____

4. OTHER FEE(S) Fees Paid ($)

Non-English Specification, $130 fee (no small entity discount) _____

Other (e.g., late filing surcharge): 1816/1.20(b)-Processing fee for correcting inventorship in patent 130

SUBMITTED BY

Signature		Registration No. (Attorney/Agent) 33,579	Telephone 937/438-6848
Name (Print/Type)	Robert L. Showalter		Date March 30, 2012

This collection of information is required by 37 CFR 1.136. 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 30 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.**

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FEE TRANSMITTAL

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT ($) 130

Complete if Known	
Application Number	11/232,839
Filing Date	09/22/2005
First Named Inventor	Chaitanya Laxminarayan
Examiner Name	Berman, Melissa J.
Art Unit	2129
Attorney Docket No.	RSW920065011US1/IBM052PA

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☑ Deposit Account Deposit Account Number: 090461 Deposit Account Name: IBM Corporation

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☑ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee

☐ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☐ Credit any overpayments

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FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES Fee ($)	FILING FEES Small Entity Fee ($)	SEARCH FEES Fee ($)	SEARCH FEES Small Entity Fee ($)	EXAMINATION FEES Fee ($)	EXAMINATION FEES Small Entity Fee ($)	Fees Paid ($)
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Design	250	125	120	60	160	80	
Plant	250	125	380	190	200	100	
Reissue	380	190	620	310	750	375	
Provisional	250	125	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee ($)	Small Entity Fee ($)
Each claim over 20 (including Reissues)	60	30
Each independent claim over 3 (including Reissues)	250	125
Multiple dependent claims	450	225

Total Claims _____ - 20 or HP = _____ x _____ = _____ (Extra Claims, Fee ($), Fee Paid ($))

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims _____ - 3 or HP = _____ x _____ = _____ (Extra Claims, Fee ($), Fee Paid ($))

HP = highest number of independent claims paid for, if greater than 3.

Multiple Dependent Claims: Fee ($) _____ Fee Paid ($) _____

3. APPLICATION SIZE FEE

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Total Sheets _____ - 100 = _____ Extra Sheets / 50 = _____ Number of each additional 50 or fraction thereof (round up to a whole number) x _____ Fee ($) = _____ Fee Paid ($)

4. OTHER FEE(S)

Non-English Specification, $130 fee (no small entity discount) — Fees Paid ($): _____

Other (e.g., late filing surcharge): 1816/1.20(b)-Processing fee for correcting inventorship in patent — 130

SUBMITTED BY

Signature		Registration No. (Attorney/Agent) 33,579	Telephone 937/438-6848
Name (Print/Type)	Robert L. Showalter		Date March 30, 2012

This collection of information is required by 37 CFR 1.136. 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 30 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.

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Application of:

Applicant	:	Chaitanya Laxminarayan, Gopal Krishnan and Sanjay Francis Kottaram (As Corrected)
Serial No.	:	11/232,839
Filed	:	September 22, 2005
Patent No.	:	7,475,051
Issue Date	:	January 6, 2009
Title	:	METHOD FOR THE CASCADING DEFINITION AND SUPPORT OF EDI RULES
Docket	:	RSW920065011US1/IBM052PA
Examiner	:	Berman, Melissa J.
Art Unit	:	2129
Confirm No.	:	1079

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Alexandria, VA 22313-1450

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I hereby certify that this paper is being facsimile transmitted to the Patent and Trademark Office at 571/273-8300 on March 30, 2012.

Robert L. Showalter Reg. No. 33579

REQUEST FOR CORRECTION OF INVENTORSHIP IN PATENT

This Request for Correction of Inventorship is presented in accordance with 37 CFR §1.324. The processing fee of $130 in accordance with §1.20(b) is being submitted herewith. Also enclosed as required by 37 C.F.R. §1.324, are a statement from Sanjay Francis Kottaram regarding the error in his name when the application was filed; and statements from inventors Laxminarayan and Krishnan and assignee International Business Machines Corporation agreeing to the change.

By inadvertence and without deceptive intent, the identified application as originally filed incorrectly named SANJAY FRANCIS as inventor of the claimed invention, instead of using his full name of SANJAY FRANCIS KOTTARAM, as acknowledged in his attached statement.

Patent No. 7,475,051
Docket No. RSW920065011US1/IBM052PA

Accordingly, it is requested that a Certificate of Correction be issued to name the inventors of this application as Chaitanya Laxminarayan, Gopal Krishnan and Sanjay Francis Kottaram.

Respectfully submitted,
STEVENS & SHOWALTER, L.L.P.

By _____
Robert L. Showalter
Registration No. 33,579

7019 Corporate Way
Dayton, OH 45459-4238
Telephone: (937) 438-6848
Facsimile: (937) 438-2124
E-mail: rshowalter@sspatlaw.com

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of:

Applicant	:	Chaitanya Laxminarayan, Gopal Krishnan and Sanjay Francis Kottaram (As Corrected)
Serial No.	:	11/232,839
Filed	:	September 22, 2005
Patent No.	:	7,475,051
Issue Date	:	January 6, 2009
Title	:	METHOD FOR THE CASCADING DEFINITION AND SUPPORT OF EDI RULES
Docket	:	RSW920065011US1/IBM052PA
Examiner	:	Berman, Melissa J.
Art Unit	:	2129
Confirm No.	:	1079

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STATEMENT OF SANJAY FRANCIS KOTTARAM

I, Sanjay Francis Kottaram, state that by inadvertence and without deceptive intent on my part, the above-identified application as originally filed named me incorrectly as Sanjay Francis, instead of my full name of Sanjay Francis Kottaram, as an inventor of the claimed invention. I submit that I made an inventive contribution to the claimed invention and request that my name be corrected to Sanjay Francis Kottaram as an inventor in patent No. 7,475,051.

Sanjay Francis Kottaram

Sanjay Francis Kottaram

3/8/2012

Date

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Application of:

Applicant	:	Chaitanya Laxminarayan, Gopal Krishnan and Sanjay Francis Kottaram (As Corrected)
Serial No.	:	11/232,839
Filed	:	September 22, 2005
Patent No.	:	7,475,051
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Title	:	METHOD FOR THE CASCADING DEFINITION AND SUPPORT OF EDI RULES
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Examiner	:	Berman, Melissa J.
Art Unit	:	2129
Confirm No.	:	1079

Commissioner for Patents
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Alexandria, VA 22313-1450

STATEMENT OF CHAITANYA LAXMINARAYAN

I, Chaitanya Laxminarayan, agree to the requested change of inventorship herein to change the name of Inventor Sanjay Francis to Sanjay Francis Kottaram.

Chaitanya Laxminarayan

3/14/2012
Date

PAGE 8/12 * RCVD AT 3/30/2012 10:31:45 AM [Eastern Daylight Time] * SVR:W-PTOFAX-002/35 * DNIS:2738300 * CSID:937 438 2124 * DURATION (mm-ss):03-49

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Application of:

Applicant	:	Chaitanya Laxminarayan, Gopal Krishnan and Sanjay Francis Kottaram (As Corrected)
Serial No.	:	11/232,839
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Examiner	:	Berman, Melissa J.
Art Unit	:	2129
Confirm No.	:	1079

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STATEMENT OF GOPAL KRISHNAN

I, Gopal Krishnan, agree to the requested change of inventorship herein to change the name of inventor Sanjay Francis to Sanjay Francis Kottaram.

Gopal Krishnan

3/13/12
Date

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of:

Applicant	:	Chaitanya Laxminarayan, Gopal Krishnan and Sanjay Francis Kottaram (As Corrected)
Serial No.	:	11/232,839
Filed	:	September 22, 2005
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Examiner	:	Berman, Melissa J.
Art Unit	:	2129
Confirm No.	:	1079

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

STATEMENT OF ASSIGNEE

This statement is presented in accordance with 37 C.F.R. § 3.73(b) as required by 37 C.F.R. §1.324(b)(3).

International Business Machines Corporation, the assignee of the entire right, title and interest in the above-identified patent, by assignments from the originally named inventors to Webify Solutions, Inc. (Reel 017612, Frame 0178); from Webify Solutions, Inc. to International Business Machines Corporation (Reel 019118, Frame 0455); and from inventor Sanjay Francis Kottaram to International Business Machines Corporation (copy enclosed); hereby agrees to the correction of inventorship as requested in the Request for Correction of Inventorship submitted herewith.

INTERNATIONAL BUSINESS MACHINES CORPORATION

By: _____
Pryor A. Garnett
Senior Counsel
USPTO Reg. No. 32,136

Date: 3/14/2012

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STATEMENT UNDER 37 CFR 3.73(b)

Applicant/Patent Owner: Chaitanya Laxminarayan et al.

Application No./Patent No.: 11/232,839; 7,475,051 Filed/Issue Date: 09/22/2005; 01/06/2009

Titled:
METHOD FOR THE CASCADING DEFINITION AND SUPPORT OF EDI RULES

International Business Machines Corporation, a corporation
(Name of Assignee) (Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1. [X] the assignee of the entire right, title, and interest in;

2. [ ] an assignee of less than the entire right, title, and interest in (The extent (by percentage) of its ownership interest is _____ %); or

3. [ ] the assignee of an undivided interest in the entirety of (a complete assignment from one of the joint inventors was made) the patent application/patent identified above, by virtue of either:

A. [ ] An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel _____, Frame _____, or for which a copy therefore is attached.

OR

B. [X] A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as follows:

1. From: Chaitanya Laxminarayan et al. To: Webify Solutions, Inc.
The document was recorded in the United States Patent and Trademark Office at Reel 017612, Frame 0178, or for which a copy thereof is attached.

2. From: Webify Solutions, Inc. To: International Business Machines Corporation
The document was recorded in the United States Patent and Trademark Office at Reel 019118, Frame 0455, or for which a copy thereof is attached.

3. From: Sanjay Francis Kottaram To: International Business Machines Corporation
The document was recorded in the United States Patent and Trademark Office at Reel _____, Frame _____, or for which a copy thereof is attached.

[ ] Additional documents in the chain of title are listed on a supplemental sheet(s).

[X] As required by 37 CFR 3.73(b)(1)(i), 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 37 CFR 3.11.

[NOTE: A separate copy (*i.e.*, a true copy of the original assignment document(s)) must be submitted to Assignment Division in accordance with 37 CFR Part 3, to record the assignment in the records of the USPTO. See MPEP 302.08]

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

Signature 3/14/2012
Date

Pryor A. Garnett, USPTO Reg. No. 32,136 Senior Counsel
Printed or Typed Name Title

This collection of information is required by 37 CFR 3.73(b). 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 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.

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IBM DOCKET NUMBER: RSW920065011US1

ASSIGNMENT

Whereas, the undersigned Inventor(s) has/have made certain inventions, improvements, and discoveries (herein referred to as the "Invention") in:

METHOD FOR THE CASCADING DEFINITION AND SUPPORT OF EDI RULES

and further identified by the IBM Docket Number provided above in the header of this Assignment, for which an application for a United States Patent was executed concurrently herewith or was filed having:

Application No.: 11/232,839

Whereas, International Business Machines Corporation, a corporation of New York having a place of business at Armonk, New York (herein referred to as "IBM"), desires to acquire, and each undersigned Inventor desires to grant to IBM, the entire worldwide right, title, and interest in and to the Invention and in and to any and all patent applications and patents directed thereto;

Now, therefore, for good and valuable consideration, the receipt and sufficiency thereof being hereby acknowledged, each undersigned Inventor ("ASSIGNOR") hereby sells, assigns, and otherwise transfers to IBM (the "ASSIGNEE"), its successors, legal representatives, and assigns, the entire worldwide right, title, and interest in and to the Invention, the above-identified United States patent application, and any and all other patent applications and patents for the Invention which may be applied for or granted therefor in the United States and in all foreign countries and jurisdictions, including all divisions, continuations, reissues, reexaminations, renewals, extensions, counterparts, substitutes, and extensions thereof, and all rights of priority resulting from the filing of such applications and granting of such patents. In addition, each undersigned Inventor hereby authorizes and requests the Director of the United States Patent and Trademark Office to issue any United States Patent, and foreign patent authorities to issue any foreign patent, granted for the Invention, to IBM, its successors, legal representatives, and assigns, the entire worldwide right, title, and interest in and to the same to be held and enjoyed by IBM, its successors, legal representatives, and assigns to the full end of the terms for which any and all such patents may be granted, as fully and entirely as would have been held and enjoyed by the undersigned had this Assignment not been made; and each undersigned Inventor agrees to execute any and all documents and instruments and perform all lawful acts reasonably related to recording this Assignment or perfecting title to the Invention and all related patents and applications, in IBM, its successors, legal representatives, and assigns, whenever requested by IBM, its successors, legal representatives, or assigns.

Each undersigned Inventor acknowledges their prior and ongoing obligations to sell, assign, and transfer the rights under this Assignment to IBM and is unaware of any reason why they may not have the full and unencumbered right to sell, assign, and transfer the rights hereby sold, assigned, and transferred, and has not executed, and will not execute, any document or instrument in conflict herewith. Each undersigned Inventor also hereby grants IBM, its successors, legal representatives, and assigns, the right to insert in this Assignment any further identification (including, but not limited to, patent Application Number) which may be necessary or desirable for recordation of this Assignment. This Assignment is governed by the substantive laws of the State of New York, and any disputes will be resolved in a New York state court or federal court sited in New York.

Signature: Sanjay Francis Kottaram Date: 3/8/2012
SANJAY FRANCIS KOTTARAM

PAGE 12/12 * RCVD AT 3/30/2012 10:31:45 AM [Eastern Daylight Time] * SVR:W-PTOFAX-002/35 * DNIS:2738300 * CSID:937 438 2124 * DURATION (mm-ss):03-49

PTO/SB/131 (01-10)
Approved for use through 02/28/2011. OMB 0651-0020
U.S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE
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REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

Attorney Docket Number: 8001-1229	Patent Number: 7,663,678
Filing Date (or 371(b) or (f) Date): 23-Sep-2005	Issue Date: 16-Feb-2010
First Named Inventor: MIYASAKA, Daigo	
Title: GAMMA CORRECTION, IMAGE PROCESSING METHOD AND PROGRAM, GAMMA CORRECTION CIRCUIT, IMAGE PROCESSING APPARATUS, 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 /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
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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YOUNG & THOMPSON
209 Madison Street
Suite 500
Alexandria, VA 22314

Mail Date: 09/02/2010

Applicant	: Daigo Miyasaka	: DECISION ON REQUEST FOR
Patent Number	: 7663678	: RECALCULATION of PATENT
Issue Date	: 02/16/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/232,926	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/23/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1151** 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.
11/232,984	09/23/2005	Seiji Maeda	278844US2SRD	1270

22850 7590 12/21/2010
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER
TANG, KENNETH

ART UNIT	PAPER NUMBER
2196	

NOTIFICATION DATE	DELIVERY MODE
12/21/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

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Eckard H. Kuesters
Oblon, Spivak, McClelland, Maier, & Neustadt, L.L.P.
1940 Duke Street
Alexandria, VA 22314

December 20, 2010

In re Application of:
Seiji Maeda et al.
Appl. No.: 11/232984
Filed: September 23, 2005
For: MAINTAINING LEVEL HEAT EMISSION IN MULTIPROCESSOR BY RECTIFYING DISPATCH TABLE ASSIGNED WITH STATIC TASKS SCHEDULING USING ASSIGNED TASK PARAMETERS

DECISION ON PETITION
UNDER 37 CFR § 1.181(a)(3)

This is a decision on the petition for suspension of prosecution under 37 CFR § 1.181(a) (3) filed on July 17, 2010.

The petition is **GRANTED**.

Pursuant to applicant's request filed on July 17, 2010, a copy of the Information Disclosure Statement filed September 23, 2005 with all references including Reference AW initialed is attached.

Any inquiry concerning this decision should be directed to the undersigned (or name of the TQAS) whose telephone number is (571) 272-3591.

/Gail Hayes/
Gail Hayes, SPRE/QAS
Technology Center 2100
Computer Architecture and Software

Docket No. 278844US2SRD

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF: Seiji MAEDA, et al.

SERIAL NO: New Application GAU:

FILED: Herewith EXAMINER:

FOR: MULTIPROCESSOR COMPUTER AND PROGRAM

INFORMATION DISCLOSURE STATEMENT UNDER 37 CFR 1.97

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:
Applicant(s) wish to disclose the following information.

REFERENCES

- ■ The applicant(s) wish to make of record the references listed on the attached form PTO-1449. Copies of the listed references are attached, where required, as are either statements of relevancy or any readily available English translations of pertinent portions of any non-English language references.
- ☐ A check or credit card payment form is attached in the amount required under 37 CFR §1.17(p).

RELATED CASES

- ■ Attached is a list of applicant's pending application(s), published application(s) or issued patent(s) which may be related to the present application. In accordance with the waiver of 37 CFR 1.98 dated September 21, 2004, copies of the cited pending applications are not provided. Cited published and/or issued patents, if any, are listed on the attached PTO form 1449.
- ☐ A check or credit card payment form is attached in the amount required under 37 CFR §1.17(p).

CERTIFICATION

- ☐ Each item of information contained in this information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this statement.
- ☐ No item of information contained in this information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application or, to the knowledge of the undersigned, having made reasonable inquiry, was known to any individual designated in 37 CFR §1.56(c) more than three months prior to the filing of this statement.

DEPOSIT ACCOUNT

- ■ Please charge any additional fees for the papers being filed herewith and for which no check or credit card payment is enclosed herewith, or credit any overpayment to deposit account number 15-0030. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.

Marvin J. Spivak
Registration No. 24,913

C. Irvin McClelland
Registration Number 21,124

Customer Number
22850
Tel. (703) 413-3000
Fax. (703) 413-2220
(OSMMN 05/03)

LIST OF RELATED CASES

Docket Number	Serial or Patent Number	Filing or Issue Date	Patent Appl. Publication No.	Inventor/ Applicant
256733US2SRD	10/902,938	8/2/2004	2005/0066330 A1	Tatsunori KANAI, et al.
258598US2SRD	10/935,188	9/8/2004	2005/0108715 A1	Tatsunori KANAI, et al.
256214US2SRD	10/895,040	7/21/2004	2005/0060709 A1	Tatsunori KANAI, et al.
251117US2SRD	10/808,470	3/25/2004	2004/0268354 A1	Tatsunori KANAI, et al.
251119US2SRD	10/808, 280	3/25/2004	2004/0268353 A1	Tatsunori KANAI, et al.
245650US2SRD	10/715,546	11/19/2003	2004/0098718 A1	Kenichiro YOSHII, et al.
251092US2SRD	10/808,320	3/25/2004	2004/0268083 A1	Tatsunori KANAI, et al.

GJM/mya

DOCKET NO.: 278844US2SRD

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF:
Seiji MAEDA, et al.

SERIAL NO: New Application

FILED: HEREWITH

FOR: MULTIPROCESSOR COMPUTER AND PROGRAM

STATEMENT OF RELEVANCY

Reference AW on Form PTO-1449:

This reference explains the basic scheme of real-time scheduling algorithm which my invention is based on.

Form PTO 1449 (Modified) U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE	ATTY DOCKET NO. 278844US2SRD	SERIAL NO. New Application
LIST OF REFERENCES CITED BY APPLICANT	APPLICANT Seiji MAEDA, et al.	
	FILING DATE Herewith	GROUP

U.S. PATENT DOCUMENTS

EXAMINER INITIAL		DOCUMENT NUMBER	DATE	NAME	CLASS	SUB CLASS	FILING DATE IF APPROPRIATE
	AA	2005/0066330 A1	3/24/2005	Tatsunori KANAI, et al.			
	AB	2005/0108715 A1	5/19/2005	Tatsunori KANAI, et al.			
	AC	2005/0060709 A1	3/17/2005	Tatsunori KANAI, et al.			
	AD	2004/0268354 A1	12/30/2004	Tatsunori KANAI, et al.			
	AE	2004/0268353 A1	12/30/2004	Tatsunori KANAI, et al.			
	AF	2004/0098718 A1	5/20/2004	Kenichiro YOSHII, et al.			
	AG	2004/0268083 A1	12/30/2004	Tatsunori KANAI, et al.			
	AH						
	AI						
	AJ						
	AK						
	AL						
	AM						
	AN						

FOREIGN PATENT DOCUMENTS

		DOCUMENT NUMBER	DATE	COUNTRY	TRANSLATION YES	TRANSLATION NO
	AO					
	AP					
	AQ					
	AR					
	AS					
	AT					
	AU					
	AV					

OTHER REFERENCES (Including Author, Title, Date, Pertinent Pages, etc.)

	AW	J.W.S. LIU, "Commonly Used Approaches to Real-Time Scheduling", REAL-TIME SYSTEMS, CHAPTER 4, PRENTICE HALL, 2000, Pages 60-84
	AX	
	AY	
	AZ	

☐ Additional References sheet(s) attached

Examiner	Date Considered

*Examiner: Initial if reference is considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

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Paper No.

Barnes & Thornburg, LLP
c/o CPA Global
P.O. Box 52050
Minneapolis MN 55402

MAILED

DEC 13 2010

OFFICE OF PETITIONS

In re Application of :
Sood et al. : DECISION ON
Application No. 11/233,167 : PETITION
Filed: September 21, 2005 :
Atty Docket No. 042390.P22326 :

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) filed September 25, 2010.

The petition is **GRANTED**.

The above-identified application was abandoned for failure to timely file a proper reply to the final Office action mailed September 16, 2009. This Office action set a shortened statutory period for reply of three (3) months from the mail date of the action. No reply having been received and no extension of time obtained, the application became abandoned effective December 17, 2009. A courtesy Notice of Abandonment was mailed on May 21, 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 2474 has been advised of this decision. The application is, thereby, forwarded to the examiner for consideration of the RCE and submission submitted on September 25, 2010.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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AUG 30 2010

OFFICE OF PETITIONS

Jonathan P. O''Brien, Ph.D.
Honigman Miller Schwartz and Cohn
350 East Michigan Avenue
Suite 300
KALAMAZOO MI 49007

In re Application of	:	
Sheikhnejad et al.	:	
Application No. 11/233,312	:	
Filed: September 22, 2005	:	ON APPLICATION FOR
Attorney Docket No.	:	PATENT TERM ADJUSTMENT
2233285/Trans 1 US/121322	:	
Title: METHODS AND COMPOSITIONS	:	
FOR CANCER THERAPY	:	

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705(d)" filed April 23, 2010. This petition is properly treated under 37 CFR 1.705(b). Applicants submit that the correct patent term adjustment to be indicated on the patent is two hundred seventy-two (272) days, not zero (0) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

The $200.00 petition fee set forth in 37 CFR 1.18(e) has been assessed. No additional fees are required.

It is noted that the 314 day reduction has been attributed to applicants and not the Office. As such no correction is required.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office cannot make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

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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

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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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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MARGARET ANDERSON
106 E. 6TH STREET, SUITE 900
AUSTIN TX 78701

MAILED

MAR 02 2011

OFFICE OF PETITIONS

In re Application of	:	
Jung et al.	:	DECISION ON PETITION
Application No. 11/233,402	:	TO WITHDRAW
Filed: September 21, 2005	:	FROM RECORD
Attorney Docket No. QQ1-0028US	:	

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 24, 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 no outstanding Office action that requires a reply.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-7751.

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: LEE & HAYES, PLLC
601 W RIVERSIDE
SUITE 1400
SPOKANE, WA 99201

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TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS, TX 75265

Mail Date: 08/03/2010

Applicant	: Aziz Umit Batur	: DECISION ON REQUEST FOR
Patent Number	: 7649549	: RECALCULATION of PATENT
Issue Date	: 01/19/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/233,445	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/22/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1107** 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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MARGARET ANDERSON
106 E. 6TH STREET, SUITE 900
AUSTIN TX 78701

MAILED
MAR 03 2011
OFFICE OF PETITIONS

In re Application of	:	
Jung et al.	:	DECISION ON PETITION
Application No. 11/233,478	:	TO WITHDRAW
Filed: September 21, 2005	:	FROM RECORD
Attorney Docket No. QQ1-0029US	:	

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 24, 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 29, 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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KILPATRICK TOWNSEND & STOCKTON LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO CA 94111-3834

MAILED

JUL 20 2011

OFFICE OF PETITIONS

In re Application of	:	
Hegde et al.	:	
Application No. 11/233,493	:	DECISION ON PETITION
Filed: September 21, 2005		TO WITHDRAW FROM RECORD
Attorney Docket No. 026705-000310US	:	
	:	

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 5, 2011.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office will require the practitioner(s) to certify that he, she or they have: (1) given reasonable notice to the client, prior to the expiration of the reply period, which the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any replies that may be due and the time frame within which the client must respond, pursuant to 37 CFR 10.40 (c).

The request was signed by Christopher L. Willink, on behalf of all attorneys/agents of record who are associated with Customer Number 20350.

All attorneys/agents associated with the Customer Number 20350 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the assignee at the address indicated below.

Currently, a Notice of Allowance and Fee(s) Due mailed May 19, 2011 requires a reply by August 19, 2011.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

cc: Pavad Medical, Inc.
Attn: John F. Thompson, Esq.
826 Coal Creek Circle
Louisville, Colorado 80027

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/22/10

TO SPE OF : ART UNIT 1795 Kelly, Cynthia (H) Spe

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/233616 Patent No.: 7625679

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Certificates of Correction Branch
703-756-1571 _____

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

SPE

1795
Art Unit

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NOV 30 2010
OFFICE OF PETITIONS

Louis J. Wille
Bristol-Myers Squibb Company
Patent Department
PO Box 4000
Princeton, NJ 08543-4000

In re Patent No. 7,589,193	:
Washburn et al.	: DECISION UPON REMAND AND
Issue Date: September 15, 2009	: RECONSIDERATION OF
Application No. 11/233,617	: PATENT TERM ADJUSTMENT
Filed: September 23, 2005	: AND NOTICE OF INTENT
Attorney Docket No. 10238	: TO ISSUE CERTIFICATE OF
Title: C-Aryl Glucoside SGLT2	: CORRECTION
Inhibitors and Method	:

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 ninety (790) 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 ninety (790) 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 : 7,589,193

DATED : **September 15, 2009** **DRAFT**

INVENTOR(S) : Washburn 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 344 days

Delete the phrase "by 433 days" and insert – by 790 days--

Day : Tuesday
Date: 11/30/2010

PALM INTRANET

Time: 10:35:50

PTA Calculations for Application: 11/233617			
Application Filing Date:	09/23/2005	PTO Delay (PTO):	433
Issue Date of Patent:	09/15/2009	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	0
Post-Issue Petitions:	0	Total PTA (days):	790
PTO Delay Adjustment:	357		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
78	11/30/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	357		
70.5	08/26/2009	PTA 36 MONTHS			
70	09/15/2009	PATENT ISSUE DATE USED IN PTA CALCULATION			
68	08/13/2009	EXPORT TO FINAL DATA CAPTURE			
67	08/12/2009	FINISHED INITIAL DATA CAPTURE			
66	08/12/2009	DISPATCH TO FDC			
65	08/03/2009	APPLICATION IS CONSIDERED READY FOR ISSUE			
64	07/29/2009	ISSUE FEE PAYMENT VERIFIED			
63	07/29/2009	ISSUE FEE PAYMENT RECEIVED			
62	05/11/2009	EXPORT TO INITIAL DATA CAPTURE			
59	05/08/2009	MAIL NOTICE OF ALLOWANCE			
58	05/06/2009	ISSUE REVISION COMPLETED			
57	05/06/2009	DOCUMENT VERIFICATION			
56	05/06/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
55	05/06/2009	CASE DOCKETED TO EXAMINER IN GAU			
54	04/23/2009	NOTICE OF ALLOWABILITY			
50	02/24/2009	DATE FORWARDED TO EXAMINER			
49	02/05/2009	RESPONSE AFTER NON-FINAL ACTION			
48	11/23/2008	MAIL POST CARD			
47	11/15/2008	EMAIL NOTIFICATION			
46	11/14/2008	MAIL NON-FINAL REJECTION			
45	11/10/2008	NON-FINAL REJECTION			
42	07/18/2008	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			

41	08/26/2008	DATE FORWARDED TO EXAMINER			
40	07/18/2008	RESPONSE AFTER NON-FINAL ACTION			
39	06/04/2008	EMAIL NOTIFICATION			
38	06/04/2008	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
37	06/02/2008	CORRESPONDENCE ADDRESS CHANGE			
36	04/21/2008	MAIL NON-FINAL REJECTION			
35	04/18/2008	NON-FINAL REJECTION			
33	12/06/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
32	05/26/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
31	02/08/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
27	04/16/2008	CASE DOCKETED TO EXAMINER IN GAU			
26	02/08/2008	ELECTRONIC INFORMATION DISCLOSURE STATEMENT		0	23
24	03/06/2008	DATE FORWARDED TO EXAMINER			
23	02/08/2008	RESPONSE TO ELECTION / RESTRICTION FILED			
22	02/08/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
21	01/30/2008	MAIL RESTRICTION REQUIREMENT	433		-1
20	01/29/2008	REQUIREMENT FOR RESTRICTION / ELECTION			
18	12/28/2007	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
17	12/08/2007	CORRESPONDENCE ADDRESS CHANGE			
16	10/30/2007	CASE DOCKETED TO EXAMINER IN GAU			
15.7	05/26/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15	05/26/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
14	01/18/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
13	12/06/2005	REFERENCE CAPTURE ON IDS			
12.7	12/06/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
12	12/06/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	11/10/2005	OATH OR DECLARATION FILED (INCLUDING SUPPLEMENTAL)			
10	11/18/2005	APPLICATION DISPATCHED FROM OIPE			

9	11/18/2005	APPLICATION IS NOW COMPLETE			
8	11/10/2005	ADDITIONAL APPLICATION FILING FEES			
7	11/10/2005	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
6	10/28/2005	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
5	10/26/2005	CLEARED BY L&R (LARS)			
4	10/12/2005	REFERRED TO LEVEL 2 (LARS) BY OIPE CSR			
3	10/12/2005	CASE CLASSIFIED BY OIPE			
2	10/01/2005	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	09/23/2005	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

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QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO, CA 92121

Mail Date: 08/05/2010

Applicant	: Juan Montojo	: DECISION ON REQUEST FOR
Patent Number	: 7657277	: RECALCULATION of PATENT
Issue Date	: 02/02/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/233,631	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/22/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1168** 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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STOEL RIVES LLP - SLC
201 SOUTH MAIN STREET, SUITE 1100
ONE UTAH CENTER
SALT LAKE CITY, UT 84111

MAILED
MAR 14 2011
OFFICE OF PETITIONS

In re Application of	:	
Mina Farr	:	
Application No. 11/233,684	:	DECISION ON PETITION
Filed: September 23, 2005		TO WITHDRAW FROM RECORD
Attorney Docket No. 16106.3.1	:	
	:	

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** because it is moot.

A review of the file record indicates that on March 8, 2011 the power of attorney to Stoel Rives LLP-SLC was revoked by the applicant 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: Maschoff Gilmore & Israelsen
1441 UTE BLVD STE 100
Park City UT 84098-7633

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 02-19-11

TO SPE OF : ART UNIT 1713

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/233860 Patent No.: 7793659

CofC mailroom date: 02-01-11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Angela Green
Certificates of Correction Branch
(703) 756-1541

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

/Gary L. Welch/ **SPE**

3765 **Art Unit**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 03/31/11

TO SPE OF : ART UNIT 1649

SUBJECT : Request for Certificate of Correction for Appl. No 11/233958.: 7524934

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)

Should the change(s) Be made?

RoChaun Johnson
Certificates of Correction Branch
571 272-0470

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

☒ **Approved**	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: All changes apply

SPE Ali Salimi
Art Unit 1649

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P.O. Box 1450
Alexandria, VA 22313-1450
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STEVENS LAW GROUP
1754 TECHNOLOGY DRIVE
SUITE #226
SAN JOSE CA 95110

MAILED

DEC 10 2010

OFFICE OF PETITIONS

In re Application of	:	
Chiu et al.	:	
Application No. 11/233,994	:	ON PETITION
Filed: September 23, 2005	:	
Attorney Docket No. APPT-032.US	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed November 15, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and a Submission under 37 CFR 1.114, a Response to Final Office Action, (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) 272-3206.

This matter is being referred to Technology Center AU 2457 for processing of the RCE under 37 CFR 1.114 filed concurrently with the instant petition.

Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JAMES TIMOTHY STRUCK
APARTMENT 108B
7333 N. RIDGE BLVD
CHICAGO IL 60645

MAILED
MAR 19 2012
OFFICE OF PETITIONS

In re Application of :
Struck :
Application No. 11/234,078 :
Filed: 23 September, 2005 :
Attorney Docket No. (None) :

DECISION

This is a decision on the papers considered as petition filed on 24 January, 2012, considered as a petition pursuant to 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition pursuant to 37 C.F.R. §1.181 is **DISMISSED**.

Any request for reconsideration of this decision or any petition in the alternative is to be filed **within two (2) months** from the mail date of this decision. *Note* 37 C.F.R. §1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 C.F.R. §1.181 to Withdraw the Holding of Abandonment."

This is **not** a final agency action within the meaning of 5 U.S.C. §704.

As to the Request to Withdraw
the Holding of Abandonment

Petitioner is directed to the Commentary at MPEP §711.03(c)(I) for guidance as to the proper showing and timeliness requirements for relief under 37 C.F.R. §1.181.

Petitioner appears not to comply with the guidance in the Commentary at MPEP §711.03(c)(I)—as discussed below, Petitioner has failed to satisfy the showing requirements set forth there. Petitioner may find it beneficial to review that material and move step-wise through that guidance in the effort to satisfy the showing requirements (statements and supporting documentation).

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(I) as to a petition pursuant to 37 C.F.R. §1.181 and the requirements under the Rule.

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the non-final Office action mailed on 19 December, 2008, with reply due under absent an extension of time on or before 19 March, 2009.

The next transactions are somewhat confusing in that:

- following a 26 January, 2009, submission by Petitioner, on 3 April, 2009, the Examiner mailed a Notice of Non-Compliant Amendment with a reply due absent extension of time on or before 3 May, 2009;
- on 20 April, 2009, Petitioner filed a reply.
- the Office mailed a Notice of Abandonment on 13 April, 2010; but
- on 3 August, 2010, the Special Programs Examiner stated that the 3 April, 2010, Notice of Non-Compliant Amendment was not proper;
- the 26 January, 2009, amendment was entered for consideration by the Examiner; and
- a final Office action was mailed on 8 October, 2010, with a reply due absent extension of time on or before 8 January, 2011.

Petitioner failed to file a proper reply, but instead on 6 December, 2010, Petitioner filed an amendment after final, which the Examiner refused to enter and Petitioner knew or should have known 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 22 December, 2010, the Examiner mailed an Advisory Action.

The application went abandoned by operation of law after midnight 8 January, 2011.

The Office mailed a Notice of Abandonment on 17 August, 2011.

On 24 January, 2012, Petitioner filed a petition pursuant to 37 C.F.R. §1.181, but untimely under the Rule, and in a one page submission Petitioner made no showing under the Rule and consistent with the in the guidance in the Commentary at MPEP §711.03(c)(I).

---

[1] A proper reply is an amendment *prima facie* placing the application in condition for allowance, a Notice of Appeal with fee, or an RCE (with fee and submission under 37 C.F.R. §1.114). (See: MPEP §711.03(c).)

Petitioners always are directed to in the guidance in the Commentary at MPEP §711.03(c)(I), which provides in pertinent part:

***

> The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.
>
> Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.
>
> A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.[2] (Emphasis supplied.)

***

Petitioner's reply to the Notice of Abandonment is late under the rule (37 C.F.R. §1.181), and Petitioner is reminded of the guidance set forth in the Commentary at MPEP §711.03(c) (in pertinent part):

***

> ***C.Treatment of Untimely Petition To Withdraw Holding of Abandonment***
>
> 37 C.F.R. 1.181(f) provides that, *inter alia*, except as otherwise provided, any petition not filed within 2 months from the action complained of may be dismissed as untimely. Therefore, any petition (under 37 C.F.R. §1.181) to withdraw the holding of abandonment not filed within 2 months of the mail date of a notice of abandonment (the action complained of) may be dismissed as untimely. 37 C.F.R. §1.181(f).

---

[2] *See*: MPEP §711.03(c) (I)(A).

> Rather than dismiss an untimely petition to withdraw the holding of abandonment under 37 C.F.R. §1.181(f), the Office may require a terminal disclaimer as a condition of granting an untimely petition to withdraw the holding of abandonment.
>
> ***
>
> **3.Utility and Plant Applications Filed on or After May 29, 2000**
>
> In utility and plant applications filed on or after May 29, 2000, a terminal disclaimer should **not** be required as a condition of granting an untimely petition to withdraw the holding of abandonment. This is because any patent term adjustment is automatically reduced under the provisions of 37 C.F.R. §1.704(c)(4) in applications subject to the patent term adjustment provisions of the American Inventors Protection Act of 1999 (AIPA) if a petition to withdraw a holding of abandonment is not filed within two months from the mailing date of the notice of abandonment, and if applicant does not receive the notice of abandonment, any patent term adjustment is reduced under the provisions of 37 C.F.R. §1.704(a) by a period equal to the period of time during which the applicant "failed to engage in reasonable efforts to conclude prosecution" (processing or examination) of the application.
>
> Where the record indicates that the applicant intentionally delayed the filing of a petition to withdraw the holding of abandonment, the Office may simply dismiss the petition as untimely (37 C.F.R. §1.181(f)) solely on the basis of such intentional delay in taking action in the application without further addressing the merits of the petition. Obviously, intentional delay in seeking the revival of an abandoned application precludes relief under 37 C.F.R. §1.137(a) or (b) (***).
>
> ***

On any renewed petition, Petitioner must comply with the required showing expressly set forth in the guidance in the Commentary at MPEP §711.03(c)(I)—as highlighted above for Petitioner's reference.

However, Petitioner may not be able to satisfy those requirements.

In such case, Petitioner may alternatively chose to present a petition pursuant to 37 C.F.R. §1.137(b) with fee, reply, and statement of unintentional delay. (Applicants/Petitioners always are cautioned that the conditions of their failure to reply timely and properly to an Office action, including a decision on petition, may be considered *indicia* of intentional delay.)

Out of an abundance of caution, Petitioners always are reminded that the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (*see*: 37 C.F.R. §1.181(f)), <u>and</u> those registered to practice <u>and</u> all others who make representations before the Office are reminded to inquire into the underlying facts of

representations made to the Office and support averments with the appropriate documentation– since all owe to the Office the continuing duty to disclose.[3]

Petitioner is requested to review the requirements as set forth in the guidance in the Commentary at MPEP 711.03(c)(I), and then seek to satisfy those requirements. Alternatively, Petitioner may file a petition to revive pursuant to the regulations at 37 C.F.R. §1.137(b).

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).

Allegations as to the Request to Withdraw the Holding of Abandonment

The guidance in the Commentary at MPEP §711.03(c)(I) specifies the showing required and how it is to be made and supported.

Petitioner appears not to have made the showing required.

CONCLUSION

Accordingly, the petition under 37 C.F.R. §1.181 is **dismissed**.

ALTERNATIVE VENUE

Should Petitioner wish to revive the application, Petitioner may wish to properly file a petition to the Commissioner requesting revival of an application abandoned due to unintentional delay under 37 C.F.R. §1.137(b). (See: http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c)

A petition to revive on the grounds of unintentional delay must be filed promptly and such petition must be accompanied by the reply, the petition fee, a terminal disclaimer and fee where

[3] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on Petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

appropriate and a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional." (The statement is in the form available online.)

Petitioner is cautioned that Petitioner's failure to properly and promptly file a petition to revive the application abandoned due to unintentional delay pursuant to 37 C.F.R. §1.137(b) may be considered indicia of delay that is other than unintentional.

For information on a petition to revive pursuant to 37 C.F.R. §1.137(b)—*see*: http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c)— and provide therewith the requirements of the petition (the petition and the petition fee, the reply, the statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional."and a terminal disclaimer and fee where appropriate. (The statement is in the form available online: http://www.uspto.gov/web/forms/sb0064.pdf .)

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By facsimile: **(571) 273-8300**
Attn: Office of Petitions

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[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 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 : 7/28/2011

TO SPE OF : ART UNIT 2852

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/234085 Patent No.: 7822357 B2

CofC mailroom date: 7/22/2011

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

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: _____

/David M. Gray/
SPE

2852
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

SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON DC 20037

MAILED
JUL 15 2011
OFFICE OF PETITIONS

In re Patent No. 7,191,802	:	
Issue Date: March 20, 2007	:	
Application No. 11/234,136	:	DECISION ON PETITION
Filed: September 26, 2005	:	
Attorney Docket No. **A9041**	:	

This is a decision on the petition under 37 CFR 1.378(c), filed March 30, 2011, with a certificate of mailing dated March 23, 2011, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired at midnight on March 20, 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.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of fee address (form PTO/SB/47) and a request for customer number (form PTO/SB/125) should be filed in accordance with Manual of Patent Examining Procedure, section 2540. A courtesy copy of this decision is being mailed to the address on the petition. However, the Office will mail all future correspondence solely to the address of record.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. In the event that such an

inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that the delay in paying the maintenance fee under 37 CFR 1.378(c) was intentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at (571) 272-2783.

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

cc: **CHARLES G. NESSLER**
P.O. BOX H
CHESTER CT 06412

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

FOLEY AND LARDNER LLP
SUITE 500
3000 K STREET NW
WASHINGTON, DC 20007

MAILED
JAN 14 2011
OFFICE OF PETITIONS

In re Patent No. 7,790,979 :
Issue Date: September 7, 2010 :
Application No. 11/234,373 : NOTICE
Filed: September 26, 2005 :
Attorney Docket No. 043419-0116 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-1642.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP
1250 CONNECTICUT AVENUE, NW
SUITE 700
WASHINGTON, DC 20036

Mail Date: 01/12/2011

Applicant	: Yutaka Takinomi	: DECISION ON REQUEST FOR
Patent Number	: 7608925	: RECALCULATION of PATENT
Issue Date	: 10/27/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 11/234,388	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/26/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **266** 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

In re Patent No. 7310744
Issue Date: December 18,2007
Application No. 11234412
Filed: September 23,2005
Attorney Docket No. 60046.0200USC1

:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)

This is a decision on the electronic petition, filed January 24,2012 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of January 24,2012 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7310744	2007-12-18	11234412	2005-09-23	60046.0200USC1

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY
☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☒ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity		Small Entity	
Fee	Code	Fee	Code
◉ 3 ½ year	(1551)	○ 3 ½ year	(2551)
○ 7 ½ year	(1552)	○ 7 ½ year	(2552)
○ 11 ½ year	(1553)	○ 11 ½ year	(2553)

SURCHARGE
The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

MAINTENANCE FEE (37 CFR 1.20(e)-(g))
The appropriate maintenance fee must be submitted with this petition.

STATEMENT
THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

◉ An attorney or agent registered to practice before the Patent and Trademark Office

○ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

○ A joint patentee; all of whom are signing this e-petition

○ The assignee of record of the entire interest

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Leonard J. Hope/	Date (YYYY-MM-DD)	2012-01-24
Name	Leonard J. Hope	Registration Number	44774

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.**

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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CAREFUSION
C/O WAGNER BLECHER LLP
123 WESTRIDGE DRIVE
WATSONVILLE CA 95076

MAILED
MAR 08 2012
OFFICE OF PETITIONS

In re Application of	:	
DeVries, et al.	:	
Application No. 11/234,636	:	DECISION
Filed/Deposited: 23 September, 2005	:	
Attorney Docket No. 90261.22001	:	

This is a decision on the petition filed on 3 January, 2012, pursuant to 37 C.F.R. §1.137(b) for revival of an application abandoned due to unintentional delay.

The petition pursuant to 37 C.F.R. §1.137(b) is **GRANTED**.

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement 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 Notice of Allowance/Allowability and Fees Due (drawings requirement) mailed on 20 July, 2011, with reply due under a non-extendable deadline on or 20 October, 2011.

The application went abandoned by operation of law after midnight 20 October, 2011.

The Office mailed the Notice of Abandonment on 3 November, 2011.

On 3 January, 2012, Petitioner filed, *inter alia*, a petition pursuant to 37 C.F.R. §1.137(b), with fee/fee authorization, a reply in the form of drawings and made the statement of unintentional delay.

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c) as to the showing regarding unintentional delay and a petition pursuant to 37 C.F.R. §1.137(b).

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[1]

STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994). And the regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application.[2],[3]

Moreover, the Office has set forth in the Commentary at MPEP §711.03(c)(I) the showing and timeliness requirements for a proper showing for relief under 37 C.F.R. §1.181 in these matters.

---

[1] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §11.18, formerly §10.18, to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

[2] See: Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. at 53158-59 (October 10, 1997), 1203 Off. Gaz. Pat. Office at 86-87 (October 21, 1997).

[3] The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition. (Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.) Delays in responding properly raise the question whether delays are unavoidable. Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) And the Petitioner must be diligent in attending to the matter. Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care. (By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.))

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[4]

As to Allegations of
Unintentional Delay

As indicated above, the requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a proper reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

It appears that the requirements under the rule have been satisfied.

CONCLUSION

Accordingly, the petition pursuant to 37 C.F.R. §1.137(b) is **granted**.

The instant application is released to the Publications Branch to be processed into a patent 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 Publications Branch in response to this decision. It is noted that all inquiries with regard to status need be directed to the Publications

[4] In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

Branch 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.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

PATENTESQUE LAW GROUP, LLP
P.O. BOX 400
LOS ALTOS CA 94023

MAILED
SEP 02 2011
OFFICE OF PETITIONS

In re Application of	:	
Michael Spilo	:	
Application No. 11/234,674	:	DECISION GRANTING PETITION
Filed: September 22, 2005	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 20024/1202445-US1	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed September 2, 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 31, 2011 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries concerning this decision should be directed to undersigned at (571) 272-1642. All other inquires concerning the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 2611 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed 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.*

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED
NOV 22 2010
OFFICE OF PETITIONS

In re Patent No. 7,298,858 :
Issued: November 20, 2007 :
Application No. 11/234,704 : ON PETITION
Filed: September 23, 2005 :
Attorney Docket No: **12548US03** :

This is a decision regarding your request for acceptance of a fee deficiency submission and loss of small entity status filed September 30, 2010 under 37 CFR 1.28.

On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc.. 154 F.33d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby accepted and the petition is **GRANTED**. Status as a small entity has also been removed.

Inquiries related to this communication should be directed to the Office of Petitions Staff at (571) 272-3282.

Patricia Faison-Ball

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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MUIRHEAD AND SATURNELLI, LLC
200 FRIBERG PARKWAY
SUITE 1001
WESTBOROUGH, MA 01581

MAILED
AUG 24 2011
OFFICE OF PETITIONS

In re Application of	:	
Anthony Ford, et al.	:	
Application No. 11/234,726	:	DECISION GRANTING PETITION
Filed: September 23, 2005	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. VMS-006CONDIVCIP	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed August 23, 2011, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on July 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 regarding this decision should be directed to undersigned at (571) 272-1642. All other inquiries regarding the status or examination of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 1773 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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MUIRHEAD AND SATURNELLI, LLC
200 FRIBERG PARKWAY
SUITE 1001
WESTBOROUGH MA 01581

MAILED
SEP 21 2011
OFFICE OF PETITIONS

In re Application of	:	
Anthony Ford et al	:	DECISION REFUSING STATUS
Application No. 11/234,726	:	UNDER 37 CFR 1.48(a) AND
Filed: September 23, 2005	:	DISMISSED UNDER 37 CFR 1.47(a)
Attorney Docket No. VMS-006CONDIVCIP	:	

This is a decision on the petitions filed July 28, 2011 and supplemented on August 1, 2011 which are collectively being treated as (1) a request under 37 CFR 1.48(a) to amend the inventive entity by the addition of Wayne Showalter, and (2) as authorized by 37 CFR 1.48(a)(3), a petition under 37 CFR 1.47(a).

The petition under 37 CFR 1.48(a) is **DISMISSED.**

The petition under 37 CFR 1.48(a) cannot be granted because the declarations filed July 28, 2011 and August 1, 2011 are defective as the wording of an oath or declaration cannot be amended, altered or changed in any manner after it has been signed. Accordingly, a new oath or declaration must be submitted and must properly identify the application of which it is to form a part, preferably by application number and filing date in the body of the oath or declaration. See §§ MPEP 602.01 and 602.02.

The petition under 37 CFR 1.47(a) is **DISMISSED.**

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks item (2) set forth above.

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: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

Telephone inquiries should be directed to Irvin Dingle at (571) 272-3210.

David Bucci
Petition Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MUIRHEAD AND SATURNELLI, LLC
200 FRIBERG PARKWAY
SUITE 1001
WESTBOROUGH MA 01581

MAILED

NOV 14 2011

OFFICE OF PETITIONS

In re Application of
Anthony Ford et al.
Application No. 11/234,726
Filed: September 23, 2005
Attorney Docket No. VMS-006CONDIVCIP

ON PETITION

This is a decision on the petitions filed October 27, 2011 which are being collectively being treated as (1) a request under 37 CFR 1.48(a) to amend the inventive entity by the addition of Wayne Showalter as inventor, and (2) as authorized by 37 CFR 1.48(a)(3), a renewed petition under 37 CFR 1.47(a).

The petition under 37 CFR 1.48(a) is **GRANTED**.

If the inventive entity is set forth in error in an executed § 1.63 oath or declaration in a nonprovisional application, and such error arose without any deceptive intention on the part of the person named as an inventor in error or on the part of the person who through error was not named as an inventor, the inventorship of the nonprovisional application may be amended to name only the actual inventor or inventors.

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).

It has been found that this non-provisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and accordingly, this application has been corrected in compliance with 37 CFR 1.48(a). The inventorship of this application has been changed by adding Wayne Showalter as inventor.

A corrected filing receipt is enclosed.

The petition under 37 CFR 1.47(a) is **GRANTED.**

Telephone inquiries regarding this decision should be directed to Irvin Dingle at (571) 272-3210.

/dab/
David Bucci
Petitions Examiner
Office of Petitions

Encl: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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MAILED

NOV 14 2011

OFFICE OF PETITIONS

Mr. Stephen Mead
1028 Brambling Court
Brandenton, FL 34212

In re Application of
Anthony Ford; Darin McDaniel; Stephen Mead; William Richards; Bobbi Druyor-Sanchez; Bronwen Heilman; Wayne Showalter
Application No. 11/234,726
Filed: September 23, 2005
For: MEMORY MANAGEMENT METHOD AND APPARATUS FOR AUTOMATED BIOLOGICAL REACTION SYSTEM

Dear Mr. Mead:

You are named as a joint inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 116 (United States Code), and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Telephone inquiries regarding this communication should be directed to the Irvin Dingle at (571) 272-3210. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (571) 272-3150 or 1 (800) 972-6382 (outside the Washington D.C. area).

/dab/
David Bucci
Petitions Examiner
Office of Petitions

cc: Muirhead and Saturnelli, LLC
200 Friberg Parkway, Suite 1001
Westborough, MA 01581

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
11/234,726	09/23/2005	1773	1430	VMS-006CONDIVCIP	19	2

CONFIRMATION NO. 2990

CORRECTED FILING RECEIPT

95723
Muirhead and Saturnelli, LLC
200 Friberg Parkway
Suite 1001
Westborough, MA 01581

OC000000050917622

Date Mailed: 11/14/2011

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)

Anthony Ford, Tucson, AZ;
Darin McDaniel, Tucson, AZ;
Stephen Mead, Tucson, AZ;
William Richards, Tucson, AZ;
Bobbi Druyor-Sanchez, Mesa, AZ;
Bronwen Heilman, Tucson, AZ;
Wayne Showalter, Tucson, AZ;

Assignment For Published Patent Application

Ventana Medical Systems, Inc., Tucson, AZ

Power of Attorney: The patent practitioners associated with Customer Number 95723

Domestic Priority data as claimed by applicant

This application is a CIP of 09/571,989 05/16/2000
which is a DIV of 09/469,601 12/21/1999 ABN
which is a CON of 08/909,335 08/11/1997 PAT 6,093,574

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 10/27/2005

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/234,726**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No
Title

MEMORY MANAGEMENT METHOD AND APPARATUS FOR AUTOMATED BIOLOGICAL REACTION SYSTEM

Preliminary Class

422

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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UNITED STATES PATENT AND TRADEMARK OFFICE

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MUIRHEAD AND SATURNELLI, LLC
200 FRIBERG PARKWAY
SUITE 1001
WESTBOROUGH MA 01581

MAILED

NOV 21 2011

OFFICE OF PETITIONS

In re Application of
Anthony Ford et al.
Application No. 11/234,726
Filed: September 23, 2005
Attorney Docket No. VMS-006CONDIVCIP

ON PETITION

CORRECTED DECISION

This is a decision on the petitions filed October 27, 2011 which are being collectively being treated as (1) a request under 37 CFR 1.48(a) to amend the inventive entity by the addition of Wayne Showalter as inventor, and (2) as authorized by 37 CFR 1.48(a)(3), papers filed on July 28, 2011 and August 1, 2011 include Declarations signed by previously non-signing inventors Anthony Ford and Stephen Mead.

The petition under 37 CFR 1.48(a) is **GRANTED**.

If the inventive entity is set forth in error in an executed § 1.63 oath or declaration in a nonprovisional application, and such error arose without any deceptive intention on the part of the person named as an inventor in error or on the part of the person who through error was not named as an inventor, the inventorship of the nonprovisional application may be amended to name only the actual inventor or inventors.

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).

It has been found that this non-provisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and accordingly, this application has been corrected in compliance with 37 CFR 1.48(a). The inventorship of this application has been changed by adding Wayne Showalter as inventor.

A corrected filing receipt is enclosed.

The petition under 37 CFR 1.47(a) is **DISMISSED AS MOOT.**

In view of the joinder of the inventors, further consideration under 37 CFR 1.47 (a) is moot; this application does not have any rule 1.47 (a) status. This application need not be returned to this office for any further consideration under 37 CFR 1.47 (a).

The decision mailed November 14, 2011 is hereby vacated as of the mail date of this decision.

This matter is being referred to Technology Center AU 1773 for examination in due course.

Telephone inquiries regarding this decision should be directed to Irvin Dingle at (571) 272-3210.

/dab/
David Bucci
Petitions Examiner
Office of Petitions

Encl: Corrected Filing Receipt

UNITED STATES 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

Mr. Stephen Mead
1028 Brambling Court
Brandenton, FL 34212

In re Application of
Anthony Ford; Darin McDaniel; Stephen Mead; William Richards; Bobbi Druyor-Sanchez; Bronwen Heilman; Wayne Showalter
Application No. 11/234,726
Filed: September 23, 2005
For: MEMORY MANAGEMENT METHOD AND APPARATUS FOR AUTOMATED BIOLOGICAL REACTION SYSTEM

CORRECTED LETTER

Dear Mr. Mead:

The letter mailed on November 14, 2011 is hereby vacated as of the mail date of this letter.

/dab/
David Bucci
Petitions Examiner
Office of Petitions

cc: Muirhead and Saturnelli, LLC
200 Friberg Parkway, Suite 1001
Westborough, MA 01581

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
11/234,726	09/23/2005	1773	1430	VMS-006CONDIVCIP	19	2

CONFIRMATION NO. 2990

CORRECTED FILING RECEIPT

95723
Muirhead and Saturnelli, LLC
200 Friberg Parkway
Suite 1001
Westborough, MA 01581

OC000000051066321

Date Mailed: 11/21/2011

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)

Anthony Ford, Tucson, AZ;
Darin McDaniel, Tucson, AZ;
Stephen Mead, Tucson, AZ;
William Richards, Tucson, AZ;
Bobbi Druyor-Sanchez, Mesa, AZ;
Bronwen Heilman, Tucson, AZ;
Wayne Showalter, Tucson, AZ;

Assignment For Published Patent Application

Ventana Medical Systems, Inc., Tucson, AZ

Power of Attorney: The patent practitioners associated with Customer Number 95723

Domestic Priority data as claimed by applicant

This application is a CIP of 09/571,989 05/16/2000
which is a DIV of 09/469,601 12/21/1999 ABN
which is a CON of 08/909,335 08/11/1997 PAT 6,093,574

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 10/27/2005

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/234,726**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No
Title

MEMORY MANAGEMENT METHOD AND APPARATUS FOR AUTOMATED BIOLOGICAL REACTION SYSTEM

Preliminary Class

422

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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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAILED

SEP 27 2010

OFFICE OF PETITIONS

Jeffery Allen Patchen
1525 Jackson St. #112
Oakland CA 94612

In re Application of	:	
Jeffrey Allen Patchen	:	
Application No. 11/234,747	:	DECISION ON PETITION
Filed: September 23, 2005	:	
	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 30, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, July 29, 2008, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on October 30, 2010. The Notice of Abandonment was mailed March 10, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $810, and (3) a proper statement of unintentional delay.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney document must be submitted. While a courtesy copy of this decision is being mailed to the person signing the petition, all future correspondence will be directed to the address currently of record until appropriate instructions are received.

Telephone inquiries concerning this decision should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to Technology Center AU 3714 for appropriate action by the Examiner in the normal course of business on the reply received.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

cc: **Michelle K. Holoubek**
STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 New York Avenue, N.W.
Washington, DC 20005-3934

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON DC 20037

MAILED
APR 12 2011
OFFICE OF PETITIONS

In re Patent of Ben-David	:	
Patent No. 7,885,709	:	
Issued: February 8, 2011	:	NOTICE
Application No. 11/234,877	:	
Filed: September 22, 2005	:	
Attorney Docket No. OLI02 P351A		

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28(c), filed February 15, 2011, and letter regarding loss of small entity status, filed March 21, 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.

The revocation/power of attorney/change of correspondence address, filed March 21, 2011, has been accepted and made of record.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: notice regarding change in power of attorney

CC: COOPER & DUNHAM, LLP
30 ROCKFELLER PLAZA
20th FLOOR
NEW YORK, NY 10112

UNITED STATES PATENT AND TRADEMARK OFFICE

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COOK ALEX LTD
SUITE 2850
200 WEST ADAMS STREET
CHICAGO IL 60606

MAILED
FEB 28 2011
OFFICE OF PETITIONS

In re Application of	:	
Thomas A. Simonian	:	
Application No. 11/234,969	:	DECISION ON PETITION
Filed: September 26, 2005	:	
Attorney Docket No. 0289-0040	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 6, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed May 26, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on August 27, 2010. A Notice of Abandonment was mailed on December 3, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $810 and (3) a proper statement of unintentional delay. Accordingly, the amendment is accepted as being unintentionally delayed.

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 regarding this decision should be directed to the Kimberly Inabinet at (571) 272-4618.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See* In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $555 extension of time fee submitted with the petition on January 6, 2011 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

This application is being referred to Technology Center AU 3691 for appropriate action by the Examiner in the normal course of business on the reply received June 6, 2011.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Thomas A. Simonian
28 North Barlon Trail
Balavia, IL 60510

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 03/02/12

TO SPE OF : ART UNIT: 3634 Attn: MITCHELL KATHERINE W (SPE)

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/235133 Patent No.: 8016075

CofC mailroom date: 02/13/2012

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 Drawings
Should these drawings be replaced with the
Attached drawings with PTO/SB/44 Form or not

Tasneem Siddiqui

Certificates of Correction Branch

703-756-1814 & 703-756-1593

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☑ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: OK to replace drawings per applicant request.

Katherine Mitchell 3634
SPE Art Unit

Knobbe Martens Olson & Bear LLP

Intellectual Property Law

2040 Main Street
Fourteenth Floor
Irvine, CA 92614
Tel 949-760-0404
Fax 949-760-9502
www.kmob.com

OK TO ENTER: /DP/

02/01/2011

January 10, 2011

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Re: Title: BLINK MONITOR FOR DETECTING BLINK OCCURRENCE IN A LIVING SUBJECT
Letters Patent No. 7,639,146
Issued: Dec. 29, 2009
Our Reference: GBAURA.001A

Dear Sir:

Enclosed for filing is a Certificate of Correction in connection with the above-identified patent.

As some of the errors cited in the Certificate of Correction were incurred through the fault of the Applicant, the amount of $100 will be paid via EFS Web. Please charge any additional fees to our Deposit Account No. 11-1410.

Respectfully submitted,

Knobbe, Martens, Olson & Bear, LLP

John M. Grover
Registration No. 42,610
Customer No. 20995

Enclosure

9492602

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,639,146
APPLICATION NO. : 11/235,373
ISSUE DATE : Dec. 29, 2009
INVENTOR(S) : Gail D. Baura

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

At Page 2, column 2, line 18, under Other Publications, please change "D"Ophtamologie," to --D'Ophtalmologie,--.

At Col. 8, line 9, please change "A/C" to --ADC--.

At Col. 12, line 2 (Claim 12), please change "a" to --the--.

At Col. 12, line 53 (Claim 24), after "the" please delete "a".

At Col. 13, line 7 (Claim 29), please change "solider." to --soldier.--.

9492546

MAILING ADDRESS OF SENDER:

John M. Grover
KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street, 14th Floor
Irvine, California 92614

DOCKET NO. GBAURA.001A

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.
11235373	9/26/2005	BAURA, GAIL D.	GBAURA.001A

EXAMINER
DARYL POPE

ART UNIT	PAPER
2612	20110201

DATE MAILED:

KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

See: Attached Response to Rule 312 Amendment

DARYL POPE
Primary Examiner
Art Unit: 2612

Response to Rule 312 Communication	Application No.	Applicant(s)
	11/235,373	BAURA, GAIL D.
	Examiner	**Art Unit**
	DARYL POPE	2612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☒ The amendment filed on *10 January 2011* under 37 CFR 1.312 has been considered, and has been:

   a) ☐ entered.

   b) ☒ entered as directed to matters of form not affecting the scope of the invention.

   c) ☐ disapproved because the amendment was filed after the payment of the issue fee.
   Any amendment filed after the date the issue fee is paid must be accompanied by a petition under 37 CFR 1.313(c)(1) and the required fee to withdraw the application from issue.

   d) ☐ disapproved. See explanation below.

   e) ☐ entered in part. See explanation below.

/DARYL POPE/
Primary Examiner, Art Unit 2612

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Alexandria, VA 22313-1450
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WOLF GREENFIELD & SACKS, P.C.
600 ATLANTIC AVENUE
BOSTON, MA 02210-2206

MAILED

SEP 27 2010

OFFICE OF PETITIONS

In re Application of	:	
Masanori HOSOMI, et *al.*	:	
Application No. 11/235,384	:	DECISION GRANTING PETITION
Filed: September 26, 2005	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **S1459.70159US00**	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed September 24, 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 9, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-7253.

This application is being referred to Technology Center AU 2894 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Monica A. Graves/
Petitions Examiner, Office of Petitions

---

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form* ***must*** *be completed and timely submitted to avoid abandonment of the application.*

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SEP 09 2010

OFFICE OF PETITIONS

MURAMATSU & ASSOCIATES
SUITE 310
114 PACIFICA
IRVINE, CA 92618

In re Application of Hiroshi Yasuda, et al. Application No. 11/235,422 Filed: September 26, 2005 Attorney Docket No.: OKAMOTO.003AUS	: : : : :	ON PETITION

This is a decision in response to the petition, filed June 25, 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 7, 2009. A Notice of Abandonment was mailed on December 18, 2009. On February 22, 2010, a petition under the provisions of 37 CFR 1.181 was filed; however, the petition was dismissed in a decision mailed May 3, 2010. In response, on June 25, 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 2881 for appropriate action by the Examiner in the normal course of business on the response filed August 6, 2009.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204. Inquiries relating to further prosecution should be directed to the Technology Center.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Paper No.

MOTOROLA SOLUTIONS, INC.
IP Law Docketing
1301 EAST ALGONQUIN ROAD
IL02 5th Floor - SH5
SCHAUMBURG IL 60196

MAILED
DEC 12 2011
OFFICE OF PETITIONS

In re Patent No. 7,817,599	:	
Issue Date: October 19, 2010	:	
Application No. 11/235,503	:	ON PETITION
Filed: September 26, 2005	:	
Attorney Docket No. CE13995N	:	
	:	

This is in response to the PETITION UNDER 37 CFR § 3.81(b) filed November 16, 2011, which is properly treated as a request under 37 CFR 3.81(b) to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED to the extent indicated herein.**

Pursuant to the issue fee transmittal filed August 13, 2010, the patent issued in the name of assignees "Motorola-Mobility, Inc." Patentee files this request, requesting that the name of the assignee be corrected to "Motorola, Inc." and submits a certificate of correction for this purpose.

Patentee's evidence and Office records show that the assignment to "Motorola, Inc., Schaumburg, IL (US)" was recorded on September 26, 2005. The recording of the assignment (Reel/Frame 017040/0477) occurred before issuance of the patent on October 19, 2010. (It is noted that as the change of name for the assignee of the above-identified application to "Motorola Solutions, Inc." was not recorded until April 6, 2011 after the issuance of the patent, no certificate of correction can be issued in the changed name).

Receipt of the required $100 certificate of correction fee and the required $130 processing fee is acknowledged.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3219. 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 has been notified of this decision granting the petition under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction to correct the Assignee data to "Motorola, Inc."

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20120106

DATE : October 18, 2011

TO SPE OF : ART UNIT 2617

SUBJECT : Request for Certificate of Correction on Patent No.: 7,817,599

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:

/RAFAEL PÉREZ-GUTIÉRREZ/
Supervisory Patent Examiner.Art Unit 2617

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450

MAILED
FEB 15 2011
OFFICE OF PETITIONS

Mr. Philip S. Johnson
Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, New Jersey 08933-7003

In re Application of	:	
Mohamed ATTAWIA et al.	:	DECISION DISMISSING PETITION
Application No. 11/235,674	:	UNDER 37 CFR 1.137(b)
Filed: 26 September 2005	:	
Atty. Docket No.: DEP5578USNP	:	

This is a decision on the petition under 37 CFR 1.137(b), filed 6 January 2011, to revive the above-identified application ("Application").

The petition is **DISMISSED.**

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mailing date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)". This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The Application became abandoned for failure to pay the issue and publication fees set forth in the Notice of Allowance mailed 18 February 2010, which set a reply period of 3 (three) months from the date of mailing. The application became abandoned on 19 May 2010, with notification mailed 5 August 2010.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the appropriate reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a Statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). The present petition lacks item (1).

An appropriate reply to a Notice of Allowance is the payment of the issue fee and publication fees within the reply period. The petitioner has filed a Request for Continued Examination (RCE) and the required fees, but such reply is not appropriate in light of the Notice of Allowance (*see*, MPEP 711.03(c)(II)(1)).

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300.**

General inquiries relating to this decision should be directed to Robert DeWitty (571-272-6051), or, if unavailable, the undersigned at 571-272-7099.

David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450

Mr. Philip S. Johnson
Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, New Jersey 08933-7003

MAILED
SEP 21 2011
OFFICE OF PETITIONS

In re Application of	:	
Mohamed ATTAWIA et al.	:	DECISION DISMISSING PETITION
Application No. 11/235,674	:	UNDER 37 CFR 1.137(b)
Filed: 26 September 2005	:	
Atty. Docket No.: DEP5578USNP	:	

This is a decision on the petition filed February 28, 2011 to withdraw the holding of abandonment of the above-identified application, which is being treated as a petition under 37 CFR 1.181.

The petition is **GRANTED.**

Petitioner requests the Notice of Abandonment mailed August 8, 2010 for failure to respond to the Notice of Allowance and Fee(s) Due mailed February 8, 2010 (Notice) be withdrawn as petitioner timely filed a response on May 6, 2010.

Petitioner asserts that a response was timely filed and thus, the Notice of Abandonment should be withdrawn. A review of the record indicates that the original copy of the response is now in the file and was timely filed on May 6, 2010. Furthermore, the filed reply was complete as the Request for Continued Examination included therewith an Information Disclosure Statement thereby meeting the submission requirement of 37 CFR 1.114. Accordingly, the holding of abandonment for failure to timely file a reply to the Notice mailed February 8, 2010 is hereby withdrawn and the application restored to pending status.

Telephone inquiries relating to this decision should be directed to Robert DeWitty, Petitions Attorney, Office of Petitions (571-272-8427).

This application is being referred to Technology Center Art Unit 3733 for consideration of the reply filed May 6, 2010.

Ramesh Krishnamurthy
for Anthony Knight
Director
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

RANKIN, HILL & CLARK LLP
38210 GLENN AVENUE
WILLOUGHBY, OH 44094-7808

Mail Date: 01/12/2011

Applicant	: Shinichi Nishio	: DECISION ON REQUEST FOR
Patent Number	: 7597021	: RECALCULATION of PATENT
Issue Date	: 10/06/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 11/235,780	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/27/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1041** 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 : October 18, 2010

TO SPE OF : ART UNIT 3744 - SPE Cheryl J. Tyler

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/235,782 Patent No.: 7,296,431 B2

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square Building
2800 South Randolph Street
Arlington, VA 22206

Antonio Johnson

Should the changes to claims be approved as requested by applicant?
See COCIN dated 03-25-2010

Certificates of Correction Branch
(571)272-0483

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☐ **Approved** — **All** changes apply.
- ☒ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: The changes from "assembly" to --means-- are not approved, as the --means-- appears to be broader than "assembly." Further, the spec supports this assertion on page 5, line 1.

SPE /CJT/ **Art Unit** 3744

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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BRINKS HOFER GILSON & LIONE/CHICAGO/COOK
PO BOX 10395
CHICAGO, IL 60610

MAILED

FEB 27 2012

OFFICE OF PETITIONS

In re Application of Hendriksen et al. :
Application No. 11/235,801 :
Filing Date: September 27, 2005 :
Atty. Docket No. 8627-1021(PA-5554-RFB):

Decision on Petition

This is a decision on the petition under 37 CFR 1.182 filed July 27, 2009, to change the order of the names of the inventors.

The petition is **granted**.

The order of the names of the inventors has been changed as follows:

1. Per Hendriksen
2. Allan G. Hemmingsen
3. Arne Molgaard-Nielsen
4. Thomas A. Osborne

A Notice of Allowance was mailed January 5, 2012. Therefore, the Office of Data Management will be informed of the instant decision and the Office of Data Management will take any steps necessary to ensure the inventors are listed on the patent in the order set forth above.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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AT&T CORP.
ROOM 2A207
ONE AT&T WAY
BEDMINSTER NJ 07921

MAILED

SEP 03 2010

OFFICE OF PETITIONS

In re Application of :
Oktay Necip Gunluk :
Application No. 11/235,896 : DECISION ON PETITION
Filed: September 27, 2005 :
Attorney Docket No. 2000-0392CON :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 19, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed March 31, 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 1, 2009. A Notice of Abandonment was mailed on October 15, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1,620 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 2473 for appropriate action by the Examiner in the normal course of business on the reply received July 19, 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

Date Mailed : 10/05/11

Patent No. : 7956926 B2
Patent Issued : **June 7, 2011**
Docket No. : **CYBS5753DIV**

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322.

Respecting the alleged errors in the documents filed on 09/07/11; please see attachments. **"Therefore, no correction(s) is in order here under United States Codes (U.S.C.) 254 and the Code of Federal Regulation (C.F.R.) 1322."**

In view of the foregoing, your request in this matter is hereby denied.

Lamonte M. Newsome

Lamonte M. Newsome
For Mary Diggs, Supervisor
Decisions & Certificates
Of Correction Branch
(571) 272-3421 or (703) 305-8309

Young Law Firm, P.C.
4370 Alpine Road, Suite 106
Portola Valley CA 94028

LMN

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 09/22/11

TO SPE OF : ART UNIT 2622

SUBJECT : Request for Certificate of Correction for Appl. No.: 11235983 Patent No.: 7956926

CofC mailroom date: 09/07/11

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.

Comments: A petition under 37 CFR 1.182 is needed for such correction.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

/Jason Chan/ 2622

SPE **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
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Attention: Dennis R. Daley
MERCHANT & GOULD P.C.
P.O. BOX 2903
Minneapolis, MN 55402-0903

MAILED
SEP 08 2010
OFFICE OF PETITIONS

In re Application of :
Schaefer et al. :
Application No. 11/236,124 :
Filed: September 25 2005 :
For: LOW TEMPERATURE RENDERING :
PROCESS

DECISION ON PETITION

This is a decision on the petition filed July 17, 2007, which is being treated as a petition under 37 CFR 1.181(a)(3) requesting supervisory review of the decision of the Group Director of Technology Center 1700 mailed May 17, 2007, and requesting that the request for continued examination filed July 19, 2006 be accepted as a proper request for continued examination under 37 CFR 1.114 and that the holding of abandonment in the above-identified application be withdrawn.

The petition to accept the request for continued examination filed July 19, 2006 as a proper request for continued examination under 37 CFR 1.114 and to withdraw the holding of abandonment in the above-identified application is **GRANTED**.

A review of the record reveals that a Notice of Allowance and Notice of Allowability were mailed April 18, 2006. On July 19, 2007, petitioners filed a request for continued examination along with its specific fee authorization, a document styled as a request to correct inventorship, and a certificate of mailing pursuant to 37 CFR 1.8 executed July 17, 2006, which specifically referenced the aforementioned documents and also authorized any other fees.

37 CFR 1.114 provides that: A submission as used in [37 CFR 1.114] includes, **but is not limited to**, an information disclosure statement, an amendment to the written description, claims, or drawings, new arguments, or new evidence in support of patentability. If reply to an Office action under 35 U.S.C. 132 is outstanding, the submission must meet the reply requirements of § 1.111. *See* 37 CFR 1.114(c) (emphasis added). As a reply to an Office action under 35 U.S.C. 132 was not outstanding, the reply requirements of § 1.111 are inapplicable to the submission with the request for continued examination filed on July 19, 2006. Therefore, a request to correct inventorship may be a proper submission under the circumstances of the above-identified application. In addition, while the request to correct inventorship does not meet the requirements of 37 CFR 1.48(a), this is a basis for refusing to grant the request to correct inventorship rather

than a basis for treating the request for continued examination filed on July 19, 2006 as improper. That is, there is no requirement in either 37 CFR 1.114 or 37 CFR 1.48 that the requested change of the inventive entity be granted *ab initio* for the request to correct inventorship to be a proper submission for the request for continued examination filed on July 19, 2006.

Accordingly, the petition to accept the request for continued examination filed July 19, 2006 as a proper request for continued examination under 37 CFR 1.114 is granted. Consequently, the petition to withdraw the holding of abandonment in the above-identified application is also granted.

This application is being referred to Technology Center 1700 for action on the request to correct inventorship under 37 CFR 1.48 and for continued examination under 37 CFR 1.114, which may result in the issuance of either an Office action under 35 U.S.C. § 132 or a notice of allowance under 35 U.S.C. § 151.

Telephone inquiries concerning this decision should be directed to Petitions Examiner David Bucci at (571) 272-7099.

Robert W. Bahr
Acting Associate Commissioner
for Patent Examination Policy

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 03-31-11

TO SPE OF : ART UNIT 3714

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/236180 Patent No.: 7883407

CofC mailroom date: 03-23-11

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

Angela Green
Certificates of Correction Branch
(703) 756-1541

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- [x] **Approved** — All changes apply.
- [ ] **Approved in Part** — Specify below which changes **do not** apply.
- [ ] **Denied** — State the reasons for denial below.

Comments: Corrects typographical & grammatical errors. No change in the scope of the claims.

CORBETT B. COBURN
PRIMARY EXAMINER

SPE [signature] Art Unit 3714

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 08/27/10

TO SPE OF : ART UNIT 1618

SUBJECT : Request for Certificate of Correction for Appl. No.: 11236272 Patent No.: 7744853

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (C of C)
Randolph Square 9D40-D
Palm Location 7580

[redacted]

Lamonte Newsome
Certificates of Correction Branch
703-756-1574

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ✓ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: All modifications are corrections of spelling and grammatical errors which do not change the scope or intent of the patent.

/Michael G. Hartley/

SPE **Art Unit**
1618

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

PAGE 3/3 * RCVD AT 9/3/2010 8:30:41 AM [Eastern Daylight Time] * SVR:USPTO-EFXRF-6/30 * DNIS:2709990 * CSID:5712730200 * DURATION (mm-ss):00-52

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FISH & RICHARDSON P.C.
PO BOX 1022
MINNEAPOLIS MN 55440-1022

MAILED
JUL 20 2011
OFFICE OF PETITIONS

In re Application of	:	
DEBAJIT GHOSH	:	DECISION ON APPLICATION
Application No. 11/236,367	:	FOR
Filed: 09/27/2005	:	PATENT TERM ADJUSTMENT
Atty Docket No. 16113-0050001	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)" filed December 20, 2010. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from 198 days to 439 days.

The application for patent term adjustment is **DISMISSED**.

On September 20, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 198 days. On December 20, 2010, applicants timely submitted the present application for patent term adjustment with payment of the issue fee.

Applicants assert that:

> A PTO action was due on or before March 21, 2009 (the date that is four months after November 21, 2008, the date on which a response to Office Action was filed). The PTO mailed a non-final Office Action on October 15, 2009. The PTO calculated 0 days of PTO Delay for the late non-final Office Action. Applicant respectfully submits that a PTO Delay of 208 days is appropriate for this PTO Delay from March 22, 2009 (the day after the date that is four months after the date on which the response to

> Office Action was filed), to October 15, 2009. See 37 C.F.R. §§ 1.702(a)(2) and 1.703(a)(2).
>
> . . .
>
> A reply to an Office Action was due on or before September 26, 2008 (the date that is three months after June 26, 2008, the date on which the Office Action was mailed). Applicant filed a response to the Office Action on November 21, 2008, thereby according an Applicant Delay of 56 days. Applicant does not dispute the PTO's calculation for this Applicant Delay from September 27, 2008 (the day after the date that is three months after the date on which the Office Action was mailed), to November 21, 2008. See 37 C.F.R. § 1.704(b).
>
> Applicant filed a Notice of Appeal on December 24, 2008, subsequent to a response to a final Office Action filed on November 21, 2008. Applicant was accorded a delay of 89 days for a late response. Applicant has reviewed the Office's calculation of Applicant Delay as shown in the PAIR Patent Term Adjustment History, which appears to have been calculated as a reduction to the period of adjustment due to a failure to respond to a final Office Action mailed June 26, 2008. However, Applicant believes the filing of a response to a final Office Action on November 21, 2008, as was the case in the instant application, was a complete response and as such, Applicant respectfully requests the Applicant Delay be decreased from 89 days to 0 days. See 37 C.F.R. § 1.704(b).

Petition, pp. 1-2.

The Office has considered applicants' arguments, but finds them unpersuasive.

37 CFR 1.704(b) states that 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.

37 CFR 1.703(a)(3) states that the period of adjustment under § 1.702(a) is the number of days beginning on the day after the date that is four months after the date a reply in compliance with § 1.113(c) was filed and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first. "A reply under 37 CFR 1.113 is a reply to a final Office action, and a reply in compliance with 37 CFR 1.113 is a reply that cancels all of the rejected claims and removes all outstanding objections and requirements or otherwise places the application in condition for allowance." MPEP 2701. "Any amendment after final that does not cancel all of the rejected claims and remove all outstanding objections and requirements or otherwise place the application in condition for allowance is not a reply in compliance with 37 CFR 1.113(c)." Id.

Following a final Office action, the period at issue is first the period it takes applicant to file a reply in compliance with 37 CFR 1.113(c). "Where a submission after a final Office action (e.g., an amendment under 37 CFR 1.116) does not place the application in condition for allowance, the period for reply continues to run until a reply under 37 CFR 1.113 (i.e., a notice of appeal or an amendment that places the application in condition for allowance) is filed." MPEP 714.03. Until such a reply is filed, applicant is subject to entry of a period of reduction for failure to engage in reasonable efforts to conclude processing or examination within the meaning of 37 CFR 1.704(b). The mailing of an Advisory Action is an indication that the reply filed did not comply with 37 CFR 1.113(c).

In this instance, applicants filed an amendment on November 21, 2008, which failed to place the application in condition for allowance. See Advisory Action mailed December 15, 2008. As the amendment was not in compliance with § 1.113(c), the period for reply to the final Office action mailed June 26, 2008, continued to run until the filing of a proper reply in the form

of a notice of appeal on December 24, 2008. As the notice of appeal was not received in the Office within three months of the mailing of the final Office action, a period of reduction under 37 CFR 1.704(b) of 89 days, beginning on the day after the date that is three months after the date of mailing of the final Office action, September 27, 2008, and ending on the date the notice of appeal was filed, December 24, 2008, is warranted and will not be removed.

Applicants' argument that the USPTO should be assessed a period of 208 days of Office delay under 37 CFR 1.702(a)(2) is equally without merit. 37 CFR 1.703(a)(4) specifies that the period of adjustment under § 1.702(a) is the number of days beginning on the day after the date that is four months after the date an appeal brief in compliance with § 41.37 was filed and ending on the date of mailing of any of an examiner's answer under § 41.39, an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first. There is no specified time frame for the Office to take action in response to the filing of a notice of appeal to avoid entry of a period of adjustment. The filing of a notice of appeal is not "an appeal taken under 35 U.S.C. 134" within the meaning of 1.702(a)(2). The phrase "the date on which" an "appeal was taken" in 35 U.S.C. 154(b)(1)(A)(ii) means the date on which an appeal brief in compliance with 37 CFR 41.37 (and not a notice of appeal) was filed.

In this instance, applicants filed an appeal brief on July 24, 2009. On October 15, 2009, the Office mailed a nonfinal Office action in response to the appeal brief. As the nonfinal Office action was mailed within four months of the filing of the appeal brief, there is no basis for assessing any Office delay under 37 CFR 1.702(a)(2).

In view thereof, the determination of patent term adjustment remains 198 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 Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

Christina T. Donnell

Christina Tartera Donnell
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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MAILED
OCT 26 2011
OFFICE OF PETITIONS

FISH & RICHARDSON P.C.
PO BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 8,005,825	:	DECISION ON REQUEST FOR
Debajit Ghosh	:	RECONSIDERATION OF
Issue Date: August 23, 2011	:	PATENT TERM ADJUSTMENT
Application No. 11/236,367	:	
Filed: September 27, 2005	:	
Atty Docket No. 16113-0050001	:	

This is a decision on the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d) filed on October 21, 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 by one thousand two hundred thirty-five (1235) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **DISMISSED**.

Patentee disputes the period of time excluded from B delay for appellate review. Patentee's argument has been considered, but not found persuasive.

The period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). An appeal to the Board of Patent Appeals and Interferences commences with the filing of a notice of appeal. See 35 U.S.C. 134(a). Generally, an appeal to the Board of Patent Appeals and Interferences ends with either 1) a Board decision, 2) the examiner reopening prosecution and issuing

another Office action, or 3) the applicant filing a request to withdraw the appeal and reopen prosecution (e.g. the filing of a request for continued examination). In this instance the period consumed by appellate review is two hundred ninety-six (296) days, beginning on December 24, 2008, the date of filing of the notice of appeal and ending on October 15, 2009, the subsequent date of the mailing of a non-final Office action. Thus, B delay is 764 (1060-296) days.

It is noted that the Office issued a Notice of proposed rulemaking entitled *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review and Information Disclosure Statements*, 76 FR 18990 (April 6, 2011). To the extent that the final rule on *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review* revises the interpretation of appellate review applied in this decision, Patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the date of the final rule to file a request for reconsideration. No extensions of time will be granted under 37 CFR 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges the payment 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) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Alexandria, VA 22313-1450
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KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE CA 92614

MAILED
OCT 07 2011
OFFICE OF PETITIONS

In re Patent No. 7,360,251	:	
Issue Date: April 15, 2008	:	
Application No. 11/236,482	:	NOTICE
Filed: September 27, 2005	:	
Attorney Docket No. EXP.213C1	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed September 22, 2011. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby accepted. The petition is **GRANTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

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

ROYLANCE, ABRAMS, BERDO & GOODMAN, L.L.P.
1300 19TH STREET, N.W.
SUITE 600
WASHINGTON, DC 20036

In re Application of		SEP 18 2010
ONG, SUNG-HWAN et al.	:	
Application No.: 11/236,564	:	DECISION ON
Filing or 371(c) Date: September 28, 2005	:	PETITION
Attorney Docket Number: 49733	:	

This is a decision in response to the "Notice to Withdraw Holding of Abandonment," filed February 17, 2010.

This petition is **DISMISSED**.

Any further petition for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under [insert the applicable code section]." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowability, mailed October 8, 2009. The Notice set a non-extendable three (3) month period for reply. No reply having been received, the application became abandoned on January 27, 2010.

The Notice of Allowability

A review of the Notice of Allowability reveals that the Notice clearly required drawings. The Notice states: "CORRECTED DRAWINGS must be submitted."

The statute, 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.

This section explains that the reply must be both complete and proper as the condition of the application may require.

Here, Applicant filed a reply on December 29, 2009, to with – the issue fee; however, corrected drawings were also required. Applicant failed to timely file corrected drawings. The application was properly abandoned.

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 (703) 756-1547.

Kay D. Pinkney
Application Assistance Unit
Office of Data Management

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

ROYLANCE, ABRAMS, BERDO & GOODMAN, L.L.P.
1300 19TH STREET, N.W.
SUITE 600
WASHINGTON, DC 20036

In re Application of	:	
Sung-Hwan Ong, et al	:	**DECISION ON PETITION**
Application No. 11/236564	:	
Filed: 09/28/2005	:	
Attorney Docket No. **49733**	:	

This is a decision on the Renewed Petition to Withdraw Holding of Abandonment under 37 CFR 1.181 received in the United States Patent and Trademark Office (USPTO) on November 3, 2010. This Petition is being treated as a Request to reconsider the Petition Decision of September 8, 2010.

The previous Decision has been reconsidered. The Petition filed on February 17, 2010 is **GRANTED**.

The application was held abandoned for failure to timely file corrected drawings as required by and within the three-month period set in, the Notice of Allowability mailed October 8, 2009. Corrected drawings were not submitted within the time period for response. Therefore, the application was **properly** held abandoned and the Notice of Abandonment was mailed on January 27, 2010.

Petitioner states that U.S. Patent and Trademark Office mistakenly required corrected drawings on the Notice of Allowability and supports this assertion by further stating that the attachment to the Notice of Allowability specifically stated that Figure 1 was amended by Examiner's Amendment to include the label "CONVENTIONAL". After consultation with the Examiner, the Office agrees that the drawing requirement was made in error.

Although the examiner did include a written amendment concerning Figure 1, the examiner did not, in fact, supply a corrected figure. Therefore, the drawings filed on February 17, 2010 are acceptable and will be used for purpose of printing the Patent Grant.

Telephone inquires relating to this matter may be directed to the undersigned in the Office of Data Management at 571-272-4200.

Kimberly Terrell, Manager
Office of Data Management
Patent Publication Branch

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAILED
FEB 28 2011
OFFICE OF PETITIONS

WYETH LLC
PATENT LAW GROUP
5 GIRALDA FARMS
MADISON, NJ 07940

In re Application of
Scott W. Poxon, et al.
Application No. 11/236,570
Filed: September 28, 2005
Attorney Docket No. AM101582 P1

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 20, 2011, to revive the above-identified application.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, June 22, 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 23, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1620, and (3) a proper statement of unintentional delay.

In view of the above, the petition is **GRANTED**.

Telephone inquiries concerning this decision should be directed to undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

This application is being referred to Technology Center AU 1611 for appropriate action by the Examiner in the normal course of business on the reply received January 20, 2011.

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

ALLEMAN HALL MCCOY
RUSSELL & TUTTLE LLP
806 SW BROADWAY
SUITE 600
PORTLAND OR 97205-3335

MAILED
MAY 26 2011
OFFICE OF PETITIONS

In re Application of :
Grudzien, et al. :
Application No. 11/236,979 : DECISION ON PETITION
Filed: 28 September, 2005 :
Attorney Docket No. GBL09302CIP :

This is a decision on the petition filed on 11 January, 2011, requesting seeking to have "an earlier filing date" pursuant to 37 C.F.R §1.182.

NOTES:

As becomes evident upon review of the matter, contrary to his suggestion Petitioner does not seek a procedural determination as to his right to an earlier "filing date," but, rather, the substantive benefit(s) of a claim for priority.

Thus, Applicant's claim—as asserted by Petitioner—is not procedural (as might be sought pursuant to 37 C.F.R §1.78).

Rather, Applicant's claim is substantive and subject to determination by the Examiner and review by the Board of Patent Appeals and Interferences.

Thus, what Petitioner seeks is a substantive determination, which is proper upon appeal.

However, Petitioner has sought inappropriately to obtain a substantive determination on petition.

It is noted that Petitioners always are cautioned that petitions to the Director (*i.e.*, petitions pursuant to the regulations at 37 C.F.R §1.181, *et seq.*) do not toll applicable periods for reply.[1]

[1] *See*: 37 C.F.R. §1.181(f).

> Thus, in light of Petitioner's authorization of "any other costs," the appropriate fee for extension of time is charged as authorized to Deposit Account 50-3397.

Accordingly, the petition considered pursuant to 37 C.F.R §1.182 is **DISMISSED**.

BACKGROUND

Petitioner John D. Russell (Reg. No. 47,048) stated on petition that he sought to have "the effective filing date [of the instant application] restored to" 22 January, 2002.[2]

Nonetheless, Petitioner acknowledged that Applicant's specification for the instant application was filed on 28 September, 2005.[3]

Thus, after clearing away the debris of Petitioner's confusion in the matter, what comes to the fore is that Petitioner wanted a claim to priority based upon the following history:

- On 28 September, 2005, Petitioner deposited the instant application with a statement in the first sentence of the specification that:

  > This application is a continuation-in-part of co-pending US Patent Application Serial No. 10/784,092, filed February 20, 2004, which is a continuation-in-part of co-pending US Patent [A]pplication Serial No. 10/349,347, filed January 22, 2003, which claims the benefit of US provisional patent application number 60/351,008, filed January 22, 2002, the contents of each of which are incorporated herein in their entirety.[4]

- On 21 September 2009, Petitioner filed an amendment to recite certain limitations (*e.g.*, a rigid frame);[5]

- On 5 March, 2010, the Examiner mailed an Office action holding that the disclosures of prior Application Serial No. 10/349,347 (the '347 application), filed January 22, 2003, and Application No. 60/351,008 (the '008 application), filed January 22, did not provide adequate support for the rigid frame, and so several of the claims of the instant application were "not entitled to the benefit of prior applications" sought by Petitioner;[6]

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2 Petition of 11 January, 2011, at page 5.

3 Petition of 11 January, 2011, at page 2, Item 1.

4 Petition of 11 January, 2011, at page 2, Item 1.

5 Petition of 11 January, 2011, at page 2, Item 2.

6 Petition of 11 January, 2011, at page 2, Item 3.

- On 7 June, 2010, Petitioner again amended the instant application and "further included remarks contesting the propriety of the Office's assertions regarding priority";[7]

- On 12 November, 2010, the Examiner mailed a final Office action and "maintained [the Examiner's] position, asserting that the adjusted effective filing date of claims 1, 8, 10, 11, 13 and 18-28" was 20 February, 2004—and, Petitioner complained, "[t]he Office failed to respond to the points raised in Applicants' [7 June, 2010] amendment."[8]

With that as his foundation, Petitioner then set about his argument that—notwithstanding the provisions of the Administrative Procedure Act (APA), 5 U.S.C. §500, *et seq.*—the Office denied Applicants proper benefit under law. Therein and thereafter, Petitioner set out statutory instructions to "a reviewing court" as to what an agency—such as the Office—may and may not do.[9] (*See*: 5 U.S.C. §704.)

Petitioner's statutory instructions to "a reviewing court" were/are misplaced at the Office, and his reliance upon the regulatory provisions set out at 37 C.F.R. §1.182 was/is misplaced in this matter.

As is clear from the history set out above, Petitioner did <u>not</u> contend that the Office erred in determining the filing date of the instant application upon its deposit—as might be considered pursuant to the provisions of 37 C.F.R. §1.182 or §1.53, which properly is a matter for procedural determination.

Moreover and as noted previously, Applicant's claim—as asserted by Petitioner—was and is not procedural as might be sought were Applicants compelled to make a delayed claim for priority pursuant to the regulations at 37 C.F.R §1.78.

Rather, Petitioner contended that the Examiner's determination as to the Applicants' right to a priority to a prior-filed application pursuant to 35 U.S.C. §120 was in error—however, that substantive determination is of right to the Examiner and properly reviewed not on petition, but on appeal before the Board of Patent Appeals and Interferences pursuant to the statutory provisions at 35 U.S.C. §134 and the regulations at 37 C.F.R. Part 40.

Petitioner's confusion is not unique to him—had he considered the matter more fully, he would have found that Courts previously have been presented the question, and long-since settled the result at, *inter alia*, the matter of *Boundy v. U.S. Patent & Trademark Office*, 73 USPQ2d 1468 (E.D. Va. 2004).

The Court outlined the facts in *Boundy*, with their familiar ring, and the law—which has a proper applicability here—as follows:

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[7] Petition of 11 January, 2011, at page 2, Item 4.

[8] Petition of 11 January, 2011, at page 2, Item 5.

[9] APA, 5 U.S.C. §706.

***

Boundy argued that the rejections were based on improper reasoning and procedure under Manual of Patent Examining Procedure ("MPEP"). The claim rejections were sustained and Boundy filed three petitions under 37 C.F.R. §1.181 with the Commissioner. All three petitions were denied by the Commissioner. Boundy also appealed the examiners' decisions to the Board of Patent Appeals and Interferences ("BPAI"). The BPAI appeal was denied. A rehearing also denied relief and affirmed Boundy's claim rejections.[10]

***

Boundy argues that the examiners were required to follow certain rules during the examination and did not do so. Furthermore, he contends that the supervisors never enforced the rules. Thus, he requests that the Court order the PTO to follow their rules; otherwise his application is stalled in a gap between the Commissioner's and the Board's roles.[11]

***

The Administrative Procedure Act ("APA"), 5 U.S.C. §§701-06, governs decision-making by federal agencies and specifically limits judicial review of agency actions to review of "final" agency actions. The APA, 5 U.S.C. §704, provides, in pertinent part, that Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. 5 U.S.C. §704.[12]

***

In accordance with 37 C.F.R. §1.181, an applicant may petition the Commissioner concerning any action or requirement of any examiner not subject to appeal to the Board of Patent Appeals and Interferences. Boundy petitioned the Commissioner three times and the Commissioner found that this matter related to the merits of patentability, thus, should be appealed to the Board. This §1.181 petition process serves as the exclusive administrative check on the discretion of individual patent examiners before a determination has been made on the merits of an application. *Star Fruits S.N.C. v. U.S.*, 280 F.Supp.2d 512, 516 (E.D. Va. 2003). While the Complaint was phrased to request procedural relief, the Commissioner found the petitions pertained to merit issues. The Commissioner relied on Federal Circuit cases and responded to the petitions in detail. Significantly, the Commissioner notes that rejection decisions involved some administrative matters but the decisions were still on the merits.

[3] Under the deferential standard of the APA, the Court refuses to interfere with the agency's proceedings. *Custom Computer Servs., Inc. v. Paychex Props. Inc.*, 337 F.3d 1334 [67 USPQ2d 1638] (Fed. Cir. 2003) (stating that the agency receives "substantial deference."). This case deals with a specialized field of patent law where the Commissioner of Patent and Trademarks is primarily responsible for the application and enforcement of the various narrow and technical statutory and regulatory provisions. His interpretation of these provisions is entitled to

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[10] *Boundy*, at 1469.

[11] *Boundy*, at 1470.

[12] *Boundy*, at 1471.

considerable deference. *Morganroth v. Quigg*, 885 F.2d 843, 848 [12 USPQ2d 1125] (Fed. Cir. 1989); *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1425 [7 USPQ2d 1152] (Fed. Cir. 1988) ("an agency's interpretation of a statute it administers is entitled to deference"). While the Court stated that the Complaint was phrased in procedural terms, the Commissioner is not bound by that finding. In fact, the Commissioner is better suited to make a decision concerning procedural versus merits. In the context of petition decisions, the Court does not disagree that the gist of Boundy's argument is for merits relief, and thus, defers to the Commissioner's decisions. The Commissioner's petition decisions will be upheld. The Federal Circuit decisions are the controlling law in this case. See 28 U.S.C. §1295(a); *Morganroth v. Quigg*, 885 F.2d 843, 846 [12 USPQ2d 1125] (Fed. Cir. 1989) (mandamus and APA claims relating to Commissioner's refusal to revive abandoned patent application arise under the patent laws).[13]

***

It is noted that Petitioner indeed has filed:

- a Notice of Appeal (with fee)—and the Technology Center may find further extension of time (request and fee authorized contemporaneously with the filing) required to make Petitioner's reply timely under statute; and

- an Appeal Brief (with fee).

Thus, as in *Boundy*,[14] it would appear that Petitioner sought to take two bites at the apple.

Petitioner can be no more sated here than was his forerunner.

Out of an abundance of caution, Petitioners always are reminded that:

- the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (*see*: 37 C.F.R. §1.181(f)); and

- those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[15]

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[13] *Boundy*, at 1472.

[14] *Boundy*, at 1469.

[15] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on Petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

The 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.

CONCLUSION

Accordingly, the petition considered pursuant to 37 C.F.R §1.182 is **DISMISSED**.

The instant application is released to Technology Center/AU 1773 for entry of the Notice of Appeal (with fee)—the Technology Center may find further extension of time (request and fee authorized contemporaneously with the filing) required to make Petitioner's reply timely under statute—and the Appeal Brief (with fee), and to await the Examiner's Answer.

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[16]) 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

[16] 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 Petitioners or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/236,979	09/28/2005	Jennipher Grudzien	GBL09302CIP	7198

50488 7590 06/06/2011
ALLEMAN HALL MCCOY RUSSELL & TUTTLE LLP
806 SW BROADWAY
SUITE 600
PORTLAND, OR 97205-3335

EXAMINER
LEVKOVICH, NATALIA A

ART UNIT	PAPER NUMBER
1773	

MAIL DATE	DELIVERY MODE
06/06/2011	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.

Commissioner for Patents
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Alexandria, VA 22313-1450
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wk

Mailed: 6/16/11

In re application of	:	
Grudzien et al.	:	DECISION ON
Serial No. 11/236,979	:	PETITION
Filed: September 28, 2005	:	

For: **REACTION SURFACE ARRAY DIAGNOSTIC APPARATUS INCLUDING A FLEXIBLE MICROTITRE PLATE**

This is a response to Applicants Petition filed on January 1, 2011 on the issue of the Examiner's improper adjustment of the effective filing date of the present application, as indicated in the Office Actions dated March 5, 2010 and November 12, 2010. Applicants filed the petition under 37 CFR 1.182 but the petition is being decided under 37 CFR 1.181.

The current application, 11/236,979, filed 09/28/2005 is a continuation in part of 10/784,092, filed 02/20/2004, now U.S. Patent 7,731,909 which is a continuation in part of 10/349,347, filed 01/22/2003, now U.S. Patent 7,736,594 which claims Priority from Provisional Application 60/351,008, filed 01/22/2002

In a non-final Office Action dated March 5, 2010, the Examiner determined that the adjusted effective filing date of claims 1, 8, 10, 11, 13 and 18-28, was February 20, 2004. In the final Office Action of November 12, 2010, the Examiner also applied the same effective filing date to newly submitted claims 30 and 31. The Examiner's position was that the disclosure of the prior-filed applications (10/349,347 and 60/351,008) failed to provide adequate support or enablement in the manner provided by the first paragraph of 35 USC 112 for one or more claims of the current application. Specifically, the above mentioned prior filed applications do not provide adequate support for the rigid frame, as recited in the instant claims. (Claims 1, 8, 10, 11, 13 and 18-28). The Examiner determined that the effective filing date was February 20, 2004.

Applicants assert that the analysis in the Office Acton of the priority issue is improper, and furthermore is not relevant because the filing date is not needed since all of the cited references were filed prior to the filing date of the parent application. The Examiner asserts that the effective filing date has been properly adjusted in response to the Applicant's amendments.

MPEP 201.08 states that unless the filing date of the earlier nonprovisional application is actually needed, for example, in the case of an interference *or to overcome a reference*, there is no need for the Office to make a determination as to whether the

requirement of 35 U.S.C. 120, that the earlier nonprovisional application discloses the invention of the second application in the manner provided by the first paragraph of 35 U.S.C. 112, is met and whether a substantial portion of all of the earlier nonprovisional application is repeated in the second application in a continuation-in-part situation. Accordingly, an alleged continuation-in-part application *should be permitted to claim the benefit of the filing date* of an earlier nonprovisional application if the alleged continuation-in-part application complies with the other requirements of 35 U.S.C. 120 and 37 CFR 1.78,

The earliest claimed filing date is not relevant since all of the cited references were filed prior to the filing date of the parent application. The current application complies with the other requirements of 35 U.S.C. 120 and 37 CFR 1.78.

DECISION

The Petition is **GRANTED**.

Applicants are permitted to claims the benefit of the filing date of the earlier non-provisional application. The effective filing date is restored to January 22, 2002.

/Yvonne Eyler/
Director, Technology Center 1700_____

Yvonne L. Eyler, Director
Technology Center 1700
Chemical and Materials Engineering

John D. Russell
ALLEMAN HALL MCCOY RUSSELL & TUTTLE LLP
806 SW BROADWAY
SUITE 600
PORTLAND OR 97205-3335

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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MAR 18 2011

FITZPATRICK CELLA HARPER & SCINTO
1290 Avenue of the Americas
NEW YORK NY 10104-3800

Paper No. 03182011

In re Application of	:	
Matti Kiik et al	:	PETITION TO ACCEPT
Application Number 11/237,023	:	COLOR DRAWINGS OR
Filed: September 28, 2005	:	PHOTOGRAPHS
For: **ENHANCED SINGLE LAYER ROOFING MATERIAL**		UNDER 37 CFR 1.84(a)(2) & (b)(2)
	:	

This is a decision on Applicant's Petitions under 37 CFR 1.84(a)(2) and (b)(2) filed on September 30, 2010 and to the acceptance of color photographs under

The Petition is **DISMISSED.**

Such a petition may be granted if the following criteria are met: (A) the fee set forth in § 1.17(i); (B) three (3) sets of color drawings; and (C) the specification must contain the following language as the first paragraph in that portion of the specification relating to the brief description of the drawing:

> The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application with color drawing(s) will be provided by the Office upon request and payment of the necessary fee.

If the language is not in the specification, a proposed amendment to insert the language must accompany the petition.

Applicant filed 3 sets of color photographs and a petition with the appropriate fee with the application with the petition of September 30, 2010.

The specification does not include the required reference to color drawings and no amendment has been proposed to insert the language.

Any questions regarding this decision should be directed to Eileen Lillis at 571-272-6928.

/Eileen Lillis/
Eileen Lillis
Supervisory Patent Examiner
Technology Center 3600

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.
11/237,053	09/28/2005	Giovanni Leo	4043.05US02	7561

24113 7590 10/03/2011
PATTERSON THUENTE CHRISTENSEN PEDERSEN, P.A.
4800 IDS CENTER
80 SOUTH 8TH STREET
MINNEAPOLIS, MN 55402-2100

EXAMINER
DANEGA, RENEE A

ART UNIT	PAPER NUMBER
3736	

MAIL DATE	DELIVERY MODE
10/03/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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PATTERSON MTHUENTE CHRISTENSEN PEDERSEN, P.A.
4800 IDS CENTER
80 SOUTH 8TH STREET
MINNEAPOLIS MN 55402-2100

In re Application of:
LEO, GIOVANNI et al
Serial No. 11/237,053
Filed: Sep. 25, 2005
Docket: 4043.05US02
Title: MEDICAL APPARATUS SYSTEM HAVING OPTICAL FIBER LOAD SENSING CAPABILITY

DECISION ON PETITION
UNDER 37 C.F.R. § 1.59(b)

This is a decision on the petition and request under 37 CFR 1.59(b), filed December 15, 2010 to expunge information from the above identified application.

In the petition, the petitioner requests that the information submitted November 10, 2010 contains a non-publication , NPL Documents for Image File Wrapper of US Application No. 12/127,657 (a total of 218 pages), be expunged, since they were unintentionally submitted. The documents were filed 8/I0/10 with a time stamp of 09:21:52. Applicant states that the documents were unintentionally filed into this file. It is noted that the petition fee was improperly paid under 37 CFR 1.17(h). The correct petition fee should be paid under 37 CFR 1.17(g).

The petition is dismissed for failure to proper pay the petition fee under 37 CFR 1.17(g).

Any inquiry regarding this decision should be directed to Henry C. Yuen, Special Programs Examiner, at (571) 272-4856.

PETITION DISMISSED

Angela D. Sykes, Director
Technology Center 3700

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/237,053	09/28/2005	Giovanni Leo	4043.05US02	7561

24113 7590 04/03/2012
PATTERSON THUENTE CHRISTENSEN PEDERSEN, P.A.
4800 IDS CENTER
80 SOUTH 8TH STREET
MINNEAPOLIS, MN 55402-2100

EXAMINER
DANEGA, RENEE A

ART UNIT	PAPER NUMBER
3736	

MAIL DATE	DELIVERY MODE
04/03/2012	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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PATTERSON MTHUENTE CHRISTENSEN PEDERSEN, P.A.
4800 IDS CENTER
80 SOUTH 8TH STREET
MINNEAPOLIS MN 55402-2100

In re Application of:
LEO, GIOVANNI et al
Serial No. 11/237,053
Filed: Sep. 25, 2005
Docket: 4043.05US02
Title: MEDICAL APPARATUS SYSTEM HAVING OPTICAL FIBER LOAD SENSING CAPABILITY

DECISION ON PETITION
UNDER 37 C.F.R. § 1.59(b)

This is a decision on the petition and request under 37 CFR 1.59(b), filed March 27, 2012 to expunge information from the above identified application. The petition fee of $200.00 set forth in 37 CFR 1.17(g) was paid. In response to the request for refund filed on March 27, 2012, the incorrect fee $130.00 paid on December 16, 2010 under 37 CFR 1.17(h) will be refunded upon written request.

In the petition, the petitioner requests that the information submitted November 10, 2010 contains a non-publication , NPL Documents for Image File Wrapper of US Application No. 12/127,657 (a total of 218 pages), be expunged, since they were unintentionally submitted. The documents were filed November 10, 2010 with a time stamp of 09:21:52. Applicant states that the documents were unintentionally filed into this file.

The petition is **granted**.

The USPTO does not remove any papers filed in an application. However, since the applicant has unintentionally filed the wrong documents on November 10, 2010, the documents (218 pages) have been blocked from public view in the Public Pair system.

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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RADER, FISHMAN & GRAUER PLLC
39533 WOODWARD AVENUE
SUITE 140
BLOOMFIELD HILLS MI 48304-0610

MAILED

JAN 25 2011

OFFICE OF PETITIONS

In re Application of
Joseph Mark
Application No. 11/237,110
Filed: September 28, 2005
Attorney Docket No. 65937-0073

DECISION DISMISSING PETITION
UNDER 37 CFR 1.78(a)(3)

This is a decision on the petition under 37 CFR 1.78(a)(3), filed December 27, 2010, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to prior-filed nonprovisional Application No. 10/649,068, filed August 27, 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 amendment as drafted is unacceptable and, therefore, is not considered a proper reference under 37 CFR 1.78(a)(2)(i). In this regard, the amendment is physically part of the petition and, as such, does not comply with 37 CFR 1.121, 1.52, or 1.4(c). Note that 37 CFR 1.121 states that amendments are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made. The pertinent section of 37 CFR 1.52 states that the claim (in this case, the claim for priority), must commence on a separate physical sheet. 37 CFR 1.4(c) states that each distinct subject must be contained in a separate paper since different matters may be considered by different branches of the United States Patent and Trademark Office.

Before the petition can be granted, petitioner must submit a substitute 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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401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

Telephone inquiries concerning this matter may be directed to Charlema Grant at (571) 272-3215.

Christopher 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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Hologic Cytyc-Suros Division
c/o Rader, Fishman & Grauer, PLLC
39533 Woodward Avenue
Suite 140
Bloomfield MI 48304

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MAR 0 8 2011

OFFICE OF PETITIONS

In re Application of :
Joseph Mark :
Application No. 11/237,110 : DECISION DISMISSING PETITION
Filed: September 28, 2005 : UNDER 37 CFR 1.78(a)(3) AND (a)(6)
Attorney Docket No. 65937-0073 :

This is a decision on the renewed petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed February 1, 2011, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 119(e) for the benefit of priority to the prior-filed nonprovisional and provisional applications set forth in the concurrently filed amendment.

The petition is **DISMISSED**

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000 and after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

(1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional where there is a question whether the delay was unintentional.

The petition does not comply with item(s) (1) and (2).

As to item (1), a reference to the prior-filed applications has been included in an amendment to the first sentence of the specification following the title.

However, the amendment is not acceptable as drafted since it improperly incorporates by reference the prior-filed application. An incorporation by reference statement added after an application's filing date is not effective because no new matter can be added to an application

after its filing date (*see* 35 U.S.C. § 132(a)). If an incorporation by reference statement is included in an amendment to the specification to add a benefit claim under 35 U.S.C. §§ 120 and 119(e) after the filing date of the application, the amendment would not be proper. When a benefit claim under 35 U.S.C. § 119(e) is submitted after the filing of an application, the reference to the prior application cannot include an incorporation by reference statement of the prior application. *See* Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980). *Note* MPEP §§ 201.06(c) and 608.04(b).

As to item (3), 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) require 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. Since the statement appearing in the petition varies from the required language, the statement is being construed as the statement required by 37 CFR §§1.78(a)(3) and 1.78(a))(6). If this is not a correct reading of the statement appearing in the petition, petitioner should promptly notify the Office.

Before the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) can be granted, a renewed petition and either an Application Data Sheet or a substitute 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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Any questions concerning this matter may be directed to Charlema Grant at (571) 272-3215.

Christopher Bottorff
Supervisor
Office of Petitions

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Suite 140
Bloomfield MI 48304

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MAR 08 2011
OFFICE OF PETITIONS

In re Application of :
Joseph Mark :
Application No. 11/237,110 : DECISION DISMISSING PETITION
Filed: September 28, 2005 : UNDER 37 CFR 1.78(a)(3) AND (a)(6)
Attorney Docket No. 65937-0073 :

This is a decision on the renewed petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed February 1, 2011, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 119(e) for the benefit of priority to the prior-filed nonprovisional and provisional applications set forth in the concurrently filed amendment.

The petition is **DISMISSED**

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000 and after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

(1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional where there is a question whether the delay was unintentional.

The petition does not comply with item(s) (1) and (2).

As to item (1), a reference to the prior-filed applications has been included in an amendment to the first sentence of the specification following the title.

However, the amendment is not acceptable as drafted since it improperly incorporates by reference the prior-filed application. An incorporation by reference statement added after an application's filing date is not effective because no new matter can be added to an application

after its filing date (*see* 35 U.S.C. § 132(a)). If an incorporation by reference statement is included in an amendment to the specification to add a benefit claim under 35 U.S.C. §§ 120 and 119(e) after the filing date of the application, the amendment would not be proper. When a benefit claim under 35 U.S.C. § 119(e) is submitted after the filing of an application, the reference to the prior application cannot include an incorporation by reference statement of the prior application. *See* Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980). *Note* MPEP §§ 201.06(c) and 608.04(b).

As to item (3), 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) require 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. Since the statement appearing in the petition varies from the required language, the statement is being construed as the statement required by 37 CFR §§1.78(a)(3) and 1.78(a))(6). If this is not a correct reading of the statement appearing in the petition, petitioner should promptly notify the Office.

Before the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) can be granted, a renewed petition and either an Application Data Sheet or a substitute amendment (complying with the provisions of 37 CFR 1.121 and 37 CFR 1.76(b)(5)) to correct the above matters are required.

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In re Application of
Joseph Mark
Application No. 11/237,110
Filed: September 28, 2005
Attorney Docket No. 65937-0073

DECISION DISMISSING PETITION
UNDER 37 CFR 1.78(a)(3) AND (a)(6)

This is a decision on the renewed petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed March 16, 2011, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 119(e) for the benefit of priority to the prior-filed nonprovisional and provisional applications set forth in the concurrently filed amendment.

The petition is **DISMISSED**

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000 and after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

(1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional where there is a question whether the delay was unintentional.

The petition does not comply with item(s) (1).

As to item (1), after review of the amendment submitted with the instant petition, the examiner has determined that the claim for priority will not be entered. An advisory action accompanies this decision.

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed to Charlema Grant at (571) 272-3215.

Christopher Bottorff
Petition Examiner
Office of Petitions

Enclosure: Advisory Action

Advisory Action Before the Filing of an Appeal Brief	Application No. 11/237,110	Applicant(s) MARK, JOSEPH L.	
	Examiner SEAN P. DOUGHERTY	Art Unit 3736	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 March 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 _____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: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Sean P. Dougherty/
Examiner, Art Unit 3736

Continuation of 3. NOTE: The proposed amendments require a new search and raise new issues. The new claim of priority renders a new search and consideration of the application as new priority date has been provided. This new priority date requires the Examiner to eliminate references that no longer meet the priority date, determine new priority data of the pending claims as the priority data is a continuation-in-part, and perform a new search with the new date.

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39533 Woodward Avenue
Suite 140
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MAILED
JUL 28 2011
OFFICE OF PETITIONS

In re Application of
Joseph Mark
Application No. 11/237,110
Filed: September 28, 2005
Attorney Docket No. 65937-0073

DECISION GRANTING PETITION
UNDER 37 CFR 1.78(a)(3) AND (a)(6)

This is a decision on the renewed petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed June 10, 2011, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 119(e) for the benefit of priority to the prior-filed nonprovisional and provisional applications set forth in the concurrently filed amendment.

The 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 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.

Additionally, the instant nonprovisional application must be pending at the time of filing of the reference to the prior-filed provisional application as required by 37 CFR 1.78(a)(5)(ii). Further, the nonprovisional application claiming the benefit of the prior-filed provisional application must have been filed within twelve months of the filing date of the prior-filed provisional application. All the above requirements having been satisfied, the late claim for benefit of priority under 35 U.S.C. §§ 120 and 119(e) is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) should not be construed as meaning that this application is entitled to the benefit of the filing date of the prior-filed applications. In order for this application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §§120 and 1.78(a)(1) and (a)(2) and under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

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 Charlema Grant at (571) 272-3215. 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 3736 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 Charlema Grant at (571) 272-3215.

Christopher Bottorff
Petition Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/237,110	09/28/2005	3736	1050	65937-0073	34	5

CONFIRMATION NO. 6157

CORRECTED FILING RECEIPT

82078
Hologic Cytyc-Suros Division
c/o Rader, Fishman & Grauer, PLLC
39533 Woodward Avenue
Suite 140
Bloomfield, MI 48304

OC000000049034278

Date Mailed: 07/29/2011

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)
Joseph L. Mark, Indianapolis, IN;

Assignment For Published Patent Application
Suros Surgical Systems, Inc.

Power of Attorney: The patent practitioners associated with Customer Number 10291

Domestic Priority data as claimed by applicant
This application is a CIP of 10/649,068 08/27/2003 PAT 7,347,829
which claims benefit of 60/416,755 10/07/2002

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: 10/14/2005

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/237,110**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No
**** SMALL ENTITY ****

Title

System and method for minimally invasive disease therapy

Preliminary Class

600

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

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United States Patent and Trademark Office
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Paper No.

DICKINSON WRIGHT PLLC
38525 WOODWARD AVENUE
SUITE 2000
BLOOMFIELD HILLS MI 48304-2970

MAILED

JAN 03 2011

OFFICE OF PETITIONS

In re Application of	:	
Wright	:	
Application No. 11/237,132	:	
Filed: September 27, 2005	:	DECISION ON PETITION
Attorney Docket No. 35540-7	:	UNDER 37 C.F.R. § 1.137(B)
Title: FASTENER APPARATUS FOR	:	
TISSUE AND METHODS OF	:	
DEPLOYMENT AND MANUFACTURE	:	

This is a decision on the petition filed December 8, 2010, pursuant to 37 C.F.R. § 1.137(b), to revive the above-identified application.

The petition pursuant to 37 C.F.R. § 1.137(b) is **GRANTED.**

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R § 1.113 in a timely manner to the final Office action mailed September 15, 2009, which set a shortened statutory period for reply of three months. No extensions of time under the provisions of 37 C.F.R § 1.136(a) were available, and no responses were received. Accordingly, the above-identified application became abandoned on December 16, 2009. A notice of abandonment was mailed on April 29, 2010.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in 37 C.F.R. § 1.17(m);

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
(4) Any terminal disclaimer (and fee as set forth in 37 C.F.R. § 1.20(d)) required pursuant to paragraph (d) of this section.

With this petition, Petitioner filed a Request for Continued Examination (RCE) along with the required fee, an amendment, the petition fee, and the proper statement of unintentional delay. The amendment 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 December 8, 2010 - can be processed in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the present decision to ensure that the revival has been acknowledged by the Technology Center in response to this decision. It is noted that all inquiries with regard to any failure of that change in status should be directed to the Technology Center where that change of status must be effected - **the Office of Petitions cannot effectuate a change of status.**

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[2] All other inquiries

---

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).

concerning examination procedures or status of the application should be directed to the Technology Center.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

RICHARD R. MUCCINO
758 SPRINGFIELD AVENUE
SUMMIT NJ 07901

MAILED

AUG 30 2010

OFFICE OF PETITIONS

In re Application of	:	
Gilbert BUCHALTER	:	
Application No. 11/237,438	:	DECISION ON PETITION
Filed: September 28, 2005	:	TO WITHDRAW
Attorney Docket No. PI 1.0-002		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 23, 2010.

The request is **NOT APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The 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 cannot be approved because the attorney of record was not appointed through use of a Customer Number, as indicated. The attorney was appointed by being named as an individual.

All future communications from the Office will continue to be directed to the above-listed address until otherwise properly notified.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

/dcg/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

cc: GILBERT BUCHALTER
PHARMACEUTICAL INNOVATIONS,
897 FRELINGHUSEN AVENUE
NEWARK NJ 07114

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RICHARD R. MUCCINO
758 SPRINGFIELD AVENUE
SUMMIT NJ 07901

MAILED

OCT 26 2010

OFFICE OF PETITIONS

In re Application of	:	
Gilbert BUCHALTER	:	
Application No. 11/237,438	:	DECISION ON PETITION
Filed: September 28, 2005	:	TO WITHDRAW
Attorney Docket No. PI 1.0-002	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed September 27, 2010.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office requires the practitioner(s) requesting withdrawal to certify that he, she, or they have: (1) given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any responses that may be due and the time frame within which the client must respond, pursuant 37 CFR 10.40(c).

The request was signed by Richard R. Muccino the sole attorney of record.

Richard R. Muccino has been withdrawn.

Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address indicated below until otherwise properly notified by the applicant.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

/DCG/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

cc: GILBERT BUCHALTER
PHARMACEUTICAL INNOVATIONS
897 FRELINGHUSEN AVENUE
NEWARK NJ 07114

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/237,438	09/28/2005	Gilbert Buchalter	PI 1.0-002

CONFIRMATION NO. 7919

POWER OF ATTORNEY NOTICE

41606
RICHARD R. MUCCINO
758 SPRINGFIELD AVENUE
SUMMIT, NJ 07901

OC000000044210087

Date Mailed: 10/26/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/27/2010.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/dcgoodwyn/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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ONE ARIZONA CENTER
400 EAST VAN BUREN STREET
PHEONIX AZ 85004-2202

MAILED

NOV 15 2010

OFFICE OF PETITIONS

In re Application
Vic Alfano
Application No. 11/237,482
Filed: September 27, 2005
Title of Invention: **REORDERING PACKETS**

: DECISION ON APPLICATION
: FOR PATENT TERM ADJUSTMENT

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT filed April 13, 2010 and being treated under 37 C.F.R. § 1.705(b) Applicant requests that the determination of patent term adjustment be corrected from 410 days to 339 days.

The application for patent term adjustment under 37 CFR 1.705(b) is **GRANTED** to the extent indicated herein.

The Office has updated the PALM screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is three hundred forty-nine (349) days. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On January 14, 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 410 days. Applicants assert that an additional circumstance constituting a failure to engage was the abandonment of the application on November 13, 2008.

The instant application for patent term adjustment was timely filed[1] on or before payment of the issue fee.

37 C.F.R. § 1.704(c) states:

Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

[1] PALM records indicate that the issue fee was paid on April 13, 2010.

(3) Abandonment of the application or late payment of the issue fee, in which case the period of adjustment set forth in §1.703 shall be reduced by the number of days, if any, beginning on the date of abandonment or the date after the date the issue fee was due and ending on the earlier of:

(i) The date of mailing of the decision reviving the application or accepting late payment of the issue fee; or

(ii) The date that is four months after the date the grantable petition to revive the application or accept late payment of the issue fee was filed;

Therefore, Applicants should have been assessed delay for the period from November 13, 2008 (the date the application became abandoned) to August 24, 2009 (the date the decision reviving the application was mailed), or 285 days.

However, while Applicants argue that the ten (10) day period of examination delay for the mailing of the Final Office Action on November 3, 2009 pursuant to 37 CFR 1.702(a)(2) should not have been accorded, applicants are advised that the calculation for the period of delay begins four months from the mailing of the Petition to Revive and thus, the delay is appropriately accorded.

In view thereof, the determination of Patent Term Adjustment at the time of the mailing of the notice of allowance is THREE HUNDRED FORTY-NINE (349) days (624 + 10 days of Office delay reduced by 285 days of applicant delay).

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within two months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3212.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of Revised PALM Screen

Patent Term Adjustments

PTA/PTE Information | Patent Term Adjustment | Patent Term Extension

Application Number*: 11237482 Search | Explanation of PTA Calculation | Explanation of PTE Calculation

PTA Calculations for Application: 11237482

Application Filing Date	09/27/2005	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	634
A Delays	634	PTO Manual Adjustment	-61
B Delays	0	Applicant Delay (APPL)	224
C Delays	0	Total PTA (days)	349

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
72	11/10/2010		P028	Adjustment of PTA Calculation by PTO		285	0
71	11/10/2010		P028	Adjustment of PTA Calculation by PTO	224		0
53	01/14/2010		MN/=.	Mail Notice of Allowance			0
52	01/13/2010		IREV	Issue Revision Completed			0
51	01/13/2010		DVER	Document Verification			0
50	01/13/2010		N/=.	Notice of Allowance Data Verification Completed			0
49	01/13/2010		CNTA	Notice of Allowability			0
48	01/11/2010		PS74	Paralegal TD Accepted			0
47	12/28/2009		FWDX	Date Forwarded to Examiner			0
46	12/22/2009		A.NE	Amendment after Final Rejection			0
45	11/03/2009	10/24/2009	MCTFR	Mail Final Rejection (PTOL - 326)	10		41
44	10/31/2009		CTFR	Final Rejection			0
43	10/06/2009		DOCK	Case Docketed to Examiner in GAU			0
42	08/27/2009		FWDX	Date Forwarded to Examiner			0
39	08/24/2009		MPREV	Mail-Petition to Revive Application - Granted			0
38	08/24/2009		PREV	Petition to Revive Application - Granted			0
37	08/06/2009		PET.	Petition Entered			0
36	07/23/2009		MPTDI	Mail-Petition Decision - Dismissed			0
35	07/23/2009		PTDI	Petition Decision - Dismissed			0
41	06/24/2009	11/12/2008	A...	Response after Non-Final Action		224	32
40	06/24/2009		AF/D	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received			0
34	06/24/2009		PET.	Petition Entered			0
33	10/06/2008		DOCK	Case Docketed to Examiner in GAU			0
32	08/12/2008	11/27/2006	MCTNF	Mail Non-Final Rejection	624		-1
31	08/11/2008		CTNF	Non-Final Rejection			0
20	05/30/2008		DOCK	Case Docketed to Examiner in GAU			0
19	05/27/2008		DOCK	Case Docketed to Examiner in GAU			0
18	10/17/2007		W525	Withdraw Flagged for 5/25			0
17	10/15/2007		F525	Flagged for 5/25			0
16	06/26/2007		DOCK	Case Docketed to Examiner in GAU			0
29	09/29/2006		IDSC	Information Disclosure Statement considered			0
15	09/29/2006		RCAP	Reference capture on IDS			0
14.7	09/29/2006		M844	Information Disclosure Statement (IDS) Filed			0
14	09/29/2006		WIDS	Information Disclosure Statement (IDS) Filed			0
13	03/22/2006		DOCK	Case Docketed to Examiner in GAU			0
12	02/07/2006		DOCK	Case Docketed to Examiner in GAU			0
11	02/07/2006		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
9	12/29/2005		OIPE	Application Dispatched from OIPE			0
8	12/29/2005		COMP	Application Is Now Complete			0
7	12/21/2005		ADDFLFEE	Additional Application Filing Fees			0
6	12/21/2005		CORRSPEC	Applicant has submitted a new specification to correct Corrected Papers problems			0
5	10/25/2005		CPAP	Corrected Paper			0
4	10/21/2005		L194	Cleared by OIPE CSR			0
3	10/21/2005		CLSS	CASE CLASSIFIED BY OIPE			0
2	10/08/2005		SCAN	IFW Scan & PACR Auto Security Review			0
10	09/27/2005		A.PE	Preliminary Amendment			0
1	09/27/2005		IEXX	Initial Exam Team nn			0

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ELMORE PATENT LAW GROUP, PC
515 Groton Road
Unit 1R
Westford MA 01886

MAILED

SEP 27 2010

OFFICE OF PETITIONS

In re Application of :
Wegman et al. :
Application No. 11/237,543 :
Filed: September 28, 2005 :
Attorney Docket No. 4024.3004 :
US4 :
For: REDUCTION OF ADIPOSE :
TISSUE :

ON APPLICATION FOR
PATENT TERM ADJUSTMENT

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705" filed February 8, 2010. This request is properly treated under 37 CFR 1.705(b). Applicants request that the determination of patent term adjustment be corrected from two hundred ninety-seven (297) days to six hundred one (601) days.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under §

1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office cannot make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

To the extent that applicant otherwise requests reconsideration of the patent term adjustment at the time of the mailing of the

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[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

notice of allowance, the application for patent term adjustment is **DISMISSED** to the extent indicated herein.

On January 8, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 297 days. The instant application for patent term adjustment was timely filed on February 8, 2010.

Applicants dispute the 57-day reduction for the submission of the response on to the final Office action of August 19, 2008. Applicants contend that a reply in the form of an amendment was submitted on November 19, 2008, thus the reduction should be 0 days, instead of a 57 days. Applicants contend that the amendment after final rejection clearly overcame the rejections. Applicants also contend in view of the fact that the advisory action and the examiner's answer were vacated, applicants should be accorded an additional 295 day adjustment pursuant to 1.703(a)(3).

A review of the application history confirms that a period of reduction of 57 days should remain. 37 CFR §1.704(b) provides:

> an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in §1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed.

As the amendment filed on November 19, 2008 was not compliant with § 1.113(c), the period for reply to the final rejection mailed August 19, 2008, continued to run. The proper reply, a notice of appeal was not received in the Office until January 15, 2009. Further, the record reveals the amendment submitted on November 19, 2008 did not place the application in condition for allowance. As such the 57 day reduction will not be removed.

Review of the record shows that applicants are not entitled to an adjustment of 295 days. In addition, the record reveals that the 48 day adjustment for the delay in mailing the Notice of Allowance is not warranted. The adjustment of 48 days is being removed as a compliant appeal brief was not filed. The two appeal briefs filed on March 16, 2009 and April 21, 2009 were deemed to be non-compliant. The period of adjustment is equal to 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. Thus, the mailing of the Notice of Allowance on January 8, 2010 does not warrant an adjustment.

Applicants' delay prior to the mailing of the Notice of Allowance is 113 (56 + 57) days. Office delay prior to the mailing of the Notice of Allowance is 362 days.

In view thereof, the correct determination of PTA at the time of the mailing of the notice of allowance is two hundred forty-nine **(249)** days.

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and **must** include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Charlema Grant at (571) 272-3215.

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of REVISED PALM Screen

Patent Term Adjustments

PTA/PTE Information | Patent Term Adjustment | Patent Term Extension

Application Number*: 11237543 Search Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application: 11237543

Application Filing Date	09/28/2005	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	410
A Delays	410	PTO Manual Adjustment	-48
B Delays	0	Applicant Delay (APPL)	113
C Delays	0	Total PTA (days)	249

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
113	09/25/2010		P028	Adjustment of PTA Calculation by PTO		48	0
102	01/08/2010		MN/=.	Mail Notice of Allowance			0
101	01/05/2010		MPTGR	Mail-Petition Decision - Granted			0
98	12/19/2009		IREV	Issue Revision Completed			0
97	12/19/2009		DVER	Document Verification			0
96	12/19/2009		N/=.	Notice of Allowance Data Verification Completed			0
95	12/19/2009		EXLA	Examiner's Amendment Communication			0
94	12/19/2009		CNTA	Notice of Allowability			0
87	12/15/2009		FWDX	Date Forwarded to Examiner			0
86	12/15/2009		W/AC	Letter Withdrawing / Vacating Office Action			0
100	11/24/2009		PTGR	Petition Decision - Granted			0
76	11/06/2009		TCWD	Appeal ready for BPAI docketing			0
75	10/14/2009		MM327	Mail Miscellaneous Communication to Applicant			0
74	10/13/2009		M327	Miscellaneous Communication to Applicant - No Action Count			0
72	09/17/2009		TCRD	Return of Undocketed appeal to the TC			0
71	09/17/2009		PACC	Exam. Ans. Review Complete			0
99	09/15/2009		PET.	Petition Entered			0
70	09/02/2009	07/16/2009	MAPEA	Mail Examiner's Answer	48		55
69	08/31/2009		APEA	Examiner's Answer to Appeal Brief			0
64	07/15/2009		MPTDE	Mail-Petition Decision - Denied			0
63	07/14/2009		PTDE	Petition Decision - Denied			0
61	05/20/2009		APBR	Appeal Brief Review Complete			0
60	05/20/2009		FWDX	Date Forwarded to Examiner			0
59	04/21/2009		AP.B	Appeal Brief Filed			0
58	04/08/2009		APBD	Notice -- Defective Appeal Brief			0
57	04/06/2009		APBR	Appeal Brief Review Complete			0
56	04/06/2009		FWDX	Date Forwarded to Examiner			0
55.1	03/16/2009		APBI	Defective / Incomplete Appeal Brief Filed			0
55	03/16/2009		AP.B	Appeal Brief Filed			0
62	01/15/2009		PET.	Petition Entered			0
54	01/15/2009	11/19/2008	N/AP	Notice of Appeal Filed		57	45
53	01/15/2009		XT/G	Request for Extension of Time - Granted			0
52	12/19/2008		AF/D	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received			0
51	12/19/2008		MCTAV	Mail Advisory Action (PTOL - 303)			0
50	12/18/2008		CTAV	Advisory Action (PTOL-303)			0
48	11/22/2008		FWDX	Date Forwarded to Examiner			0
73	11/19/2008		IDSC	Information Disclosure Statement considered			0
49	11/19/2008		EIDS.	Electronic Information Disclosure Statement			0
47	11/19/2008		A.NE	Amendment after Final Rejection			0
46	11/19/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
45	08/19/2008	06/07/2008	MCTFR	Mail Final Rejection (PTOL - 326)	73		37
44	08/18/2008		CTFR	Final Rejection			0
38	04/09/2008		FWDX	Date Forwarded to Examiner			0
43	02/07/2008		IDSC	Information Disclosure Statement considered			0
37	02/07/2008	12/13/2007	A...	Response after Non-Final Action		56	31
36	02/07/2008		XT/G	Request for Extension of Time - Granted			0
35	02/07/2008		EIDS.	Electronic Information Disclosure Statement			0
32	02/07/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
31	09/13/2007	11/28/2006	MCTNF	Mail Non-Final Rejection	289		-1
30	09/12/2007		CTNF	Non-Final Rejection			0
28	04/25/2007		DOCK	Case Docketed to Examiner in GAU			0
27	07/13/2006		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
25	07/13/2006		C.AD	Correspondence Address Change			0
26	05/05/2006		LET.	Miscellaneous Incoming Letter			0
24	05/02/2006		WROIPE	Application Return from OIPE			0
23	05/02/2006		COMP	Application Is Now Complete			0
22	05/02/2006		ROIPE	Application Return TO OIPE			0
21	05/02/2006		WROIPE	Application Return from OIPE			0
20	05/02/2006		COMP	Application Is Now Complete			0
19	02/02/2006		MPTGR	Mail-Petition Decision - Granted			0
15	01/03/2006		ROIPE	Application Return TO OIPE			0
14	01/03/2006		WROIPE	Application Return from OIPE			0
13	01/03/2006		COMP	Application Is Now Complete			0
17	12/02/2005		LET.	Miscellaneous Incoming Letter			0
16	12/02/2005		PET.	Petition Entered			0
12	12/02/2005		ADDFLFEE	Additional Application Filing Fees			0
11	12/02/2005		OSPECNFD	Ommited Specification Pages. Applicant has Petitioned that the Filing Date not be changed and the P			0
9	10/28/2005		OMIT	Notice of Omitted Items			0
5	10/27/2005		COMP	Application Is Now Complete			0
7	10/26/2005		ROIPE	Application Return TO OIPE			0
6	10/26/2005		OIPE	Application Dispatched from OIPE			0
4	10/24/2005		L194	Cleared by OIPE CSR			0
3	10/24/2005		CLSS	CASE CLASSIFIED BY OIPE			0
2	10/09/2005		SCAN	IFW Scan & PACR Auto Security Review			0
10	09/28/2005		A.PE	Preliminary Amendment			0
1	09/28/2005		IEXX	Initial Exam Team nn			0

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Date : March 25, 2011

Patent No. :7824673
Inventor(s): :11/237543
Issued :November 2, 2010
Title :REDUCTION OF ADIPOSE TISSUE

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 Rules 1.322 and 1.323.

With respect to the alleged error concerning the deletion of inventors' names; the inventors are printed in accordance with the Declaration and/or ADS submitted at the time of filing the application or the filing of a petition during pendency. Review of the application file does not reveal a petition/amendment that meet the requirement of changing the inventorship. Accordingly, correction is not warranted under 1.322 or 1.323 as filed.

In view of the foregoing, your request is hereby denied.

However, your attention is directed to 37 C.F.R. 1.324, wherein a request is being made to add or delete inventor(s), after issuance of the patent.

Any inquiry concerning this communication should be directed to Ms. A. Green at (571) 272-9005

Mary Diggs, Supervisor
Decisions & Certificates
of Correction Branch
(703) 308-9390 or (571) 272- 9005

Elmore Patent Law Group, P.C.
484 Groten Road
Westford, Massachusetts 01886

/arg

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OFFICE OF PETITIONS

ELMORE PATENT LAW GROUP, PC
484 Groton Road
Westford MA 01886

In re Patent No. 7,824,673	:
Wegman et al.	: DECISION ON REQUEST FOR
Issue Date: November 2, 2010	: RECONSIDERATION OF
Application No. 11/237,543	: PATENT TERM ADJUSTMENT
Filed: September 28 2005	:
Attorney Docket No. 4024-3004	:
US4	:
Title: REDUCTION OF ADIPOSE	:
TISSUE	:

This is a decision on the petition filed under 37 CFR 1.705(d) on November 18, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected.

The petition to correct the patent term adjustment indicated on the above-identified patent is **DISMISSED.**

Patentee continues to advance the argument that the patent is entitled to an additional 295 days pursuant to 1.703(a)(3). Patentee maintains that based upon the petition decision from the Director of Technology Center 1600, mailed November 24, 2009, the November 19, 2008 response to the final Office action was compliant. Thus, patentee contends an entitlement of 295 days for the delay in mailing the Notice of Allowance.

The Office is not convinced that the allowance was based upon the November 19, 2008 Office action. Although the November 24, 2009 decision vacated the advisory action and the Examiner's Answer, the decision did not state that the application was in condition for allowance. The November 24, 2009 decision directed the mailing of a new advisory action, not a notice of allowance. Further, the Notice of Allowability shows that allowance was based upon the arguments presented in the April 21, 2009 appeal brief. As such the patentee is not entitled to an additional 295 days.

Further the Office is not convinced by patentee's alternative argument that the submission of the Notice of Appeal submitted on January 15, 2009 should result in a 238 day adjustment. Patentee calculates the delay from the date of filing of the Notice of Appeal until the mailing of the Notice of Allowance pursuant to 37 CFR 1.703(a)(3). While the submission of the Notice of Appeal was an appropriate reply to the final Office action, the filing of the Notice of Appeal did not require the Office to act. Upon the filing of the Notice of Appeal, the next action required is that of the applicant, not the Office. As such a 238 day adjustment pursuant to 37 CFR 1.703(a)(3) is not warranted.

A review of the application history confirms that a period of reduction of 57 days should remain. 37 CFR §1.704(b) provides:

> an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in §1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed.

As the amendment filed on November 19, 2008 was not compliant with § 1.113(c), the period for reply to the final rejection mailed August 19, 2008, continued to run. The proper reply, a notice of appeal was not received in the Office until January 15, 2009. Further, the record reveals the amendment submitted on November 19, 2008 did not place the application in condition for allowance. As such the 57 day reduction will not be removed.

The appeal brief filed on April 21, 2009 was deemed to be non-compliant in the November 24, 2009 petition decision. The period of adjustment is equal to 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. Thus the 48 days was properly removed.

Patentee's dispute the period of time excluded from B delay for appellate review. Contrary to patentee's argument, the petition decision mailed on September 27, 2010 did not in effect vacate the appeal. The period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). An appeal to the Board of Patent Appeals and Interferences commences with the filing of a notice of appeal. See 35 U.S.C. 134(a). Generally, an appeal to the Board of Patent Appeals and Interferences ends with either 1) a Board decision, 2) the examiner reopening prosecution and issuing another Office action, or 3) the applicant filing a request to withdraw the appeal and reopen prosecution (e.g. the filing of a request for continued examination). In this instance the period consumed by appellate review is 26 days, beginning on April 5, 2010, the date of filing of the notice of appeal and ending on April 30, 2010, the subsequent date of the mailing of a notice of allowance. Thus, adjustment accorded for B delay will not be increased.

It is noted that the Office issued a Notice of proposed rulemaking entitled *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review and Information Disclosure Statements*, 76 FR 18990 (April 6, 2011). To the extent that the final rule on *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review* revises the interpretation of appellate review applied in this decision, Patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the date of the final rule to file a request for reconsideration. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3215.

Charlema Grant
Attorney
Office of Petitions

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AUG 22 2011

OFFICE OF PETITIONS

In re Application of :
Meehan et al. :
Application No. 11/237,564 : ON PETITION
Filed: September 28, 2005 :
Attorney Docket No. 53510-P001US :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 11, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed January 21, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on April 22, 2009. A Notice of Abandonment was mailed September 25, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of 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 the undersigned at (571) 272-6059.

This application is being referred to Technology Center AU 2436 for appropriate action by the Examiner in the normal course of business on the reply received August 11, 2011.

/A.Kelley-Collier/
Alicia Kelley-Collier
Petitions Examiner
Office of Petitions

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Stolowitz Ford Cowger LLP
621 SW Morrison St
Suite 600
Portland OR 97205

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JUL 20 2011

OFFICE OF PETITIONS

In re Application of :
Hsu et al. :
Application No. 11/237,579 :
Filed: September 27, 2005 :
Title: METHOD AND USER INTERFACE :
FOR PERFORMING A SCAN OPERATION :
FOR A SCANNER COUPLED TO A :
COMPUTER SYSTEM :

DECISION ON PETITION
UNDER 37 CFR 1.183

This is a decision on the "PETITION UNDER 37 CFR § 1.47(a)," filed May 18, 2011, which is properly treated as a petition under 37 CFR 1.183.[1]

In this instance, waiver is sought with respect to the requirement in view of 37 CFR §§ 1.67, 1.172, and 1.175 that a supplemental declaration be executed by the named inventors in a broadening reissue application.

The petition is **granted**.

BACKGROUND

On September 30, 2003, U.S. Patent No. 6,628,416 issued to Chuan-Yu Hsu, Jay Liu, and T.J. Hsu. A broadening reissue application (the present application) was filed for the '416 patent on September 27, 2005, and it was assigned Application

[1] Once an application has received a fully executed oath or declaration that has been placed on the files for examination, the provisions of 37 CFR 1.47 no longer apply. Rather, the remedy for treating an inventor's refusal to also sign a supplemental oath or declaration is waiver of 37 CFR 1.67. See MPEP 603.

No. 11/237,579. During the prosecution of the application, the Office required a supplemental reissue declaration directed to errors in the original patent, which were corrected in the application after the signing of the original reissue declaration.

On May 18, 2011, applicant filed the present petition under 37 CFR 1.183. The petition is accompanied by (1) a Supplemental Reissue Declaration signed by two of three inventors, (2) a declaration of facts by Hsin-I Tsai, Patent Administrator of Transpacific IP Ltd, (3) a copy of a certified letter dated April 14, 2011, sent to the last known address of the non-signing inventor Chuan-Yu Hsu, including the Supplemental Reissue Declaration and a copy of the current pending claims, and (4) a copy of the receipt of mailing and delivery of the certified letter dated April 20, 2011.

DECISION

35 U.S.C. 251, which is directed to reissue, does not address the signature requirements of a declaration in reissue. 37 CFR 1.172 requires that a reissue declaration be made (and signed) by the inventors, except as otherwise provided (§§ 1.42, 1.43, 1.47), where the scope of the claims of the original patent is being enlarged. 37 CFR 1.175(b)(1), requires that:

> For any error corrected, which is not covered by the oath or declaration submitted under paragraph (a) of this section, applicant must submit a supplemental oath or declaration stating that every such error arose without any deceptive intention on the part of the applicant.

37 CFR 1.175(b)(1), taken in conjunction with § 1.172, requires a supplemental declaration to be signed by the inventor. This is because all oaths or declarations necessary to fulfill the rule requirements in a reissue application are taken together collectively as a single oath or declaration. Thus, each oath and/or declaration must bear the appropriate signature of the inventor.

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 waiver, and applicant has requested a waiver of

the requirement that the 37 CFR 1.175(b)(1) supplemental declaration be signed an inventor.

The instant petition is accompanied by an appropriate showing that the inventor has refused to sign the supplemental declaration. Specifically, the petition includes adequate proof that the non-signing inventor, Chuan-Yu Hsu, was presented with and received the supplemental declaration and a copy of the current pending claims by certified mail, but the inventor refused to sign the supplemental declaration.

Accordingly, the supplemental declaration, signed by Jay Liu, and T.J. Hsu will be accepted as though it was signed by joint inventors Chuan-Yu Hsu, Jay Liu, and T.J. Hsu as required by 37 CFR 1.175(b)(1) taken in conjunction with § 1.172. See MPEP 602.02. See In re Hayes, 53 USPQ2d 122 (Comm'r Pat. 1999).

CONCLUSION

The present petition, taken as a petition to waive 37 CFR §§ 1.67, 1.172, and 1.175, is granted.

The Office finance records reveal that applicant submitted a $200.00 fee for filing the present petition. The Office notes that the current fee for filing a petition under 37 CFR 1.183 is $400.00. Accordingly, the Office will charge the deficient amount of $200.00 to applicant's Deposit Account, as authorized.

Jurisdiction over the application is being forwarded to Technology Center 2625 for further examination in due course.

Please direct any questions related to this decision to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3211.

/Kenneth M. Schor/

Kenneth M. Schor
Senior Legal Advisor
Office of Patent Legal Administration

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9229 SUNSET BOULEVARD
SUITE 630
LOS ANGELES CA 90069

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OFFICE OF PETITIONS

In re
Greg Arnold
Application No. 11/237,626
Filed: September 27, 2005
Patent No. 7,337,218
Issued: February 26, 2008

DECISION

This is a decision on the fee deficiency submission under 37 CFR 1.28(c), filed September 15, 2011.

The fee deficiency submission under 37 CFR 1.28 of $490 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

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AUG 30 2010
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In re Application of
David Kammer et al.
Application No. 11/237,644
Filed: September 27, 2005
Attorney Docket No.
3196.ACCESS.ASA.CON (A)

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 18, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of April 16, 2009. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is July 17, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810, and the submission required by 37 CFR 1.114; (2) the petition fee of $810; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at (571) 272-2783.

This application is being referred to Technology Center AU 2614for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Ramesh Krishnamurthy

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : September 10, 2010

TO SPE OF : ART UNIT 1716

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/237,997 Patent No.: 7,712,435 B2

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square Building
2800 South Randolph Street
Arlington, VA 22206

Antonio Johnson

Should the change to FIG. 2b be approved? Reference numeral "29" is being added.
See COCIN dated 08-13-2010

Certificates of Correction Branch

(571)272-0483

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

☑ **Approved** — **All** changes apply.

☐ **Approved in Part** — Specify below which changes **do not** apply.

☐ **Denied** — State the reasons for denial below.

Comments: Corrections are okay to be entered.

SPE /Parviz Hassanzadeh/ **Art Unit** 1716

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Lawrence Livermore National Security, LLC
LAWRENCE LIVERMORE NATIONAL LABORATORY
PO BOX 808, L-703
LIVERMORE CA 94551-0808

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In re Patent No. 7,611,524	:	
Issue Date: 11/03/2009	:	
Application No. 11/238,018	:	ON PETITION
Filed: 09/27/2005	:	
Attorney Docket No. IL-11377	:	

This is a decision on the petition under 37 CFR 3.81(b) filed June 7, 2011.

Patentees request correction of the front page of the Letters Patent to include the correct assignee data via Certificate of Correction. With the present request, patentees submitted a completed Certificate of Correction form and paid the requisite fees. Furthermore, it is noted that the assignment was recorded with the USPTO prior to the issuance of the patent.

In view of the above, the request under 37 CFR 3.81(b) to correct the assignee data is GRANTED.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3211. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch 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 as to the assignment information.

Christina T. Donnell

Christina Tartera Donnell
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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DEC 30 2011
OFFICE OF PETITIONS

In re Application of	:	
Minz, et al.	:	
Application No. 11/238,123	:	ON REQUEST FOR
Filed: September 28, 2005	:	RECONSIDERATION OF
Attorney Docket Number: 088245-1735	:	PATENT TERM ADJUSTMENT

This is a decision on the petition under 37 CFR 1.705(b), filed December 23, 2011. Applicants believe that the PTA should be accorded an additional two hundred forty-five (245) days. Applicants request this correction on the basis that the Office will take in excess of three years to issue this patent pursuant to 37 CFR 1.702(b).

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment solely as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file a request for reconsideration of patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, 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 one hundred fourteen (1114) 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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MCKENNA LONG & ALDRIDGE LLP
4435 EASTGATE MALL
SUITE 400
SAN DIEGO CA 92121

MAILED

JUN 06 2011

OFFICE OF PETITIONS

In re Application of :
Louis H. Bookbinder et al. :
Application No. 11/238,171 : ON PETITION
Filed: September 27, 2005 :
Attorney Docket No. 33320.03053.US20/3053 :

This is a decision regarding your request under 37 CFR 1.28. for acceptance of a fee deficiency submission and loss of small entity status filed May 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.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 $955, under 37 CFR 1.28, is hereby accepted and the petition is **GRANTED**. Status as a small entity has also been removed.

The matter is being referred to Technology Center 1656.

Inquiries related to this communication should be directed to the Office of Petitions Staff at (571) 272-3282.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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AUG 04 2011
OFFICE OF PETITIONS

Paper No.

NIXON PEABODY LLP
300 S. Riverside Plaza
16th Floor
CHICAGO IL 60606

In re Patent No. 7,775,873	:	DECISION ON REQUEST
Aoki et al.	:	FOR
Issue Date: August 17, 2010	:	RECONSIDERATION OF
Application No. 11/238,219	:	PATENT TERM ADJUSTMENT
Filed: September 29, 2005	:	and
Atty Docket No. 247079-000322USPT	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on September 16, 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 eight hundred and seven (807) 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 and eighty-four (584) days is **GRANTED to the extent indicated herein.**

Submission of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fee is required.

Patentee has indicated that this patent is not subject to a terminal disclaimer.[1]

First, there is one period of Examination delay in dispute. 37 C.F.R. § 1.703(a)(4) indicates that the failure of the Office to timely respond to an Appeal Brief will result in an adjustment totaling "[t]he 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 (emphasis added) of this title was filed and ending on the date of mailing of any of an

[1] Petition, page 5.

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."

A defective Appeal Brief was filed on July 8, 2009. A notice of defective Appeal Brief was mailed on August 7, 2009, an Appeal Brief in compliance with 37 C.F.R. § 41.37 was received on August 12, 2009, and a notice of allowance was mailed four months and 195 days after the filing of the compliant Appeal Brief. As such, this warrants an adjustment of 195 days (not 229 days as reflected in the PAIR calculations and asserted by Patentee on pages 3-4 of this petition) as the Office improperly measured the period for response as starting with the four month anniversary of the defective Appeal Brief of July 8, 2009).[2]

The 229-day adjustment has been removed and a 195-day adjustment has been entered.

It follows that the examination delay pursuant to 37 C.F.R. § 1.703(a) totals 645 (450 + 195) days.

Second, Patentee was accorded 244 (687 - 443) days. Patentee maintains entitlement to a period of adjustment due to the Three Year Delay be the Office, pursuant to 37 CFR § 1.703(b), of 243 (244 over three years minus one overlapping day).

A notice of appeal was filed on April 8, 2009, and a Notice of Allowance was mailed on June 25, 2010. The 444 (not 443)[3] days of the over three year period consumed by appellate review, beginning on April 8, 2009 and ending on June 25, 2010, is not included in the B delay. See 35 U.S.C. § 154(b)(1)(B)(ii). Petitioner will note that the excluded period begins on April 8, 2009, as the date on which a notice of appeal is filed is included in the period of exclusion.[4]

The 244 adjustment (687 over three years minus 443) has been removed, and a 243 (687 - 444) day adjustment has been entered.

Moreover, the Office holds that the overlap totals 189 days.

As such, the patent term adjustment is increased by 584 (645 days of examination delay plus 54 (687 days over three years

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[2] Petition, pages 3-4. See also Footnote 1.
[3] Petition, page 4.
[4] 37 C.F.R. § 1.702(b)(4).

minus the excluded 444 days minus the overlapping 189 days) minus 115 days of Applicant delay) days, not 807 days.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, Patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

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]

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 **five hundred and eighty-four (584) 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

---

[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

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,775,873 B2

DATED : **August 17, 2010** **DRAFT**

INVENTOR(S) : Aoki 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 617 days

Delete the phrase "by 617 days" and insert – by 584 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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THOMPSON HINE L.L.P.
Intellectual Property Group
P.O. BOX 8801
DAYTON OH 45401-8801

MAILED
JUL 14 2011
OFFICE OF PETITIONS

In re Patent No. 7,659,118	:	DECISION ON APPLICATION
FURCHT et al.	:	FOR RECONSIDERATION OF
Issue Date: April 9, 2010	:	PATENT TERM ADJUSTMENT
Application No. 11/238,234	:	AND NOTICE OF INTENT TO
Filing Date: September 29, 2005	:	ISSUE CERTIFICATE OF
Attorney Docket No. 890003-2000.1	:	CORRECTION

This is a decision on the petition filed on June 28, 2010, which is being treated as a petition under 37 C.F.R. § 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by two hundred four (204) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.** The term of the above-identified patent is extended or adjusted by **one hundred eighty-two (182) days**.

Patentee disputes the period of time excluded from B delay for appellate review. Patentee's argument has been considered, but 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). In this instance, the "over three year period" is four hundred ninety-eight (498) days, beginning on September 20, 2008, the date after the date that is three years after the

filing date of the application and ending on February 9, 2010, the date the patent issued.

However, 37 CFR 1.703(b) also sets forth the limitations on patent term adjustment specified in 35 U.S.C. 154(b)(1)(B)(i) and (ii). Specifically, the period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). An appeal to the Board of Patent Appeals and Interferences commences with the filing of a notice of appeal. See 35 U.S.C. 134(a). Generally, an appeal to the Board of Patent Appeals and Interferences ends with either 1) a Board decision, 2) the examiner reopening prosecution and issuing another Office action, or 3) the applicant filing a request to withdraw the appeal and reopen prosecution (e.g. the filing of a request for continued examination). In this instance the period consumed by appellate review is thirty (30) days, beginning on March 5, 2007, the date of filing of the notice of appeal and ending on April 3, 2007, the subsequent date of the mailing of the nonfinal Office action. Thus, B delay is 468 (498 - 30) days (not 469 days).

Accordingly, the patent term adjustment is 182 days (492 days of A delay + 468 days of B delay - 176 days of overlap - 602 days of applicant delay).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

It is noted that the Office issued a Notice of proposed rulemaking entitled *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review and Information Disclosure Statements*, 76 FR 18990 (April 6, 2011). To the extent that the final rule on *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review* revises the interpretation of appellate review applied in this decision, Patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the date of the final rule to file a

request for reconsideration. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one hundred eighty-two (182) days.**

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,659,118 B2

DATED : Feb. 9, 2010

INVENTOR(S) : Furcht 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 182 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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In re Patent No. 7320652
Issue Date: January 22,2008
Application No. 11238268
Filed: September 29,2005
Attorney Docket No. 601905-1010

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed April 2,2012 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of April 2,2012 .
This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7320652	2008-01-22	11238268	2005-09-29	601905-1010

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY
☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity		Small Entity	
Fee	Code	Fee	Code
○ 3 ½ year	(1551)	● 3 ½ year	(2551)
○ 7 ½ year	(1552)	○ 7 ½ year	(2552)
○ 11 ½ year	(1553)	○ 11 ½ year	(2553)

SURCHARGE
The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

MAINTENANCE FEE (37 CFR 1.20(e)-(g))
The appropriate maintenance fee must be submitted with this petition.

STATEMENT
THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

○ An attorney or agent registered to practice before the Patent and Trademark Office
● A sole patentee
○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.
○ A joint patentee; all of whom are signing this e-petition
○ The assignee of record of the entire interest

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Sole Patentee			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature.			
Signature	/Bryan Kilpatrick/	Date (YYYY-MM-DD)	2012-04-02
Name	Bryan Kilpatrick		

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.**

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
Alexandria, VA 22313-1450
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Decision Date : October 7,2011

In re Application of :

Eugene Chen

Application No : 11238279

Filed : 28-Sep-2005

Attorney Docket No : USGINZ04910

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY/AGENTOF RECORD

This is an electronic decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed October 7,2011

The request is **APPROVED.**

The request was signed by Johney U. Han (registration no. 45565) on behalf of all attorneys/agents associated with Customer Number 40518 . All attorneys/agents associated with Cusotmer Number 40518 have been withdrawn.

Since there are no remaining attorneys of record, all future communications from the Office will be directed to the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71, with correspondence address:

Name	USGI Medical, Inc.
Name2	
Address 1	1140 Calle Cordillera
Address 2	
City	San Clemente
State	CA
Postal Code	92673
Country	US

As a reminder, requester is required to inform the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71 of the electronically processed petition.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

Office of Petitions

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	11238279
Filing Date	28-Sep-2005
First Named Inventor	Eugene Chen
Art Unit	3738
Examiner Name	CHRISTOPHER PRONE
Attorney Docket Number	USGINZ04910
Title	Transgastric abdominal access

◉ Please withdraw me as attorney or agent for the above identified patent application and the practitioners of record associated with Customer Number: 40518

The reason(s) for this request are those described in 37 CFR:

10.40(b)(4)

Certifications

☒ I/We have given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intend to withdraw from employment

☒ I/We have delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled

☒ I/We have notified the client of any responses that may be due and the time frame within which the client must respond

Change the correspondence address and direct all future correspondence to the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71:

Name	USGI Medical, Inc.
Address	1140 Calle Cordillera
City	San Clemente
State	CA
Postal Code	92673
Country	US

I am authorized to sign on behalf of myself and all withdrawing practitioners.	
Signature	/Johney U. Han/
Name	Johney U. Han
Registration Number	45565

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	11238298
Filing Date	28-Sep-2005
First Named Inventor	Tracy Maahs
Art Unit	3779
Examiner Name	RYAN HENDERSON
Attorney Docket Number	USGINZ06407
Title	Disposable shapelocking system

◉ Please withdraw me as attorney or agent for the above identified patent application and the practitioners of record associated with Customer Number: 40518

The reason(s) for this request are those described in 37 CFR:

10.40(b)(4)

Certifications

☒ I/We have given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intend to withdraw from employment

☒ I/We have delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled

☒ I/We have notified the client of any responses that may be due and the time frame within which the client must respond

Change the correspondence address and direct all future correspondence to the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71:

Name	USGI Medical, Inc.
Address	1140 Calle Cordillera
City	San Clemente
State	CA
Postal Code	92673
Country	US

I am authorized to sign on behalf of myself and all withdrawing practitioners.	
Signature	/Johney U. Han/
Name	Johney U. Han
Registration Number	45565

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Decision Date : October 7,2011

In re Application of :

Tracy Maahs

Application No : 11238298

Filed : 28-Sep-2005

Attorney Docket No : USGINZ06407

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY/AGENTOF RECORD

This is an electronic decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed October 7,2011

The request is **APPROVED.**

The request was signed by Johney U. Han (registration no. 45565) on behalf of all attorneys/agents associated with Customer Number 40518 . All attorneys/agents associated with Cusotmer Number 40518 have been withdrawn.

Since there are no remaining attorneys of record, all future communications from the Office will be directed to the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71, with correspondence address:

Name	USGI Medical, Inc.
Name2	
Address 1	1140 Calle Cordillera
Address 2	
City	San Clemente
State	CA
Postal Code	92673
Country	US

As a reminder, requester is required to inform the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71 of the electronically processed petition.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

Office of Petitions

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	11238543
Filing Date	30-Sep-2005
First Named Inventor	Vahid Saadat
Art Unit	3773
Examiner Name	GREGORY ANDERSON
Attorney Docket Number	USGINZ04710
Title	Methods and apparatus for securing and deploying tissue anchors

◉ Please withdraw me as attorney or agent for the above identified patent application and the practitioners of record associated with Customer Number: 40518

The reason(s) for this request are those described in 37 CFR:

10.40(b)(4)

Certifications

☒ I/We have given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intend to withdraw from employment

☒ I/We have delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled

☒ I/We have notified the client of any responses that may be due and the time frame within which the client must respond

Change the correspondence address and direct all future correspondence to the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71:

Name	USGI Medical, Inc.
Address	1140 Calle Cordillera
City	San Clemente
State	CA
Postal Code	92673
Country	US

I am authorized to sign on behalf of myself and all withdrawing practitioners.	
Signature	/Johney U. Han/
Name	Johney U. Han
Registration Number	45565

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Decision Date : October 7,2011

In re Application of :

Vahid Saadat

Application No : 11238543

Filed : 30-Sep-2005

Attorney Docket No : USGINZ04710

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY/AGENTOF RECORD

This is an electronic decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed October 7,2011

The request is **APPROVED.**

The request was signed by Johney U. Han (registration no. 45565) on behalf of all attorneys/agents associated with Customer Number 40518 . All attorneys/agents associated with Cusotmer Number 40518 have been withdrawn.

Since there are no remaining attorneys of record, all future communications from the Office will be directed to the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71, with correspondence address:

Name	USGI Medical, Inc.
Name2	
Address 1	1140 Calle Cordillera
Address 2	
City	San Clemente
State	CA
Postal Code	92673
Country	US

As a reminder, requester is required to inform the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71 of the electronically processed petition.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

Office of Petitions

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In re Patent No. 7,937,265	: DECISION ON
Pasca, et al.	: REQUEST FOR RECONSIDERATION
Application No. 11/238,623	: of PATENT TERM ADJUSTMENT
Issue Date: May 3, 2011	:
Filed: September 27, 2005	:
Attorney Docket No. 16113-0035001	:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)", filed July 1, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected from one thousand two hundred four (1204) days to one thousand three hundred thirty-seven (1337) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **DISMISSED.**

On May 3, 2011, the instant application matured into U.S. Patent No. 7,937,265 with a patent term adjustment of one thousand two hundred four (1204) days. The Office determined a patent term adjustment of 1204 days based upon 861 days of Office delay pursuant to 37 CFR 1.703(a)(1) and 534 days of Office delay pursuant to 37 CFR 1.703(b), reduced by 191 days of overlap between "A" and "B" delay.

Patentee argues that even though he filed an RCE on March 16, 2010, he should be awarded 37 CFR 1.703(b) "over three year" delay from the time the Office mailed a Notice of Allowance on December 22, 2010 until the issue date of the patent. In other words, Patentee argue that no continued examination took place during this time period, and the Office should be accorded 133 additional days of delay pursuant to 37 CFR 1.703(b). Patentee's argument has been considered, but is not persuasive.

RELEVANT STATUTE AND REGULATIONS

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including —

> (i) any time consumed by continued examination of the application requested by the applicant under section 132(b);
>
> (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or
>
> (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 CFR 1.702(b) provides that:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:

> (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);
> (2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);
> (3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;
> (4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or
> (5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

Patentee's arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 534 days based on the application having been filed under 35 U.S.C. 111(a) on September 27, 2005, and a request for continued examination under 132(b) having been filed on March 16, 2010. In other

words, the 133 day period beginning on the date of mailing of the notice of allowance on December 22, 2010 to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay."

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1]. So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

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[1] Pursuant to 35 U.S.C. 132(b), 37 CFR 1.114 provides for continued examination of an application, as follows:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, (580 F. Supp. 2d 138), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than

three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)2. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. *Websters Collegiate Dictionary*, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

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[2] Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures3 permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

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[3] Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, a request for continued examination was filed on March 16, 2010, and the patent issued by virtue of that request on May 3, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on March 16, 2010 and ending on May 3, 2011 is not included in calculating Office delay.

CONCLUSION

In view thereof, it is concluded that the patent term adjustment of 1204 days indicated on the patent is correct.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

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In re Patent No. 7,937,265	: DECISION ON
Pasca, et al.	: REQUEST FOR RECONSIDERATION
Application No. 11/238,623	: of PATENT TERM ADJUSTMENT
Issue Date: May 3, 2011	:
Filed: September 27, 2005	:
Attorney Docket No. 16113-0035001	:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)", filed September 30, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected from one thousand two hundred four (1204) days to one thousand three hundred thirty-seven (1337) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **DENIED.** This decision is a final agency action within the meaning of 5 U.S.C. §704 for purposes of seeking judicial review. See MPEP 1002.02.

On May 3, 2011, the instant application matured into U.S. Patent No. 7,937,265 with a patent term adjustment of one thousand two hundred four (1204) days. The Office determined a patent term adjustment of 1204 days based upon 861 days of Office delay pursuant to 37 CFR 1.703(a)(1) and 534 days of Office delay pursuant to 37 CFR 1.703(b), reduced by 191 days of overlap between "A" and "B" delay.

Patentee argues that even though he filed an RCE on March 16, 2010, he should be awarded 37 CFR 1.703(b) "over three year" delay from the time the Office mailed a Notice of Allowance on December 22, 2010 until the issue date of the patent. In other words, Patentee argue that no continued examination took place during this time period, and the Office should be accorded 133 additional days of delay pursuant to 37 CFR 1.703(b). Patentee's argument has been considered, but is not persuasive.

RELEVANT STATUTE AND REGULATIONS

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including —

(i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

(ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or

(iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 CFR 1.702(b) provides that:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:

(1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);
(2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);
(3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;
(4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or
(5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

Patentee's arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 534 days based on the application having been filed under 35 U.S.C. 111(a) on September 27, 2005, and a

request for continued examination under 132(b) having been filed on March 16, 2010. In other words, the 133 day period beginning on the date of mailing of the notice of allowance on December 22, 2010 to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay."

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1]. So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8).

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[1] Pursuant to 35 U.S.C. 132(b) , 37 CFR 1.114 provides for continued examination of an application, as follows:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, (580 F. Supp. 2d 138), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)[2]. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. Websters Collegiate Dictionary, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b) (the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at

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[2] Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or

withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[3] permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, a request for continued examination was filed on March 16, 2010, and the patent issued by virtue of that request on May 3, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on March 16, 2010 and ending on May 3, 2011 is not included in calculating Office delay.

CONCLUSION

In view thereof, it is concluded that the patent term adjustment of 1204 days indicated on the patent is correct.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Cliff Congo at (571) 272-3207.

Anthony Knight
Director
Office of Petitions

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[3] Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

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PO BOX 1022
MINNEAPOLIS MN 55440-1022

MAILED
JAN 12 2012
OFFICE OF PETITIONS

In re Patent No. 7,937,265	: DECISION ON
Pasca, et al.	: REQUEST FOR RECONSIDERATION
Application No. 11/238,623	: of PATENT TERM ADJUSTMENT
Issue Date: May 3, 2011	:
Filed: September 27, 2005	:
Attorney Docket No. 16113-0035001	:

This is a decision on the petition captioned "PETITION UNDER 37 C.F.R. § 181(a)(3) TO INVOKE THE SUPERVISORY AUTHORITY OF THE DIRECTOR", filed Monday, December 12, 2011, requesting that the Director review the Final Agency Decision on Request for Reconsideration of Decision on Application for Patent Term Adjustment ("Decision") mailed by the Office of Petitions on September 13, 2011.

The Decision maintains that the above-identified patent is entitled to one thousand two hundred four (1204) days of patent term adjustment ("PTA"). Patentee requests that the Director review the decision and modify the PTA calculation to one thousand three hundred thirty-seven (1337) days.

The decision of the Director of the Office of Petitions has been reviewed. However, because no error has been found in the decision, the petition under 37 CFR §1.181 is **DENIED**.

The patent term adjustment remains 1204 days, as indicated in the final agency action of October 12, 2011.

Andrew Hirshfeld
Associate Commissioner for Patent Examination Policy

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AUG 02 2010

OFFICE OF PETITIONS

SEYFARTH SHAW LLP
131 S. DEARBORN ST., SUITE 2400
CHICAGO, IL 60603-5803

In re Application of	:	
Ronald F. CHILDS, et *al.*	:	
Application No. 11/238,642	:	DECISION GRANTING PETITION
Filed: September 29, 2005	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **31521-400300**	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed July 29, 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 March 29, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-7253.

This application is being referred to Technology Center AU 1782 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Monica A. Graves/
Petitions Examiner, Office of Petitions

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[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form* ***must*** *be completed and timely submitted to avoid abandonment of the application.*

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/238,708	09/29/2005	Robert P. Morris	1354/US	8803

52354 7590 01/31/2011
SCENERA RESEARCH, LLC
JENKINS, WILSON, TAYLOR & HUNT, P.A.
5400 Trinity Road
Suite 303
Raleigh, NC 27607

EXAMINER
RAHMAN, MOHAMMAD N

ART UNIT	PAPER NUMBER
2161	

MAIL DATE	DELIVERY MODE
01/31/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Kevin L. Wingate
SCENERA RESEARCH, LLC
5400 Trinity Road
Suite 303
Raleigh, North Carolina 27607

In re Application of: Robert P. MORRIS Appl. No.: 11/238,708 Filed: September 29, 2005 For: USER INTERFACES AND RELATED METHODS, SYSTEMS, AND COMPUTER PROGRAM PRODUCTS FOR ANTOMATICALLY ASSOCIATING DATA WITH A RESOURCE AS METADATA	DECISION ON PETITION UNDER 37 CFR § 1.103(a)

This is a decision on the petition for suspension of prosecutions under 37 CFR § 1.103(a) filed on 28 January 2011.

The petition is **GRANTED**.

Pursuant to applicant's requests filed on 28 January 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 the undersigned whose telephone number is (571) 272-3613.

/Vincent N. Trans/
Vincent N. Trans, SPRE/QAS
Technology Center 2100
Computer Architecture and Software

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/238,708	09/29/2005	Robert P. Morris	1354/US	8803

52354 7590 04/28/2011
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EXAMINER
RAHMAN, MOHAMMAD N

ART UNIT	PAPER NUMBER
2161	

MAIL DATE	DELIVERY MODE
04/28/2011	PAPER

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Kevin L. Wingate
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In re Application of: Robert P. MORRIS Appl. No.: 11/238,708 Filed: September 29, 2005 For: USER INTERFACE AND RELATED METHODS, SYSTEMS, AND COMPUTER PROGRAM PRODUCTS FOR AUTOMATICALLY ASSOCIATING DATA WITH A RESOURCE AS METADATA	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 26 April 2011.

The petition is **GRANTED**.

Pursuant to applicant's request filed on 26 April 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 the undersigned whose telephone number is (571) 272-3613.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/238,708	09/29/2005	Robert P. Morris	1354/US	8803

52354 7590 08/03/2011
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EXAMINER
RAHMAN, MOHAMMAD N

ART UNIT	PAPER NUMBER
2161	

MAIL DATE	DELIVERY MODE
08/03/2011	PAPER

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The time period for reply, if any, is set in the attached communication.

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In re Application of: Robert P. MORRIS Appl. No.: 11/238,708 Filed: September 29, 2005 For: USER INTERFACE AND RELATED METHODS, SYSTEMS, AND COMPUTER PROGRAM PRODUCTS FOR AUTOMATICALLY ASSOCIATING DATA WITH A RESOURCE AS METADATA	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 02 August 2011.

The petition is **GRANTED**.

Pursuant to applicant's request filed on 02 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 the undersigned whose telephone number is (571) 272-3613.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/238,708	09/29/2005	Robert P. Morris	1354/US	8803

52354 7590 11/04/2011
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EXAMINER
RAHMAN, MOHAMMAD N

ART UNIT	PAPER NUMBER
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MAIL DATE	DELIVERY MODE
11/04/2011	PAPER

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Kevin L. Wingate
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In re Application of: Robert P. MORRIS Appl. No.: 11/238,708 Filed: September 29, 2005 For: USER INTERFACE AND RELATED METHODS, SYSTEMS, AND COMPUTER PROGRAM PRODUCTS FOR AUTOMATICALLY ASSOCIATING DATA WITH A RESOURCE AS METADATA	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 01 November 2011.

The petition is **GRANTED**.

Pursuant to applicant's request filed on 01 November 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 the undersigned whose telephone number is (571) 272-3613.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/238,708	09/29/2005	Robert P. Morris	1354/US	8803

52354 7590 02/13/2012
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EXAMINER
RAHMAN, MOHAMMAD N

ART UNIT	PAPER NUMBER
2161	

MAIL DATE	DELIVERY MODE
02/13/2012	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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Kevin L. Wingate
SCENERA RESEARCH, LLC
5400 Trinity Road
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Raleigh, North Carolina 27607

In re Application of: Robert P. MORRIS Appl. No.: 11/238,708 Filed: September 29, 2005 For: USER INTERFACE AND RELATED METHODS, SYSTEMS, AND COMPUTER PROGRAM PRODUCTS FOR AUTOMATICALLY ASSOCIATING DATA WITH A RESOURCE AS METADATA	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 07 February 2012.

The petition is **GRANTED**.

Pursuant to applicant's request filed on 07 February 2012, 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 the undersigned whose telephone number is (571) 272-3613.

/Vincent N. Trans/
Vincent N. Trans, QAS
Technology Center 2100
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OFFICE OF PETITIONS

BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO IL 60610

In re Patent No. 8,008,089	: DECISION ON REQUEST
Fukuda, et al.	: FOR
Issue Date: August 30, 2011	: RECONSIDERATION OF
Application No. 11/238,896	: PATENT TERM ADJUSTMENT
Filed: September 29, 2005	: and
Atty Docket No.**11333/91**	: 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 seven hundred and eighty (780) 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 seven hundred and eighty (780) days is **GRANTED**.

The Office acknowledges receipt of $200.00 for the fee set forth in 37 CFR 1.18(e), which is a requirement of a petition under 37 CFR 1.705(d). Accordingly, the petition fee will not be refunded. No additional fees are required.

Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of 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 **seven hundred and eighty (780) days.**

Telephone inquiries specific to this matter should be directed to the undersigned, at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Attorney-Advisor
Office of Petitions

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 8,008,089 B2

DATED : Aug. 30. 2011

INVENTOR(S) : Fukuda, et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (737) days

Delete the phrase "by 737 days" and insert – by 780 days--

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BACON & THOMAS, PLLC
625 SLATERS LANE
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ALEXANDRIA, VA 22314-1176

Mail Date: 08/04/2010

Applicant	: Stefan Simon Gustaaf Moriau	: DECISION ON REQUEST FOR
Patent Number	: 7640708	: RECALCULATION of PATENT
Issue Date	: 01/05/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/239,085	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/30/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **0** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

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MAILED
OCT 24 2011
OFFICE OF PETITIONS

CANTOR COLBURN LLP
20 CHURCH STREET
22ND FLOOR
HARTFORD CT 06103

In re Patent No. 7,360,478	:	
Issued: April 22, 2008	:	
Application No. 11/239,209	:	ON PETITION
Filed: September 30, 2005	:	
Attorney Docket No. CFL0021US	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed September 27, 2011 and October 17, 2007.

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.

However, an itemization of the total deficiency payment is required by 37 CFR 1.28(c)(2)(ii). The itemization must include the following information:

(A) Each particular type of fee that was erroneously paid as a small entity, (e.g., basic statutory filing fee, two-month extension of time fee) along with the current fee amount for a non-small entity;
(B) The small entity fee actually paid, and when. This will permit the Office to differentiate, for example, between two one-month extension of time fees erroneously paid as a small entity but on different dates;
(C) The deficiency owed amount (for each fee erroneously paid); and

(D) The total deficiency payment owed, which is the sum or total of the individual deficiency owed amounts set forth in paragraph (c)(2)(ii)(C) of this section.

If the requirements of 37 CFR 1.28(c)(2) are not complied with (i.e. not itemizing the total deficiency ,etc.), such failure will either: be treated as an authorization for the Office to process the deficiency payment and charge the processing fee set forth in § 1.17(i), or result in a requirement for compliance within a one-month non-extendable time period under § 1.136(a) to avoid the return of the fee deficiency paper, at the option of the Office.

Petitioner has not provided a proper itemization of the total deficiency payment of $625.00 and therefore petitioner's deposit account has been charged the $130.00 processing fee as set forth in 37 CFR 1.17(i).

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.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: 042390.P22188	Patent Number: 7,668,614
Filing Date (or 371(b) or (f) Date): 09-29-2005	Issue Date: 02-23-2010
First Named Inventor: Nirmal Govind	
Title: OPTIMIZATION-BASED PROCESS SCHEDULING METHOD AND 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 /Shireen Irani Bacon/	Date July 14, 2010
Name (Print/Typed) Shireen Irani Bacon	Registration Number 40,494

***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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1279 OAKMEAD PARKWAY
SUNNYVALE, CA 94085-4040

Mail Date: 09/14/2010

Applicant	: Nirmal Govind	: DECISION ON REQUEST FOR
Patent Number	: 7668614	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/239,254	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/29/2005	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **556** 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.
11/239,276	09/29/2005	Robert P. Morris	1351/US	1173

52354 7590 01/31/2011
SCENERA RESEARCH, LLC
JENKINS, WILSON, TAYLOR & HUNT, P.A.
5400 Trinity Road
Suite 303
Raleigh, NC 27607

EXAMINER
BIBBEE, JARED M

ART UNIT	PAPER NUMBER
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MAIL DATE	DELIVERY MODE
01/31/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Kevin L. Wingate
SCENERA RESEARCH, LLC
5400 Trinity Road
Suite 303
Raleigh, North Carolina 27607

In re Application of: Robert P. MORRIS Appl. No.: 11/239,276 Filed: September 29, 2005 For: METHODS, SYSTEMS, AND COMPUTER PROGRAM PRODUCTS FOR RESOURCE-TO-RESOURC METADATA ASSOCIATION	DECISION ON PETITION UNDER 37 CFR § 1.103(a)

This is a decision on the petition for suspension of prosecutions under 37 CFR § 1.103(a) filed on 28 January 2011.

The petition is **GRANTED**.

Pursuant to applicant's requests filed on 28 January 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 the undersigned whose telephone number is (571) 272-3613.

/Vincent N. Trans/
Vincent N. Trans, SPRE/QAS
Technology Center 2100
Computer Architecture and Software

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/239,276	09/29/2005	Robert P. Morris	1351/US	1173

52354 7590 04/28/2011
SCENERA RESEARCH, LLC
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EXAMINER
BIBBEE, JARED M

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MAIL DATE	DELIVERY MODE
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Kevin L. Wingate
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In re Application of: Robert P. MORRIS Appl. No.: 11/239,276 Filed: September 29, 2005 For: METHODS, SYSTEMS, AND COMPUTER PROGRAM PRODUCTS FOR RESOURCE-TO-RESOURCE METADATA ASSOCIATION	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 26 April 2011.

The petition is **GRANTED**.

Pursuant to applicant's request filed on 26 April 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 the undersigned whose telephone number is (571) 272-3613.

/Vincent N. Trans/
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/239,276	09/29/2005	Robert P. Morris	1351/US	1173

52354 7590 08/03/2011
SCENERA RESEARCH, LLC
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EXAMINER
BIBBEE, JARED M

ART UNIT	PAPER NUMBER
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MAIL DATE	DELIVERY MODE
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Kevin L. Wingate
SCENERA RESEARCH, LLC
5400 Trinity Road
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Raleigh, North Carolina 27607

In re Application of:
Robert P. MORRIS
Appl. No.: 11/239,276
Filed: September 29, 2005
For: METHODS, SYSTEMS, AND COMPUTER PROGRAM PRODUCTS FOR RESOURCE-TO-RESOURCE METADATA ASSOCIATION

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 02 August 2011.

The petition is **GRANTED**.

Pursuant to applicant's request filed on 02 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 the undersigned whose telephone number is (571) 272-3613.

/Vincent N. Trans/
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/239,276	09/29/2005	Robert P. Morris	I351/US	1173

52354 7590 11/04/2011
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BIBBEE, JARED M

ART UNIT	PAPER NUMBER
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MAIL DATE	DELIVERY MODE
11/04/2011	PAPER

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Kevin L. Wingate
SCENERA RESEARCH, LLC
5400 Trinity Road
Suite 303
Raleigh, North Carolina 27607

In re Application of:
Robert P. MORRIS
Appl. No.: 11/239,276
Filed: September 29, 2005
For: METHODS, SYSTEMS, AND COMPUTER PROGRAM PRODUCTS FOR RESOURCE-TO-RESOURCE METADATA ASSOCIATION

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 01 November 2011.

The petition is **GRANTED**.

Pursuant to applicant's request filed on 01 November 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 the undersigned whose telephone number is (571) 272-3613.

/Vincent N. Trans/
Vincent N. Trans, SPRE/QAS
Technology Center 2100
Computer Architecture and Software

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/239,276	09/29/2005	Robert P. Morris	1351/US	1173

52354 7590 02/13/2012
SCENERA RESEARCH, LLC
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Kevin L. Wingate
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In re Application of: Robert P. MORRIS Appl. No.: 11/239,276 Filed: September 29, 2005 For: METHODS, SYSTEMS, AND COMPUTER PROGRAM PRODUCTS FOR RESOURCE-TO-RESOURCE METADATA ASSOCIATION	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 07 February 2012.

The petition is **GRANTED**.

Pursuant to applicant's request filed on 07 February 2012, 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 the undersigned whose telephone number is (571) 272-3613.

/Vincent N. Trans/
Vincent N. Trans, QAS
Technology Center 2100
Computer Architecture and Software

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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ATTN: PATENT DOCKETING
ROOM 2A-207
ONE AT & T WAY
BEDMINSTER NJ 07921

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AUG 16 2010

OFFICE OF PETITIONS

In re Application of	:	
Richard L. GUZMAN et al.	:	
Application No. 11/239,368	:	DECISION ON PETITION
Filed: September 30, 2005	:	
Attorney Docket No. 003493.00405	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 30, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, December 31, 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 April 01, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1,620.00, and (3) a proper statement of unintentional delay. Accordingly, the reply to the non-final Office action of December 31, 2008 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-4231.

This application is being referred to Technology Center AU 2113 for appropriate action by the Examiner in the normal course of business on the reply received.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

cc: **XIAOLEI SUN**
WOLFF & SAMSON, PC
ONE BOLAND DRIVE
WEST ORANGE, NJ 07052

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PCT LEGAL ADMINISTRATION

RABIN & BERDO, PC
1101 14TH STREET, NW
SUITE 500
WASHINGTON DC 20005

In re Application of AKIE et al.	:	
Application No.: 11/239,383	:	DECISION ON PETITION
Filing Date: 30 September 2005	:	
Attorney Docket No.: 31762-223988	:	UNDER 37 CFR 1.78(a)(3)
For: VOICE COMMUNICATION APPARATUS:		

This is a decision on Petitioner's "Petition for An Unintentionally Delayed Priority Claim under 37 CFR 1.78(a)(3) ", filed 28 October 2009 to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of priority to prior-filed PCT Application No. PCT/JP04/04642 filed on 31 March 2004.

At the time of filing the present application, applicant did not make a proper claim for domestic priority. Thus, the filing of a petition under 37 CFR 1.78(a)(3) is necessary. Such petition is hereby **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;

(2) the surcharge set forth in § 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) a reference to the prior-filed nonprovisional application has been included in an application data sheet, as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §§ 120 and 365(c) to the prior-filed PCT application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that this instant application is entitled to the benefit of the prior-filed application. In order for this application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. §§ 120 and 365(c) and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether this application is entitled to the benefit of the earlier filing date.

Any inquiries concerning this decision may be directed to Cynthia M. Kratz at (571) 272-3286. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

/Bryan Lin/
Bryan Lin
Legal Examiner
Office of PCT Legal Administration

UNITED STATES PATENT AND TRADEMARK OFFICE

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SUGHRUE-265550
2100 PENNSYLVANIA AVE. NW
WASHINGTON, DC 20037-3213

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AUG 09 2010

OFFICE OF PETITIONS

In re Application of :
Ryuichi Shiohara :
Application No. 11/239,427 :
Filed: September 30, 2005 :
Attorney Docket No. Q90474

ON PETITION

This is a decision on the petition, filed August 4, 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 July 12, 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 2621 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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2100 PENNSYLVANIA AVE. NW
WASHINGTON DC 20037-3213

MAILED
JAN 20 2011
OFFICE OF PETITIONS

In re Application of	:	
Ryuichi Shiohara, et al.	:	
Application No. 11/239,427	:	DECISION GRANTING PETITION
Filed: September 30, 2005	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. Q90474	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, January 19, 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 November 23, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to Technology Center AU 2621 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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JAMES M. SKORICH
377 ABW/JAN
2251 MAXWELL ST., SE
KIRTLAND AFB NM 87117-5773

MAILED
AUG 30 2010
OFFICE OF PETITIONS

In re Application of
Steven A. Lane, et al.
Application No. 11/239,439
Filed: September 27, 2005
Attorney Docket No. PRS103

ON PETITION

This is a decision on the petition under the unavoidable provisions of 37 CFR 1.137(a), filed August 5, 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 fee on or before June 7, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed March 5, 2010, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on June 6, 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 unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item(s) (3).

Petitioner asserts that timely payment of the issue fee was unavoidable as the delay was caused by examiner errors which resulted in the Supplemental Notices of Allowability mailed April 23, 2010 and June 7, 2010.

The showing of record is inadequate to establish unavoidable delay within the meaning of 35 U.S.C. 133 and 37 CFR 1.137(a).

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.

In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

A review of the written record indicates that the application was allowed and the Notice of Allowance and Fee(s) Due was mailed March 5, 2010. The Notice of Allowance and Fee(s) Due stated "**THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN <u>THREE</u> <u>MONTHS</u> FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. <u>THIS</u> <u>STATUTORY</u> <u>PERIOD</u> <u>CANNOT</u> <u>BE</u> <u>EXTENDED</u>**. SEE 35 U.S.C. 151." On April 23, 2010 and June 7, 2010 a Supplemental Notice of Allowability was mailed. These Supplemental Notices of Allowability did not restart the time period for paying the Issue Fee due. Moreover, the Supplemental Notices of Allowability stated "Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312" and further stated that "This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308."

Therefore, the showing of record indicates that petitioner knew or should have known: (1) the issue fee was due on or before June 7, 2010 and that this statutory period cannot be extended; (2) an amendment under 37 CFR 1.312 may have been filed to correct any errors that petitioner believed to exist in the examiners amendment, thus ensuring petitioner had claims submitted in the manner desired; and (3) that the application may have been withdrawn from issue. Furthermore, while the examiner issued Supplemental Notices of Allowability, this did not preclude petitioner from timely paying the issue fee due.

A delay resulting from the lack of knowledge or improper application of the patent statute, rules of practice or the MPEP does not constitute and "unavoidable" delay. See Haines v. Quigg, 673 F. Supp. 314, 317, 5 USPQ2d 1130, 1132 (N.D. Ind 1987); Vincent v. Mossinghoff, 230 USPQ 621, 624 (D.D.C. 1985); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (1891).

While the showing of the record is not sufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable, petitioner is not precluded from obtaining relief by filing a petition pursuant to 37 CFR 1.137(b) on the basis of the unintentional delay.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300.**

Telephone inquiries concerning this decision should be directed 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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2251 MAXWELL ST., SE
KIRTLAND AFB NM 87117-5773

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OCT 18 2010

OFFICE OF PETITIONS

In re Application of
Steven A. Lane, et al.
Application No. 11/239,439
Filed: September 27, 2005
Attorney Docket No. PRS103

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 9, 2010, to revive the above-identified application.

This application became abandoned for failure to timely pay the issue and publication fees on or before June 7, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed March 5, 2010. Accordingly, the date of abandonment of this application is June 6, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1510, (2) the petition fee of $1620; and (3) a proper statement of unintentional delay.

In view of the above, the petition is **GRANTED**.

Telephone inquiries concerning this decision should be directed to undersigned at (571) 272-1642. All other inquiries concerning this application should be directed to the Office of Data Management at their hotline 571-272-4200.

This application is being referred to Office of Data Management for processing into a patent.

April M. Wise
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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NASA JOHN F. KENNEDY SPACE CENTER
MAIL CODE: CC-A/OFFICE OF CHIEF COUNSEL
ATTN: PATENT COUNSEL
KENNEDY SPACE CENTER, FL 32899

MAILED

AUG 04 2010

OFFICE OF PETITIONS

In re Application of	:	
Calle et al.	:	
Application No. 11/239,445	:	DECISION ON PETITION
Filed: September 19, 2005	:	
Attorney Docket No. KSC-12723	:	

This is a decision on the petition under 37 CFR 1.137(b), filed June 9, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue fee on or before June 4, 2010, as required by the Notice of Allowance and Fee(s) Due mailed March 4, 2010. Accordingly, the application became abandoned on June 5, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,510 , (2) the petition fee of $1,620, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Alicia Kelley at (571)272-6059.

This application is being referred to the Office of Data Management for processing into a patent.

Carl Friedman
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO IL 60610

MAILED
JAN 13 2011
OFFICE OF PETITIONS

In re Application of	:	
Noriaki Koeda	:	
Application No. 11/239,574	:	DECISION ON PETITION
Filed: September 29, 2005	:	
Attorney Docket No. 11333/92	:	

This is a decision on the petition under 37 CFR 1.59(b), filed November 16, 2010, to expunge information from the above identified application.

The petition is **dismissed**.

Petitioner requests that the Request for Continued Examination, filed November 9, 2010, be expunged from the record.

The petition is deficient because there is no statement that:

(B) 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;
(C) the information has not otherwise been made public;
(D) there is a commitment on the part of the petitioner to retain such information for the period of any patent with regard to which such information is submitted.

Petitioner is directed to MPEP 724.05(II).

Telephone inquiries concerning this communication should be directed to Carl Friedman at (571) 272-6842.

Carl Friedman
Petitions Examiner
Office of Petitions

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Foley & Lardner LLP
3000 K STREET NW
SUITE 500
WASHINGTON DC 20007-5109

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FEB 28 2012

OFFICE OF PETITIONS

In re Application of	:	
Liang et al.	:	
Application No. 11/239,638	:	DECISION GRANTING PETITIONS
Filed: September 30, 2005	:	
Attorney Docket No. 063089-0200	:	

This is a decision on the petition under 37 CFR 1.78(a)(6), filed February 21, 2012, to accept an unintentionally delayed claim under 35 U.S.C. 119(e) for the benefit of prior-filed provisional Application No. 60/614,622 set forth in the concurrently filed Application Data Sheet (ADS). This is also a decision on the petition under 37 CFR 1.182 for expedited consideration of the petition.

The petitions are **GRANTED**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

(1) the reference required by 35 U.S.C. 119(e) and 37 CFR 1.78(a)(5)(i) to the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

Additionally, the present nonprovisional application must be pending at the time of filing of the reference to the prior-filed provisional application as required by 37 CFR 1.78(a)(5)(ii). Further, the nonprovisional application claiming the benefit of the prior-filed provisional application must have been filed within twelve months of the filing date of the prior-filed provisional application.

All of the above requirements having been satisfied, the late claim under 35 U.S.C. 119(e) for the benefit of the prior-filed provisional is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(6) should not be construed as meaning that this application is entitled to the benefit of the filing date of the prior-filed application. In order for this application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. 119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the benefit claim to the prior-filed provisional application, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3211. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

The application is being forwarded to Technology Center AU 1615 for consideration by the examiner of the claim under 35 U.S.C. 119(e) for the benefit of the prior-filed provisional application.

/Christina Tartera Donnell/

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/239,638	09/30/2005	1615	2930	063089-0200	56	3

CONFIRMATION NO. 8827

CORRECTED FILING RECEIPT

90368
Foley & Lardner LLP
3000 K STREET NW
SUITE 500
WASHINGTON DC, DC 20007-5109

OC000000052834285

Date Mailed: 02/28/2012

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)

Likan Liang, Boyds, MD;
Niraj Shah, Owings Mills, MD;
Padmanabh P. Bhatt, Rockville, MD;
Scott Ibrahim, Owings Mills, MD;

Power of Attorney: The patent practitioners associated with Customer Number 22428

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/614,622 09/30/2004

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: 11/01/2005

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/239,638**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

CONTROLLED RELEASE COMPOSITIONS OF GAMMA-HYDROXYBUTYRATE

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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Paper No.

FOLEY & LARDNER LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON WI 53701-1497

MAILED

OCT 26 2010

OFFICE OF PETITIONS

In re Application of :
Donald Brian Eidson :
Application No. 11/239,657 : ON APPLICATION FOR
Filed: September 28, 2005 : PATENT TERM ADJUSTMENT
Atty Docket No. 088245-2504 :

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 October 5, 2010. Applicant submits that the correct patent term adjustment to be indicated on the patent is one thousand three hundred forty-three (1343) days, not seven hundred twenty-eight (728) 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

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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).

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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SEP 23 2010

OFFICE OF PETITIONS

In re Patent No. 7,700,778	:	DECISION ON REQUEST
Goulet et al.	:	FOR
Application Number: 11/239,770	:	RECONSIDERATION OF
Issue Date: 04/20/2010	:	PATENT TERM ADJUSTMENT
Filing or 371(c) Date: 09/30/2005	:	
Atty Docket No.	:	
20811YPDA	:	

This is a decision on the petition filed on June 15, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be revised to indicate that the term of the above-identified patent is extended or adjusted by one thousand two hundred sixty-one (1261) days.

The petition to correct the patent term adjustment is **DISMISSED** with respect to making any change in the patent term adjustment determination under 35 U.S.C. § 154(b) of one thousand one hundred forty-two (1142) days.

As to the "B" delay period, the over three year period begins on October 1, 2008, and ends on April 20, 2010, and is 567 days. Considering the overlapping period of 109 days, beginning on November 24, 2008, the day after the date four months after a response to the first Office action was filed and ending on March 12, 2009, the date an Office action in response to the reply was mailed, the "B" delay is 458 (567 – 109) days.

Accordingly, no change will be made to the patent term adjustment of 1142 (684 days Office delay + 567 days three years delay – 109 overlapping days - 0 days of applicant delay) days as indicated on 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.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under

35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3231.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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Dallas TX 75380

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AUG 26 2010

OFFICE OF PETITIONS

In re Application of :
Phil Gibson et al. :
Application No. 11/239,833 :
Filed: September 30, 2005 :
Attorney Docket No. **P06500** :

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 application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed December 9, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on March 10, 2010.

The petition is **DISMISSED**.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item(s) (1).

The proposed reply required for consideration of a petition to revive must be either a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). *See* MPEP 711.03(c)(III)(A)(2). Since the amendment submitted on February 15, 2010, does not *prima facie* place the application in condition for allowance, the reply required must be a Notice of Appeal (and appeal fee), RCE, or the filing of a continuing application under 37 CFR 1.53(b). A copy of the Advisory Action explaining why the amendment was not accepted is enclosed with this decision.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "**Renewed Petition under 37 CFR 1.137(b)**." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300.**

Telephone inquiries concerning this decision should be directed to JoAnne Burke at (571) 272-4584.

JoAnne Burke
Petitions Examiner
Office of Petitions

Enclosed: Copy of Advisory Action

Advisory Action Before the Filing of an Appeal Brief	Application No. 11/239,833	Applicant(s) GIBSON ET AL.	
	Examiner JAY A. MORRISON	Art Unit 2168	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 July 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: 1-20.
   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: _____.

/Jay A Morrison/
Examiner, Art Unit 2168

The amendments to the claims raise new issues which necessitate further search and consideration and therefore the amendments will not be entered and the request for reconsideration does not place the application in condition for allowance.

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OCT 04 2010
OFFICE OF PETITIONS

In re Application of	:	
Phil Gibson et al.	:	
Application No. 11/239,833	:	ON PETITION
Filed: September 30, 2005	:	
Attorney Docket No. **P06500**	:	

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**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810, and the submission required by 37 CFR 1.114; (2) the petition fee of $1620; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-4584.

This application is being referred to Technology Center AU 2168 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/
JoAnne Burke
Petitions Examiner
Office of Petitions

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PAUL, HASTING, JANOFSKY & WALKER LLP
875 15TH STREET, NW
WASHINGTON DC 20005

MAILED
JAN 31 2011
OFFICE OF PETITIONS

In re Application of	:	
GRAHAM	:	
Application No. 11/239,849	:	DECISION ON PETITION
Filed: September 30, 2005	:	TO WITHDRAW
Attorney Docket No. 76130,00002.UTL	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed December 28, 2010.

The request is **NOT APPROVED** because it is moot.

A review of the file record indicates that the power of attorney to Todd M. Schneider and the attorneys of record associated with Customer No. 36183, has been revoked by the applicant of the patent application on January 12, 2011. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-6735.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

cc: KEVIN P. GRAHAM
2129 ROPER CIRCLE
BRENTWOOD CA 94513

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CLARK & ELBING LLP
101 FEDERAL STREET
BOSTON MA 02110

In re Application of	:	
Borsook et al.	:	DECISION ON APPLICATION
Application No. 11/240,007	:	FOR PATENT TERM ADJUSTMENT
Filed: September 30, 2005	:	
Docket No. 04843/146002	:	

This is a decision on the APPLICATION FOR PATENT TERM ADJUSTMENT, filed September 22, 2010. The petition will be treated under 37 CFR 1.705(b). Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from 222 days to 331 days.

The application for patent term adjustment is **DISMISSED**.

On June 29, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 222 days. On September 22, 2010, applicants timely submitted the instant application for patent term adjustment.[1]

Applicants assert there should be a 109 day adjustment entered in connection with the mailing of the Notice of Allowance on June 29, 2010. Applicants assert there was Office delay, pursuant to 37 CFR 1.702(a)(2), in taking action in response to the date on which a reply was filed.

The Office does not concur. On November 12, 2009, applicants filed a response to a final Office action, mailed May 12, 2009. A non-final Office action was mailed on January 28, 2010. On

[1] Office finance records indicate that the issue fee payment was received on September 22, 2010.

March 29, 2010, applicants filed a Petition for Withdrawal of Office Action. By decision, mailed April 5, 2010, the Technology Center Director instructed the examiner to prepare a supplemental Office action to address the overlooked amendment filed on November 12, 2009. A Notice of Allowance was mailed on June 29, 2010, which is four months and 109 days after applicants' November 12, 2009 reply was filed.

Applicants would have the Office accord 109 days of Office delay on the basis that the June 29, 2010 Notice of Allowance was mailed explicitly in response to their November 12, 2009 response after final Office action. Applicants argue that the Office failed to mail an action under 35 U.S.C. §132 not later than 4 months after applicants' November 12, 2009 reply under 37 C.F.R. § 1.113.

37 CFR 1.702(a) provides, in pertinent part, that grounds for adjustment of patent term due to examination delay include failure of the Office to

> (2) Respond to a reply under 35 U.S.C. 132 or to an appeal taken under 35 U.S.C. 134 not later than four months after the date on which the reply was filed or the appeal was taken;

Pursuant to 37 CFR 1.703(a), the periods are calculated as follows:

> (2) The number of days, if any, in the period beginning on the day after the date that is four months after the date a reply under § 1.111 was filed and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first;
>
> (3) The number of days, if any, in the period beginning on the day after the date that is four months after the date a reply in compliance with § 1.113(c) was filed and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first;

Regarding the period of Office delay, pursuant to 37 C.F.R. § 1.703(a)(3), applicants submitted a RCE and amendment on November 12, 2009. The Office mailed a non-final Office action on January 28, 2010, which is within four months of the receipt

date of applicants' reply. Accordingly, there was no Office delay pursuant to 37 CFR 1.703(a)(3).

In reply to applicants' November 12, 2009 reply, the Office mailed a non-final Office action on January 28, 2010. This was in response to and within four months of the date the reply was filed. The fact that the Office mailed a Notice of Allowance on June 29, 2010 which also referenced the reply filed November 12, 2009 does not negate the fact that the Office first mailed an action under 35 U.S.C. §132 in response on January 28, 2010. It is noted that the March 29, 2010 Technology Center Director's decision did **not** vacate the January 28, 2010 non-final Office action. It instructed the examiner to mail a *supplemental* Office action that addressed the overlooked November 12, 2009 amendment. Accordingly, Office delay in taking action in response to the reply filed November 12, 2009 was properly calculated as zero days.

In view thereof, the determination of patent term adjustment at the time of mailing of the notice of allowance remains two hundred twenty-two **(222) days** (409 days of Office delay - 187 days of Applicant delay).

The Office acknowledges receipt of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
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	11240039
Filing Date	30-Sep-2005
First Named Inventor	Lena Sojian
Art Unit	2458
Examiner Name	AFSHAWN TOWFIGHI
Attorney Docket Number	SLA1820.1
Title	METHODS AND SYSTEMS FOR ADMINISTRATING IMAGING DEVICE EVENT NOTIFICATION

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	/Scott C. Krieger/
Name	Scott C. Krieger
Registration Number	42768

UNITED STATES PATENT AND TRADEMARK OFFICE

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Decision Date : May 17,2011

In re Application of :

Lena Sojian

Application No : 11240039

Filed : 30-Sep-2005

Attorney Docket No : SLA1820.1

DECISION ON PETITION

UNDER CFR 1.137(b)

This is an electronic decision on the petition under 37 CFR 1.137(b), filed May 17,2011 , 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

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.
11/240,281	09/30/2005	Daniel E. Katzman	NEU-101.2 US	3976

7590 08/24/2010

Leon R. Yankwich
YANKWICH & ASSOCIATES, P.C.
201 Broadway
Cambridge, MA 02139

EXAMINER
WEDDINGTON, KEVIN E

ART UNIT	PAPER NUMBER
1614	

MAIL DATE	DELIVERY MODE
08/24/2010	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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AUG 2 4 2010

Leon R. Yankwich
YANKWICH & ASSOCIATES, P.C.
201 Broadway
Cambridge MA 02139

In re Application of	:
Katzman et al.	:
Serial No.: 11/240,281	: PETITION DECISION
Filed: 30 September 2005	:
Attorney Docket No.: NEU-101-2US	:

This is in response to the petition under 37 CFR 1.144, filed 9 July 2010, requesting reconsideration of the restriction requirement.

BACKGROUND

This application is a national application filed under 35 U.S.C. 111(a) and, as such, would be considered for restriction under US practice in chapter 800 of the MPEP.

On 24 September 2009, the examiner mailed a first restriction requirement in which claims 1-84 were divided into 2 groups as follows.

I. Claims 1-49 are drawn to a kit and a method of treating an impaired neurological function of an individual who has sustained a brain injury comprising administering to said individual an effective amount of apomorphine, classified in class 514, subclass 282.

II. Claims 50-84 are drawn to a method of treating an impaired neurological function of an individual who has sustained a brain injury comprising administering to said individual a dose of at least 1000 mg of L-dopa per day, classified in class 514, subclass 567.

On 23 October 2009, applicants responded by electing Group 1, claims 1-49, with traverse.

On 12 January 2010, the traversal "was noted but not deemed persuasive for the reasons set forth in the previous office action." The examiner withdrew claims 50-84 from consideration as being directed to non-elected inventions. The examiner then set forth a second restriction requirement in which the elected claims 1-49 were divided into 5 groups which were based upon limitations recited in different dependent claims. The groupings depended upon whether the method required a further

dopaminergic agent, (Group I)
an anti-emetic agent, (Group II)
a central nervous system enhancer or stimulant, (Group III)
a procedure to provide an electric or magnetic stimulation to the brain (Group IV) or
step of having an individual perform or task or exercise (Group).

On 12 February 2010, applicants elected Group I with traverse.

On 10 May 2010, the examiner prepared a non-final Office action in which the traversal "was noted but not deemed persuasive for the reasons set forth in the previous office action." The requirement made final. Claims 21-28, 40, 43, 44 and 50-84, drawn to non-elected species/inventions were withdrawn from consideration. Claims 1-20, 29-39, 41, 42 and 45-49 were examined on the merits.

On July 2010, Applicants filed this petition.

DISCUSSION

The petition and file history have been carefully considered. The petition requests withdrawal of the second restriction requirement.

MPEP 806.03 provides the following guidance on when a restriction requirement may not be appropriate:

> Where the claims of an application define the same essential characteristics of a single disclosed embodiment of an invention, restriction therebetween should never be required. This is because the claims are not directed to distinct inventions; rather they are different definitions of the same disclosed subject matter, varying in breadth or scope of definition.

Here, the examiner has taken limitations recited in different dependent claims to provide the basis for groupings I-V. This is problematic because the sum of the scope of Groups I-V does not equal the scope of claim 1. Moreover, the limitations are not mutually exclusive in nature. One could easily envision that a patient receiving an additional dopaminergic agent (Group I) may require both an anti-emetic to relieve constipation (Group II) and a extra central nervous system stimulant (Group III), while undergoing electrical or magnetic stimulation of the brain (Group IV) and being tested by a task or exercise (Group V).

While it may have been proper to require applicants to elect a species of one of several patentably distinct dopaminergic agents amongst those recited in claim 26, for example, (should concurrent examination be burdensome), it is counter to MPEP 806.03-806.04 to require applicants

to restrict a claim set to one of several non-mutually exclusive limitations recited in different dependent claims.

Finally, it is noted that the examiner failed to fully consider and address the traversal or to provide sufficient reasons or examples to support the conclusion that the second restriction requirement had been necessary.

DECISION

For these reasons, the petition is **GRANTED**.

The second restriction requirement between Groups I-V is withdrawn. Claims 1-49, will be rejoined and examined together concurrently in this application.

The Office action mailed 10 May 2010 is withdrawn as incomplete for not addressing claims 21-28, 29-39 and 43-44 on the merits.

The application will be forwarded to the examiner for preparation of an Office action consistent with this decision.

Should there be any questions about this decision, please contact Quality Assurance Specialist Julie Burke, by letter addressed to Director, Technology Center 1600, at the address listed above, or by telephone at 571-272-0512 or by facsimile sent to the general Office facsimile number, 571-273-8300.

Remy Yucel
Director, Technology Center 1600

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 06/21/11

TO SPE OF : ART UNIT 1629

SUBJECT : Request for Certificate of Correction for Appl. No.: 11240281 Patent No.: 7943632

CofC mailroom date: 06/16/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580
You can fax the Directors/SPE response to 571-273-3421

Note: Claim 43

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:

Ardin H. Marschel
ARDIN H. MARSCHEL
SUPERVISORY PATENT EXAMINER
AU1636 7-19-11

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20100921

DATE : September 21, 2010

TO SPE OF : ART UNIT 2881

SUBJECT : Request for Certificate of Correction on Patent No.: 7,456,403

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 KIM/
Supervisory Patent Examiner.Art Unit 2881

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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Paper No.

NIXON PEABODY LLP
300 S. RIVERSIDE PLAZA
16TH FLOOR
CHICAGO IL 60606

MAILED
DEC 20 2010
OFFICE OF PETITIONS

In re Application of :
Hornik et al. :
Application No. 11/240,407 : ON APPLICATION FOR
Filed: 09/30/2005 : PATENT TERM ADJUSTMENT
Atty Docket No. :
247079-000327USPT :

This is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT," filed on October 13, 2010. Applicants assert that the correct patent term adjustment is 1342 days rather than 946 days as indicated in the Determination of Patent Term Adjustment Under 35 U.S.C. § 154(b) mailed with the notice of allowance. Applicants assert entitlement to the additional patent term adjustment solely on the basis that the patent will issue more than 3 years after the filing date.

The instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

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[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3231.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions