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In re Patent No. 8,005,696	: DECISION ON
Marcken, et al.	: REQUEST FOR RECONSIDERATION
Application No. 11/335,170	: of PATENT TERM ADJUSTMENT
Issue Date: August 23, 2011	:
Filed: January 18, 2006	:
Attorney Docket No. 16113-4076001	:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)", filed October 21, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected from eight hundred ninety-four (894) days to one thousand twenty-six (1026) days.

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

On August 23, 2011, the instant application matured into U.S. Patent No. 8,005,696 with a patent term adjustment of eight hundred ninety-four (894) days. The Office determined a patent term adjustment of 894 days based upon 743 days of "A" delay, 492 days of "B" delay, reduced by 270 days of Applicant delay.

Petitioner argues that even though he filed an RCE on May 26, 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 April 18, 2011 until the issue date of the patent. In other words, Petitioner argue that no continued examination took place during this time period, and the Office should be accorded 128 additional days of delay pursuant to 37 CFR 1.703(b). Petitioner's argument has been considered, but is not persuasive.

RELEVANT STATUTE AND REGULATIONS

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

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

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

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

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

> (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);
> (2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);
> (3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;
> (4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or
> (5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

Petitioner's arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 37 CFR 1.702(b)(1) as 492 days based on the application having been filed under 35 U.S.C. 371(f) on January 18, 2006, and a request for continued

examination under 132(b) having been filed on May 26, 2010. In other words, the 128 day period beginning on the date of mailing of the notice of allowance on April 18, 2011 to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay".

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1]. So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

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

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[1] Pursuant to 35 U.S.C. 132(b) , 37 CFR 1.114 provides for continued examination of an application, as follows:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

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

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

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

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

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

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

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at

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

the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the 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 May 26, 2010, and the patent issued by virtue of that request on August 23, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on May 26, 2010 and ending on August 23, 2011 is not included in calculating Office delay.

In addition, petitioner also argues that in two instances where he was assessed Applicant delay of 88 days and 90 days, he should have instead been assessed Applicant delay of 86 days and 88 days because the due date fell on a weekend. Petitioner's argument has been considered, but is not persuasive. The three month reply as intended by 35 USC 154(b)(2)(C)(ii) refers to the date of reply by applicants not the date of mailing of the Office action by the USPTO. See also 35 USC 21(b). 37 CFR 1.704(b) addresses what ends the clock, not what starts the clock.

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

CONCLUSION

In view thereof, it is concluded that the patent term adjustment of 894 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
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In re Patent No. 8,005,696	: DECISION ON
Marcken, et al.	: REQUEST FOR RECONSIDERATION
Application No. 11/335,170	: of PATENT TERM ADJUSTMENT
Issue Date: August 23, 2011	:
Filed: January 18, 2006	:
Attorney Docket No. 16113-4076001	:

This is a decision on the "RESPONSE TO DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT", filed January 17, 2012, requesting that the patent term adjustment indicated on the above-identified patent be corrected from eight hundred ninety-four (894) days to one thousand twenty-six (1026) days.

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

On August 23, 2011, the instant application matured into U.S. Patent No. 8,005,696 with a patent term adjustment of eight hundred ninety-four (894) days. The Office determined a patent term adjustment of 894 days based upon 743 days of "A" delay, 492 days of "B" delay, reduced by 270 days of Applicant delay.

Petitioner argues that even though he filed an RCE on May 26, 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 April 18, 2011 until the issue date of the patent. In other words, Petitioner argue that no continued examination took place during this time period, and the Office should be accorded 128 additional days of delay pursuant to 37 CFR 1.703(b). Petitioner's argument has been considered, but is not persuasive.

RELEVANT STATUTE AND REGULATIONS

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

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

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

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

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

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

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

(1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);
(2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);
(3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;
(4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or
(5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

Petitioner's arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 37 CFR 1.702(b)(1) as 492 days based on the application having been filed under 35 U.S.C. 371(f) on January 18, 2006, and a request for continued

examination under 132(b) having been filed on May 26, 2010. In other words, the 128 day period beginning on the date of mailing of the notice of allowance on April 18, 2011 to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay".

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1]. So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

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

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[1] Pursuant to 35 U.S.C. 132(b), 37 CFR 1.114 provides for continued examination of an application, as follows:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

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

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

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

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

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

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

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at

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

the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the 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 May 26, 2010, and the patent issued by virtue of that request on August 23, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on May 26, 2010 and ending on August 23, 2011 is not included in calculating Office delay.

In addition, petitioner also argues that in two instances where he was assessed Applicant delay of 88 days and 90 days, he should have instead been assessed Applicant delay of 86 days and 88 days because the due date fell on a weekend. Petitioner's argument has been considered, but is not persuasive. The three month reply as intended by 35 USC 154(b)(2)(C)(ii) refers to the date of reply by applicants not the date of mailing of the Office action by the USPTO. See also 35 USC 21(b). 37 CFR 1.704(b) addresses what ends the clock, not what starts the clock.

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

CONCLUSION

In view thereof, it is concluded that the patent term adjustment of 894 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

UNITED STATES PATENT AND TRADEMARK OFFICE

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NOV 16 2010

OFFICE OF PETITIONS

SCHWABE WILLIAMSON & WYATT
PACWEST CENTER, SUITE 1900
1211 SW FIFTH AVENUE
PORTLAND, OR 97204

In re Application of
Dean L. MONTHEI
Application No. 11/335,218
Filed: January 19, 2006
Attorney Docket No. TQ0090

CORRECTED
DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 2, 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, May 27, 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 August 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 $1620 and (3) a proper statement of unintentional delay.

Per instructions from petitioner, the extension of time fee of $1110, filed December 4, 2009, was applied to the petition fee.

The Power of Attorney filed November 9, 2010, has been accepted and made of record.

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

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

This application is being referred to Technology Center AU 2831 for appropriate action by the Examiner in the normal course of business.

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

Cc: JOSEPH PUGH
2300 NE BROOKWOOD PARKWAY
HILLSBORO, OR 97124

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/335,218	01/19/2006	Dean L. Monthei	TQ0090

CONFIRMATION NO. 6176

POA ACCEPTANCE LETTER

86128
Schwabe Williamson & Wyatt
Pacwest Center, Suite 1900
1211 SW Fifth Avenue
Portland, OR 97204

OC000000044502648

Date Mailed: 11/16/2010

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 11/09/2010.

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.

/dcgoodwyn/

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

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Integral Docket
304 Indian Trace, #750
Weston FL 33326

MAILED

OCT 06 2011

OFFICE OF PETITIONS

In re Application of	:	
Thomas Aisenbrey	:	
Application No. 11/335,363	:	DECISION ON PETITION
Filed: January 19, 2006	:	TO WITHDRAW
Attorney Docket No. 2200-0057	:	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 29, 2011.

The request is **NOT APPROVED.**

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

Accordingly, the request to withdraw from record cannot be approved because a forwarding address was not provided. The request to change the correspondence address should be that of the: (1) the first named inventor; or (2) an assignee of the entire interest under 37 C.F.R 3.71. If an assignee has intervened in this application then a Statement under 37 CFR 3.73(b), or a copy of the actual assignment must be submitted with a renewed request.

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

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

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

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IBM CORP. (END/RCR)
C/O ROLINK LAW FIRM, P.C.
24 N. MAIN ST
KINGWOOD TX 77339

MAILED

DEC 21 2010

OFFICE OF PETITIONS

In re Application of	:	
William L. **MORACA, JR.**, et al	:	
Application No. 11/335,450	:	DECISION ON PETITION
Filed: January 19, 2006	:	
Attorney Docket No. AUS920050781US1	:	

This is a decision on the petition under 37 CFR 1.59(b), filed April 21, 2010, to expunge information from the above identified application.

The petition is **DISMISSED**.

Petitioner requests that the documents entitled Exhibit A, Exhibit B, and Exhibit C, filed January 28, 2009, be expunged from the record. Petitioner indicates that the information is a trade secret or otherwise proprietary information, has not otherwise been made public, has identified the party in interest, and submitted the required fee under 37 CFR 1.17(g). Finally, petitioner recognized the duty to retain the information documents for the period of any patent that may issue based on the instant serial number 11/335,450.

A review of the file history indicates that on April 17, 2009, the examiner in charge of this application issues an office action in response to the 37 CFR 1.131 Declaration of Prior Use, indication that the information submitted had been considered and found to be not sufficiently persuasive to overcome the rejections of record. Hence the material requested to be deleted has become part of the record and is clearly material to the prosecution history. Therefore the Exhibit A, page 9-14 "Disclosure", Exhibit B, pages 15-19, "Main Idea" and Exhibit C, pages 20-21 Untitled or Flowchart, will not be expunged, and the petition dismissed.

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

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

Thurman K. Page
Petitions Examiner
Office of Petitions

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C/O ROLNIK LAW FIRM, P.C.
24 N. MAIN ST.
KINGWOOD, TX 77339

MAILED
MAR 29 2011
OFFICE OF PETITIONS

In re Application of :
William L. MORACA, Jr., et al :
Application No. 11/335,450 : DECISION ON PETITION
Filed: January 19, 2006 :
Attorney Docket No. AUS920050781US1 :

This is a decision on the renewed petition under 37 CFR 1.59(b), filed January 5, 2011, to expunge information from the above identified application.

The petition is **GRANTED**.

Petitioner requests that a document entitled Exhibit A, Exhibit B, and Exhibit C, filed January 28, 2009, be expunged from the application. The petition fee of $400.00 set forth in 37 CFR 1.17(f) was previously submitted.

In a paper file, the unintentionally submitted exhibits could, but not necessarily would, have been physically removed from the file wrapper and returned to applicant. In the IFW realm the corresponding action(s) is to close the document and also remove such from the listing of "Public[ly available] Documents." It is agreed that it would be appropriate in this instance to close the information in application serial no. 11/335,450 that was erroneously filed in the above identified application, and also remove such from the listing of publicly available documents for this Image File Wrapper (IFW).

Applicant is required to retain the expunged material(s) for the life of any patent which issues on the above-identified application.

Telephone inquiries concerning this communication should be directed to the undersigned at 571-27-0602.

Thurman K. Page
Petitions Examiner
Office of Petitions

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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA VA 22314

MAILED

DEC 16 2010

OFFICE OF PETITIONS

In re Application of	:	
Takehiko Nakano, et al.	:	
Application No. 11/335,466	:	DECISION GRANTING PETITION
Filed: January 20, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 283817US6 CONT	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, December 15, 2010, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on November 8, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 2437 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 12/27/11

TO SPE OF : ART UNIT 3751

SUBJECT : Request for Certificate of Correction for Appl. No.: 11335501 Patent No.: 7513278

CofC mailroom date: 12/15/11

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580
You can fax the Directors/SPE response to 571-273-3421

Note: **Should the changes in fig. 4 be approved?**

Lamonte Newsome

Certificates of Correction Branch

571-272-3421

Thank You For Your Assistance

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

☒ **Approved** — **All** changes apply.

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

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

Comments: _____

GREGORY HUSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

3751

SPE **Art Unit**

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NDQ&M WATCHSTONE LLP
300 NEW JERSEY AVENUE, NW
FIFTH FLOOR
WASHINGTON DC 20001

MAILED
MAR 14 2011
OFFICE OF PETITIONS

In re Application of	:	
MORISHITA, Shuji	:	
Application No. 11/335,570	:	DECISION ON PETITION
Filed: January 20, 2006	:	TO WITHDRAW
Attorney Docket No. MIY.001.0001.NP	:	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 February 04, 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: **EC TECHNO, INC.**
CREATION CORE HIGASHI-OSAKA 4F
1-4-17 ARAMOTOKITA
HIGASHI-OSAKA CITY, JAPAN

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Patent No. : 7,525,425 B2
Ser. No. : 11/335,699
Inventor(s) : Diem
Issued : April. 28, 2009
Title : SYSTEM AND METHOD FOR DEFINING AN EVENT BASED ON RELATIONSHIP BETWEEN AN OBJECT LOCATION AND A USER-DEFINED ZONE
Docket No. : 65966-227494
Re: Request for Certificate of Correction

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

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

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

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

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

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

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

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

By hand:	Customer Service Window Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(703) 872-9306 ATTN: Office of Petitions

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

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

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Paper No.

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

MAILED
MAR 16 2011
OFFICE OF PETITIONS

In re Patent No. 7,793,007	:	
Ramsdale	:	DECISION ON
Issue Date: September 7, 2010	:	REQUEST FOR
Application No. 11/335,800	:	RECONSIDERATION OF
Filed: January 19, 2005	:	PATENT TERM ADJUSTMENT
Attorney Docket No. 16430US02	:	

This is a decision on the "APPLICATION FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT UNDER 35 U.S.C. § 154(b) INDICATED IN THE PATENT (37 CFR § 1.705(d))," filed November 8, 2010, requesting that the patent term adjustment determination for the above-identified patent be changed from one thousand, one hundred and five (1105) days to one thousand, one hundred and six (1106) days.

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

On September 7, 2010, the above-identified application matured into US Patent No. 7,793,007 with a patent term adjustment of 1105 days. This request for reconsideration of patent term adjustment was timely filed within two months of the issue date of the patent.[1] See 37 C.F.R. § 1.705(d).

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

Patentee requests recalculation of the patent term adjustment to include a 434-day period of adjustment pursuant to 37 C.F.R.

[1] It is noted that November 7, 2010 fell on a Sunday.

§ 1.703(b).[2] Patentee maintains entitlement to a period of adjustment due to the Three Year Delay by the Office, pursuant to 37 CFR § 1.703(b), of 434 days.

The period of adjustment of 803 days of examination delay is not in dispute.

The period of reduction of 0 days of Applicant delay is not in dispute.

The 131-day period of overlap (129 + 2) between the examination delay and the B-delay is not in dispute.

The sole item that is in dispute is when the RCE-cutoff should commence. The Office maintains that 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, and the over three year period begins on January 20, 2009 and ends on March 28, 2010, *the day before the first RCE was filed*, which amounts to 433 (not 434) days. See U.S.C. 154(b)(1)(B)(i). As such, the patent term adjustment is 1105, not 1106 days.

Patentee argues that the day on which the RCE was filed should be included in the period of B-delay. As such, Patentee argues that the over three period begins on January 29, 2009 and ends on March 29, 2010, *the day on which the RCE was filed*, which amounts to 434[3] days, which results in a patent term adjustment of 1106[4] days.

The Office holds that the day on which the RCE was filed is not included in the over three year period.

37 C.F.R. § 1.703(b)(1) sets forth, in toto:

> (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:

---

[2] A Request for Continued Examination (RCE) was filed 434 days after the application was filed.
[3] Petition, page 7.
[4] Id.

> (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 (emphasis added) and ending on the date the patent was issued;

It follows that the proper manner of calculating the RCE-cutoff is to terminate the over three-year period on the day before the RCE was filed, since 37 C.F.R. § 1.703(b)(1) expressly states that the day on which the RCE was filed is not included in the over three-year period.

Accordingly, at issuance, the Office properly entered 433 additional days of patent term adjustment for the Office taking in excess of 3 years to issue the patent. It follows that Patentee is entitled to a patent term adjustment of 1105 days:

	803 days of examination delay
+	433 days attributable to the Office taking in excess of 3 years to issue the patent
–	131 days of overlap
–	0 days of Applicant delay.

In view thereof, no adjustment to the patent term will be made. It follows that a certificate of correction is not 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 37 C.F.R. § 1.136.

Any response to this decision should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail,[5] hand-delivery,[6] or facsimile.[7] Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web.[8]

---

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

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3225.[9]

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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 Patent No. 7,640,379
Issued: December 29, 2009
Application No. 11/335,801
Filed: January 19, 2006
Attorney Docket No. 16432US02

: DECISION ON REQUEST
: FOR RECONSIDERATION
: OF PATENT TERM ADJUSTMENT

This is a decision on the REQUEST FOR RECONSIDERATION OF USPTO RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH filed on June 4, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting correction of the patent term adjustment indicated on the above-identified patent.

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

On April 29, 2010, patentee filed a Request for Recalculation of Patent Term Adjustment in View of Wyeth. On May 5, 2010, the Office mailed a decision granting the petition under 37 CFR 1.705(d) to the extent that a certificate of correction would be issued indicating that the term of the patent was extended or adjusted by 1002 days.

Applicants contest the application(s) of 37 CFR § 1.704(b) to reduce the patent term adjustment by one (1) day in that the Office action response was filed on the first business day after a deadline falling on a weekend or holiday and thus was not late.

Applicant's arguments have been considered, but not found to be persuasive.

Rule 1.704(b) sets forth, in pertinent part:

> an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § **1.703** shall be reduced

> by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

A Notice of Allowance was mailed August 11, 2009 and the issue fee was therefore due on November 11, 2009. November 11, 2009 was a holiday and thus, the issue fee was received on November 12, 2009 which is three months and one day later. As such, a reduction of one day was assessed. Patentees have argued that this is improper, as November 11, 2009 fell on a Holiday. However, Petitioner will note that 35 U.S.C. 154(b)(2)(C)(ii)[1] does not require that a reply be filed in the Office within its three (3) month grace period, but simply specifies that there is a patent term adjustment reduction if a reply is not filed within this three (3) month period. Therefore, the "carry-over" provisions of 35 U.S.C. § 21(b)[2] does not apply to the three (3) month period in 35 U.S.C. 154(b)(2)(C)(ii).

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

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

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

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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[1] "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."

[2] "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."

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 06-28-11

TO SPE OF : ART UNIT 2629

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/3355813 Patent No.: 7791561

CofC mailroom date: 06-08-11

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

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: _____

SPE [signature] Art Unit 2629

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110720

DATE : July 20, 2011

TO SPE OF : ART UNIT 1657

SUBJECT : Request for Certificate of Correction on Patent No.: 7718395

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:

/JON P WEBER/
Supervisory Patent Examiner.Art Unit 1657

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MICHAEL A. GUTH
2-2905 EAST CLIFF DRIVE
SANTA CRUZ CA 95062

MAILED

SEP 19 2011

OFFICE OF PETITIONS

In re Application of	:	
William A. Moffat et al.	:	
Application No. 11/335,945	:	DECISION ON PETITION
Filed: January 20, 2006	:	
Attorney Docket No. 1053-US	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 29, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to properly reply in a timely manner to the final Office action mailed, January 22, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on April 23, 2010. A Notice of Abandonment was mailed on August 31, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a RCE (Request for Continued Examination, with the required fee of $405, (2) the petition fee of $810, and (3) a proper statement of unintentional delay. Accordingly, the RCE is accepted as being unintentionally delayed.

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

This application is being referred to Technology Center AU 1716 for appropriate action by the Examiner in the normal course of business on the reply received August 29, 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
www.uspto.gov

Decision Date : August 5,2011

In re Application of :

Lawrence Roberts

Application No : 11335973

Filed: 20-Jan-2006

Attorney Docket No : ANA1P002

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY/AGENT OF RECORD

This is an electronic decision on the Request to Withdraw as attorney or agent of record under 37 CFR.§ 1.36(b), filed August 5,2011

The request is **APPROVED**

The request was signed by Kevin J. Zilka (registration no. 41429) on behalf of all the attorneys/agents of record. All attorneys/agents of record have been withdrawn.

Since there are no remaining attorneys of record, all future communications from the Office will be directed the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71 with correspondence address:

Name	Lawrence Roberts
Name2	
Address 1	238 Hillview Ave.
Address 2	
City	Redwood City
State	CA
Postal Code	94062
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	11335973
Filing Date	20-Jan-2006
First Named Inventor	Lawrence Roberts
Art Unit	2463
Examiner Name	MOHAMMAD ANWAR
Attorney Docket Number	ANA1P002
Title	System, method, and computer program product for controlling output port utilization

◉ Please withdraw me as attorney or agent for the above identified patent application and all the practitioners of record.

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

10.40(c)(5)

Certifications

☒ I/We have given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intend to withdraw from employment

☒ I/We have delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled

☒ I/We have notified the client of any responses that may be due and the time frame within which the client must respond

Change the correspondence address and direct all future correspondence to the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71:

Name	Lawrence Roberts
Address	238 Hillview Ave.
City	Redwood City
State	CA
Postal Code	94062
Country	US

I am authorized to sign on behalf of myself and all withdrawing practitioners.	
Signature	/KEVINZILKA/
Name	Kevin J. Zilka
Registration Number	41429

UNITED STATES PATENT AND TRADEMARK OFFICE

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

THE NOBLITT GROUP, PLLC
4800 NORTH SCOTTSDALE ROAD
SUITE 6000
SCOTTSDALE AZ 85251

MAILED
AUG 03 2010
OFFICE OF PETITIONS

In re Application of	:	
Howard et al.	:	
Application No. 11/336,145	:	DECISION ON PETITION
Filed: 01/19/2006	:	
Attorney Docket No. RAYTH.2300	:	

This is a decision on the petition under 37 CFR 1.181, filed March 24, 2010, to withdraw the holding of abandonment in the above-identified application.

On October 28, 2009, the Office mailed an Office action, which set a period of thirty days or one month, whichever was longer, to reply. In the absence of the timely filed reply, the application became abandoned on November 29, 2009. On January 22, 2010, the Office mailed a Notice of Abandonment.

Registered patent practitioner, Gary W. Newson, stated that a search of the file jacket and docket records indicates that the Office communication of October 28, 2009, was not received at the correspondence address of record.

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.

As stated in Section 711.03(c)(I)(A) of the Manual for Patent Examining Procedure:

> In Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of Delgar, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of

abandonment and remail the Office action. That is, the reasoning of Delgar is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133).

To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).

After reviewing the documents submitted on petition, the Office concludes that the showing of record is sufficient to warrant withdrawal of the holding of abandonment. The practitioner submitted a copy of the master docket where the Office action of October 28, 2009, would have been entered had it been received and docketed. The practitioner stated the Office action would have been entered in this docketing system had it been received and docketed. The practitioner attested to the fact that a search of the records indicated that the Office action was not received at the correspondence address of record. Accordingly, petitioner presented the required showing under 37 CFR 1.181.

The petition under 37 CFR 1.181 is **GRANTED**. The holding of abandonment is hereby withdrawn. No petition fee is required.

This application is being referred to Technology Center Art Unit 3661 for further action on the reply submitted March 24, 2010.

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

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Carmen Patti Law Group, LLC
One N. LaSalle Street
44th Floor
Chicago, IL 60602

Mail Date: 08/02/2010

Applicant	: Mohamad Mehio	: DECISION ON REQUEST FOR
Patent Number	: 7653374	: RECALCULATION of PATENT
Issue Date	: 01/26/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/336,149	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/20/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **947** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Stolowitz Ford Cowger LLP
621 SW Morrison St
Suite 600
Portland, OR 97205

Mail Date: 08/31/2010

Applicant	: Donald Edward Banks	: DECISION ON REQUEST FOR
Patent Number	: 7661025	: RECALCULATION of PATENT
Issue Date	: 02/09/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/336,167	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/19/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **939** 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.

Issue Classification	Application/Control No.	Applicant(s)/Patent under Reexamination	
	11/336,198	SCHATZ, OCTAVIAN	
	Examiner	Art Unit	
	FRANK LU	1634	

ISSUE CLASSIFICATION

ORIGINAL						CROSS REFERENCE(S)						
CLASS				SUBCLASS	CLASS	SUBCLASS (ONE SUBCLASS PER BLOCK)						
435				6	435	91.1						
INTERNATIONAL CLASSIFICATION					536	23.1	24.3	24.33	25.3			
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)		Total Claims Allowed: 13
(Legal Instruments Examiner) (Date)	/Frank W Lu/ 10/31/2011 (Primary Examiner) (Date)	O.G. Print Claim(s): 1 — O.G. Print Fig.: None

☐ Claims renumbered in the same order as presented by applicant ☐ CPA ☐ T.D. ☐ R.1.47

Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original
	1		31		61		91		121		151		181
	2		32		62		92		122		152		182
	3		33		63		93		123		153		183
	4		34		64		94		124		154		184
	5		35		65		95		125		155		185
	6		36		66		96		126		156		186
	7		37		67		97		127		157		187
	8	1	38		68		98		128		158		188
	9		39		69		99		129		159		189
	10	2	40		70		100		130		160		190
	11	3	41		71		101		131		161		191
	12	4	42		72		102		132		162		192
	13	5	43		73		103		133		163		193
	14	6	44		74		104		134		164		194
	15	7	45		75		105		135		165		195
	16	8	46		76		106		136		166		196
	17	10	47		77		107		137		167		197
	18	11	48		78		108		138		168		198
	19	12	49		79		109		139		169		199
	20	13	50		80		110		140		170		200
	21	9	51		81		111		141		171		201
	22		52		82		112		142		172		202
	23		53		83		113		143		173		203
	24		54		84		114		144		174		204
	25		55		85		115		145		175		205
	26		56		86		116		146		176		206
	27		57		87		117		147		177		207
	28		58		88		118		148		178		208
	29		59		89		119		149		179		209
	30		60		90		120		150		180		210

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 11/15/2011

TO SPE OF : ART UNIT 3711

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/236846 Patent No.: 8016582

CofC mailroom date: 11/3/2011

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.

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

Comments: Change to typographical error & do not change scope of claims.

Corbett B Coburn

CORBETT B. COBURN
PRIMARY EXAMINER

SPE

3724
Art Unit

PTOL-366 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

OK TO ENTER: /C.C./

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patentee: Jay S. Walker, et al.
Patent No.: 8,016,657 B2
Issued: September 13, 2011
Title: METHOD AND APPARATUS FOR DETERMINING A GAME SERIES COMPRISING A PLURALITY OF INDIVIDUALLY SELECTABLE WAGERING GAMES
Docket No.: 3718582-00192

REQUEST FOR CERTIFICATE OF CORRECTION PURSUANT TO 37 CFR § 1.323

Certificate of Correction Branch
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

It is respectfully requested that the above-referenced patent be amended as follows:

IN THE CLAIMS:

In Claim 19, column 31, line 54, delete "first series of."

In Claim 20, column 32, line 53, delete "different."

REMARKS

Upon the careful review of recently issued U.S. Patent No. 8,016,657 B2, the above-listed mistakes were noted. Patentee prepared this request for correction in order to correct these mistakes. These mistakes are of a clerical nature and of minor character, and occurred in good faith. Thus, the correction of these mistakes does not constitute new matter and does not make necessary a reexamination of the patent. Further, the requested changes to the claims do not change the scope of Patentee's rights granted under this patent.

Patentee is hereby requesting the issuance of a Certificate of Correction pursuant to 37 C.F.R. § 1.323. A proposed Certificate of Correction is also submitted herewith.

Please charge Deposit Account No. 02-1818 the $100.00 fee and any additional fees due in connection with this request.

Patentee respectfully solicits the granting of the requested Certificate of Correction.

If there are any questions, please telephone the undersigned.

Respectfully submitted,

K&L Gates LLP

By: _____

Adam H. Masia
Reg. No. 35,602
Customer No. 29159
(312) 807–4284

Dated: November 2, 2011

PTO/SB/44 (09-07)
Approved for use through 08/31/2013. OMB 0651-0033
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 8,016,657 B2

APPLICATION NO.: 11/336,245

ISSUE DATE : September 13, 2011

INVENTOR(S) : Jay S. Walker, 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:

In Claim 19, column 31, line 54, delete "first series of."

In Claim 20, column 32, line 53, delete "different."

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

Adam H. Masia, K&L Gates LLP, P.O. Box 1135, Chicago, Illinois 60690-1135

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/336,273	01/20/2006	Joshua Allen Maurer	9885M	3533

27752 7590 06/30/2011
THE PROCTER & GAMBLE COMPANY
Global Legal Department - IP
Sycamore Building - 4th Floor
299 East Sixth Street
CINCINNATI, OH 45202

EXAMINER
KASHNIKOW, ERIK

ART UNIT	PAPER NUMBER
1782	

MAIL DATE	DELIVERY MODE
06/30/2011	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE
BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte JOSHUA ALLEN MAURER, FRANK WILLIAM DENOME, BRUNO JEAN-PIERRE MATTHYS and HANIF BADOURALY

Application 11/336,273
Technology Center 1700

DECISION ON PETITION

This is a decision on the "Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b)" filed June 1, 2011 (Petition).

See 75 Fed. Reg. 15,689-90 (Mar. 30, 2010) for authority of the Chief Administrative Patent Judge.

FINDINGS

1. On February 3, 2009, Appellants filed an Appeal Brief.

2. On March 10, 2009, the Patent Appeal Center Specialist issued a Notification of Non-Compliant Appeal Brief (37 CFR 41.37). The Notification granted Appellants a period of one month or thirty days, whichever was longer, within which to file a corrected brief, i.e., until April 10, 2009.

3. On April 1, 2010, the Examiner issued a Notice of Abandonment.

4. On June 1, 2011, Appellants filed the present Petition and an Appeal Brief.

7. With respect to the revival of an unintentionally abandoned application, 37 C.F.R. § 1.137(b) provides that:

> (b) *Unintentional.* If the delay in reply by applicant or patent owner was unintentional, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination prosecution terminated under § 1.550(d) or § 1.957(b) or limited under § 1.957(c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:
>
> (1) The reply required to the outstanding Office action or notice, unless previously filed;
>
> (2) The petition fee as set forth in § 1.17(m);
>
> (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and
>
> (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

8. The Petition to Revive filed June 1, 2011, was accompanied by:

(a) an Appeal Brief;

(b) the Petition fee; and

(c) A statement that "The entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional."

9. There are no facts known by the Office that would cause the Office to question whether either the abandonment or delay in filing the Petition to Revive was unintentional.

10. Since the application was filed after June 8, 1995, on January 20, 2006, no terminal disclaimer is required.

11. A review of the Appeal Brief filed on June 1, 2011 indicates that it is in compliance with 37 C.F.R. § 41.37.

DISCUSSION

As indicated above, Appellants have complied with all of the requirements of a petition under 37 C.F.R. § 1.137(b) for revival of an unintentionally abandoned application.

DECISION

In view of the foregoing, the "Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b)" is GRANTED and the Appeal Brief of June 1, 2011 will be returned to the Examiner for preparation of an Examiner's Answer.

Merrell C. Cashion, Jr.
Case Management Administrator

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.
11/336,362	01/20/2006	Kevin G. Adkins	28231-10	3735

21130 7590 11/03/2010
BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP
ATTN: IP DEPARTMENT DOCKET CLERK
200 PUBLIC SQUARE
SUITE 2300
CLEVELAND, OH 44114-2378

EXAMINER
GELIN, JEAN ALLAND

ART UNIT	PAPER NUMBER
2617	

NOTIFICATION DATE	DELIVERY MODE
11/03/2010	ELECTRONIC

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

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

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

patent@beneschlaw.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

Benesch, Friedlander, Coplan & Aronoff, LLP (For Applicant)
Attn: IP Department Clerk
200 Public Square
Suite 2300
Cleveland, Ohio 44114-2378

MAILED
2010
CENTRAL REEXAMINATION UNIT

Arne M. Olson (For Holtzbrinck Publishers)
Olson & Cepuritis, LTD
20 North Wacker Drive
36th Floor
Chicago, Illinois 60606

In re Application of: Kevin G. Adkins	:	**DECISION**
Application No. 11/336,362	:	**GRANTING**
Filing Date: January 23, 2006	:	**PETITIONS**
Attorney Docket No.: 28231-10	:	

This is a decision on applicant's October 14, 2010 Expedited Petition to Seal or, in the alternative, to Expunge Protected Information pursuant to 37 CFR 1.59(b) and MPEP 724.05(I) and applicant's October 21, 2010 Supplemental paper thereto. The decision also addresses a November 1, 2010 paper[1] filed by Holtzbrinck Publishers, LLC, d/b/a Macmillan, which is not a party to this application (hereinafter "the third party"), the paper being titled "Expedited Petition under 37 C.F.R. 1.59(b) and 37 C.F.R. 1.182."

The three petition papers are before the Office of Patent Legal Administration.

The petition relief requested for expedited consideration of the petitions is **granted**.

The petition relief requested to expunge a paper subject to protective order is **granted**.

FEES

The petition fee of $400 pursuant to 37 CFR 1.17(f) for the October 14, 2010 petition under 37 CFR 1.182 to expedite consideration of this matter was submitted with the petition.

[1] Although the third party initially submitted the petition on October 22, 2010, this decision uses the November 1, 2010 date of the resubmission by third party as the initial submission has yet to be matched to the file.

The petition fee of $200 pursuant to 37 CFR 1.17(g) for the October 14, 2010 petition under 37 CFR 1.59(b) was charged to deposit account 02-2051 designating Docket No. 28231-10, as authorized on page 2 of the petition.

The petition fee of $400 pursuant to 37 CFR 1.17(f) for the November 1, 2010 petition under 37 CFR 1.182 was charged to third party's Deposit Account No. 15-0508, as authorized on page 3 of the petition.

DECISION

On August 30, 2010, applicant filed an information disclosure statement (IDS) which cited and provided a copy of a document identified as "Indesign-RF Protocol I-Clicker System.; Responsive Innovations, LLC and Turning Technologies, LLC v. Holtzbrinck Publishers, LLC and MacMillan Publishers, Inc., N.D. Ohio ED 4:08-cv-01184-PCE; 2008-12-16 (12 pages)" (hereinafter referred to as the "Indesign-RF Protocol") and denoted as NPL Doc. 20 on an accompanying form PTO-1449.

On October 14, 2010, applicant petitioned under 37 CFR 1.59(b) and MPEP 724.05(I) to expunge the protected information inadvertently submitted during the prosecution of the '362 application.

Petitioner requested therein that a document ("Indesign-RF Protocol") submitted as part of an information disclosure statement submitted August 30, 2010, and denoted as NPL Doc 20 on the accompanying form 1449, be expunged from the record. Petitioner stated that the information is subject to a protective order,[2] the information had not been made public, and petitioner committed to retain the information "in accordance with the protective order for the duration of any patent" that issues from the instant application.[3]

On October 18, 2010, prompted by the October 14, 2010 petition for expedited consideration, the Office, administratively provisionally sealed the document pending resolution of the matter.

On October 21, 2010, applicant filed a supplemental paper stating that "the parties have conferred and agree that Holtzbrinck Publishers, LLC will retain" the Indesign-RF Protocol for the life of the patent.[4]

On November 1, 2010, third party Holtzbrinck Publishers, LLC filed a paper entitled "Expedited Petition under 37 C.F.R. § 1.159(b) and 37 C.F.R. § 1.182" requesting the expungement of the Indesign-RF Protocol. To support its request, Holtzbrinck provided a copy of a protective order from *Responsive* Innovations, *LLC, et al. v. Holtzbrinck Publishers, LLC, et al.*, 4:08-cv-01184-PCE (Eastern Division of the Northern District of Ohio). The petition states that "the document contains trade secret material, proprietary material, and/or material belonging to Petitioner, has

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[2] A copy of the protective order from *Responsive Innovations, LLC, et al. v. Holtzbrinck Publishers, LLC, et al.*, 4:08-cv-01184-PCE (Eastern Division of the Northern District of Ohio) was included with the petition.

[3] Note that the provisions of the protective order appear on their face to be inconsistent with applicant retaining the document in question for the life of the patent.

[4] This document carries the signatures of applicant's attorney and third party Holtzbrinck's attorney.

not otherwise been made public, and is subject to a protective order," and requests that the above-mentioned document be expunged from the Office proceedings.

As an initial matter, it is noted that Holtzbrinck's petition is not entitled to entry under the rules – see 37 CFR § 1.99, 1.291, and 1.292. Holtzbrinck failed to suggest any provision of the regulations which could provide a basis for entry of its petition, and the Office can identify none. Thus, by rule, Holtzbrinck is not entitled to consideration of the November 1, 2010 petition. Pursuant to 37 CFR 1.183, however, "[i]n an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed." In the present instance, the November 1, 2010 petition paper seeks to protect Holtzbrinck's confidential material consistent with the court's protective order. Further, the petition paper was presented solely to assert the third party's rights in protecting the confidentiality of its materials and in no way deals with the merits of the present application. In order to comply with the court order to protect the rights of the parties to the litigation, the interests of justice require that the application entry right rules be *sua sponte* waived, and the Office is waiving the rules in order to enter and consider Holtzbrinck's petition paper.

The Examiner of record, has completed review of the Indesign-RF Protocol and has determined that, with respect to the prosecution history of the '362 application, the Indesign-RF Protocol is not material to the patentability of the claims in the '362 application.

In view of the terms of the protective order, the irreparable harm to the litigation defendant that could be caused by public disclosure of the protected materials, and the facts and circumstances in this instance, applicant's petition is granted. Thus, the Indesign-RF Protocol is expunged from the record. As the document to be expunged has already been made part of the Image File Wrapper (IFW) system and cannot be physically returned, expungement is effected by permanently sealing the document identified above by closing the document in the IFW and marking it as non-public. Holtzbrinck Publishers, LLC is required to retain the Indesign-RF Protocol for the enforceable life of the patent.

Since the present application has been published, a one-time courtesy copy of this decision is being sent to third party Holtzbrinck Publishers, LLC.

CONCLUSION

1. The relief requested in applicant's petitions **is granted** to expunge the Indesign-RF Protocol document submitted August 30, 2010, and denoted as item NPL Doc. 20 on the accompanying form 1449. The signed and initialed form 1449 remains part of the record.

2. As the document to be expunged has already been made part of the Image File Wrapper (IFW) system and cannot be physically returned, expungement is effected by permanently sealing the document identified above by closing the document in the IFW and marking it as non-public.

3. Holtzbrinck Publishers, LLC must retain the expunged document for the enforceable life of any patent issuing from the '362 application.

4. Inquiries regarding the present decision may be directed to Pinchus M. Laufer, Legal Advisor, at (571) 272-7726, or, in his absence, to Susy Tsang-Foster, Legal Advisor at (571) 272-7711.

Kenneth M. Schor
Senior Legal Advisor
Office of Patent Legal Administration

11-1-10, Kenpet8/

Doc Code: PET.PTA.RCAL
Document Description: Request for Recalculation in view of Wyeth

PTO/SB/131 (02-10)
Approved for use through 07/31/2010. OMB 0651-0020
U.S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE
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REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

Attorney Docket Number: PA-0000936-US(05-809)	
Application Number: 11/336,437	Filing Date (or 371(b) or (f) Date): January 20, 2006
Patent Number: 7,662,489 B2	Issue Date: February 16, 2010
First Named Inventor: David A. Litton et al.	
Title: Durable Reactive Thermal Barrier Coatings	

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 /Barry L. Kelmachter #29999/	Date August 11, 2010
Name (Print/Typed) Barry L. Kelmachter	Registration Number 29,999

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

☐ *Total of _____ forms are submitted.

The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 10 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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

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

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

(Not to be Submitted to the USPTO)

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

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

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

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

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

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

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

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

Privacy Act Statement

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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BACHMAN & LAPOINTE, P.C. (P&W)
900 CHAPEL STREET
SUITE 1201
NEW HAVEN, CT 06510-2802

Mail Date: 09/03/2010

Applicant	: David A. Litton	: DECISION ON REQUEST FOR
Patent Number	: 7662489	: RECALCULATION of PATENT
Issue Date	: 02/16/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/336,437	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/20/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **694** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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TUCKER ELLIS & WEST LLP
1150 HUNTINGTON BUILDING
925 EUCLID AVENUE
CLEVELAND, OH 44115-1414

Mail Date: 08/04/2010

Applicant	: Peter Tran	: DECISION ON REQUEST FOR
Patent Number	: 7668883	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/336,479	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/20/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **290** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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.
11/336,502	01/19/2006	Charles E. Murry	UWTT-010	1853

7590 12/13/2010
BOZICEVIC, FIELD & FRANCIS LLP
1900 UNIVERSITY AVENUE
SUITE 200
EAST PALO ALTO, CA 94303

EXAMINER
DAVIS, RUTH A

ART UNIT	PAPER NUMBER
1651	

MAIL DATE	DELIVERY MODE
12/13/2010	PAPER

ACKNOWLEDGEMENT OF REQUEST

Notice of Allowance/Allowability Mailed

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

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

FORM PTOM327-5 (Rev. 02/08)

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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December 13, 2010

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

In re Application of	:	
Charles E. Murry et al.	:	**DECISION ON PETITION**
Application No. 11336502	:	
Filed: 1/19/2006	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. UWTT-010	:	***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) January 19, 2006.

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

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

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

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

Application Information

Application Number	11/336,671	Confirmation Number	1295	Filing Date	2006-01-20
Attorney Docket Number (optional)	24035-006	Art Unit	3693	Examiner	Khattar
First Named Inventor	Steven S. Schuver				
Title of Invention	SYSTEM AND METHOD OF DETERMINING A PREMIUM FOR INSURANCE FOR A SECURITY				

Attention: Office of Petitions

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

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

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

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

Given Name	Middle Name	Family Name	Suffix
Thomas	L.	Bakos	

A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18.
Please see 37 CFR 1.4(d) for the format of the signature.

Select (1) or (2) :

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

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

Signature	/David H. Chervitz/	Date (YYYY-MM-DD)	2011-11-15
Name	David H. Chervitz	Registration Number	32820

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

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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In re Application of
Steven S. Schuver

Application No. 11336671

Filed: January 20,2006

Attorney Docket No. 24035-006

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

This is a decision on the electronic petition under 37 CFR 1.102 (c)(1), filed 15-NOV-2011 to make the above-identified application special based on applicant's age as set forth in MPEP § 708.02, Section IV.

The petition is **GRANTED**.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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MAILED

FEB 25 2011

OFFICE OF PETITIONS

WILHELM LAW SERVICE, S.C.
100 W LAWRENCE ST
THIRD FLOOR
APPLETON WI 54911

In re Application of	:	
Kamaljit S. Paul	:	
Application No. 11/336,738	:	DECISION ON PETITION
Filed: January 20, 2006	:	
Attorney Docket No. 29722A	:	

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**.

The application became abandoned for failure to reply in a proper and timely manner to the final Office action mailed, June 23, 2010, which set a shortened statutory period for reply of three (3) months. A two-month extension of time under the provisions of 37 CFR 1.136(a) was timely obtained. Accordingly, the application became abandoned on 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 (previously submitted January 11, 2011) and the submission required by 37 CFR 1.114 (previously submitted November 23, 2010); (2) the petition fee of $810.00; and (3) a proper statement of unintentional delay.

This decision ratifies the prosecution from the date of abandonment of the instant application until the date of the granting of this petition. A Non-final Office Action was mailed February 2, 2010 in the above-identified application which requires a reply.

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

Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Patent No. : **7334720**
Ser. No. : **11/336758**
Inventor(s) : **HULST, HERMEN-ARD .**
Issued : **02/26/2008**
Title : **DATA STORAGE AND ACCESS SYSTEMS**
Docket No. : **080379-000100US**

Re: Request for Certificate of Correction

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

In regards to the alleged error(s) on the Title Page Item [75] Inventors, the patent is printed in accordance with the Oath of Declaration filed by the Applicant/Attorney on 1-19-06.

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

However, a petition under 37 CFR 1.182 (required fee currently $130) to correct the order of inventors should be directed to the attention of:

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

A Certificate of Correction will be issued to correct the remaining error(s) noted in your request.

Omega Lewis
For Mary Diggs
Decisions & Certificates
Of Correction Branch
(703)756-1575 or (703) 756-1814

Jason D. Lohr, Esq.
TOWNSEND AND TOWNSEND AND CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, CA 94111-3834
OL

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110425

DATE : April 26, 2011

TO SPE OF : ART UNIT 2628

SUBJECT : Request for Certificate of Correction on Patent No.: RE41967

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:

/KEE M TUNG/
Supervisory Patent Examiner.Art Unit 2628

UNITED STATES PATENT AND TRADEMARK OFFICE

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RYAN KROMHOLZ
& MANION, S.C.
POST OFFICE BOX 26618
MILWAUKEE WI 53226

MAILED
FEB 28 2012
OFFICE OF PETITIONS

In re Application of :
Thrope, et al. :
Application No. 11/337,319 : ON PETITION
Filed: 23 January, 2006 :
Attorney Docket No. 9844.19615 :

This is a decision on the petition filed on 28 December, 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, §11.18, 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 Technology Center/AU 1643 for further processing 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.

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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RONALD V. DAVIDGE
5103 MADISON LAKES CIRCLE
DAVIE FL 33328

MAILED

AUG 30 2010

OFFICE OF PETITIONS

In re Application of	:	
Diana GOODWIN	:	
Application No. 11/337,340	:	DECISION ON PETITION
Filed: January 23, 2006	:	
Attorney Docket No. 1419	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 02, 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 July 07, 2009. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is November 08, 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 $405.00, and the submission required by 37 CFR 1.114; (2) the petition fee of $810.00; and (3) a proper statement of unintentional delay. Accordingly, the reply to the final Office action of July 07, 2009 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 3744 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

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)
7,251,913	2007-08-07	11337346	2006-01-23	8404.313

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	/klhester/	Date (YYYY-MM-DD)	2011-08-12
Name	KATHRYN L. HESTER, Ph.D.	Registration Number	46768

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Patent No. 7251913
Issue Date: August 7,2007
Application No. 11337346
Filed: January 23,2006
Attorney Docket No. 8404.313

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

This is a decision on the electronic petition, filed August 12,2011 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of August 12,2011 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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Paper No.

Michael L. Leetzow, P.A.
2393 Crest Ridge Ct
SANFORD FL 32771

MAILED
JAN 24 2011
OFFICE OF PETITIONS

In re Application of	:	
Hoffman et al.	:	
Application No. 11/337,357	:	
Filed: January 23, 2006	:	DECISION ON PETITION
Attorney Docket No. DAPA-002	:	UNDER 37 C.F.R. § 1.137(B)
Title: ACCOUNT ADMINISTRATION	:	
PLANS AND SYSTEMS	:	

This is a decision on the petition filed September 29, 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 March 26, 2010, which set a shortened statutory period for reply of three months. An after-final amendment was received on September 27, 2010 along with a three-month extension of time so as to make timely the response (it is noted that September 26, 2010 fell on a Sunday). No additional extensions of time under the provisions of 37 C.F.R § 1.136(a) were available, and no further responses were received. Accordingly, the above-identified application became abandoned on September 27, 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, the petition fee, and the proper statement of unintentional delay. The amendment filed on September 27, 2010 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 September 27, 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.**

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

1 See Rule 1.137(d).

contrary. Petitioner will not receive future correspondence related to this application unless Change of Correspondence Address, Patent Form (PTO/SB/122) is submitted for the above-identified application. For Petitioner's convenience, a blank 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/
Paul Shanoski
Senior Attorney
Office of Petitions

cc: Michael L. Leetzow
5213 Shoreline Cir
Sanford, FL 32771

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

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ECKERT SEAMANS CHERIN & MELLOTT
600 GRANT STREET
44TH FLOOR
PITTSBURGH PA 15219

MAILED

AUG 16 2010

OFFICE OF PETITIONS

In re Application of	:	
Gregory Ambrose	:	
Application No. 11/337,368	:	DECISION ON PETITION
Filed: January 23, 2006	:	
Attorney Docket No. 283066-00003	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 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 Restriction Requirement, mailed September 25, 2007, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on December 26, 2007. The Notice of Abandonment was mailed June 17, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an election, (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 3632 for appropriate action by the Examiner in the normal course of business on the reply received.

Terri Johnson
Petitions Examiner
Office of Petitions

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Alexandria, VA 22313-1450
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ROBERT C. SHADDOX / WINSTEAD PC
P.O. BOX 50784
DALLAS TX 75201

MAILED
AUG 27 2010
OFFICE OF PETITIONS

In re Patent No. 7,704,323	:	
Issue Date: January 23, 2006	:	
Application No. 11/337,456	:	DECISION ON PETITION
Filed: January 23, 2006	:	
Attorney Docket No. OWLS-12-1 (11321-P129US)	:	

This is a decision on the petition under 37 CFR 1.182, filed May 19, 2010, requesting issuance of duplicate Letters Patent for the above-identified patent.

The petition is **GRANTED**.

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

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

Telephone inquiries concerning this decision may be directed to Michelle R. Eason at (571) 272-4231. Inquiries regarding the issuance of duplicate Letters Patent may be directed to Niomi Farmer in the Office of Data Management at (703) 756-1556.

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

Thurman K. Page
Petitions Examiner
Office of Petitions

cc: Niomi Farmer, Randolph Square, 9th Floor, Room D30-B (Fax No. (571) 270-9753)

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MCKENNA LONG & ALDRIDGE LLP
1900 K STREET, NW
WASHINGTON DC 20006

MAILED
MAY 23 2011
OFFICE OF PETITIONS

In re Patent No. 7,363,948	:	
Issue Date: April 29, 2008	:	
Application No. 11/337,670	:	DECISION ON PETITION
Filed: January 24, 2006	:	
Attorney Docket No. 8734.177.C2	:	

This is a decision on the Request Correction of Assignee Under 37 CFR 3.81(b), filed March 15, 2011, which is being treated as a Petition Under 37 CFR §3.81(b), to accept the omission of the second assignee's name. A completed Certificate of Correction Form (PTO/SB/44) was previously submitted.

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

Petitioner requests that the present Petition was submitted to accept the omission of the second assignee's name on the previously submitted PTOL 85B and such error was inadvertent. Accordingly, petitioner urges that a Certificate of Correction (PTO/SB/44) be issued to add the omitted second assignee's name to the Title Page of the Letters Patent.

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

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

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

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

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (703)756-1814.

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. 7,363,948.

Cheryl Gibson-Baylor
Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

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

MAILED
JAN 11 2011
OFFICE OF PETITIONS

In re Application of :
Carlson :
Application No. 11/337,699 : ON APPLICATION FOR
Filed: January 23, 2006 : PATENT TERM ADJUSTMENT
Atty Docket No. 13185US02 :

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 21, 2010. Applicant submits that the correct patent term adjustment to be indicated on the patent is seven hundred seventy-two (772) days, not two hundred forty-eight (248) 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 in this instance where a request for continued examination (RCE) was filed. The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

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

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

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

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

---

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

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

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

David W. Carrithers
Carrithers Law Office, PLLC.
Ste. 206
6200 Dutchmans Lane
Louisville KY 40205

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JUL 06 2011

OFFICE OF PETITIONS

In re Application of	:	
Paul R. JOHNSON et al.	:	ON PETITION
Application No. 11/337,803	:	
Filed: January 24, 2006	:	
Atty. Docket No.: AN146.1		

This is a decision on the petition under 37 CFR 1.137(b), filed May 6, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application was held abandoned for failure to reply in a timely manner to the Notice of Allowance and Fee(s) Due mailed January 3, 2011, which set a statutory period for reply of three (3) months. The application became abandoned on April 4, 2011. A Notice of Abandonment was mailed April 18, 2011.

The petition satisfies the conditions for revival pursuant to 37 CFR 1.137(b) by including (1) a reply in the form of payment of the issue and publication fees in accordance with the Notice of Allowance and Fee(s) Due, (2) a petition fee of $810, and (3) a statement of unintentional delay. The reply to the Notice 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 file will be referred to Office of Data Management for further processing.

Anthony Knight
Director
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Lisa V. Mueller
Polsinelli Shughart PC
161 N. Clark Street
Suite 4200
Chicago IL 60601

MAILED

JAN 11 2011

OFFICE OF PETITIONS

In re Application of	:	
Liu et al.	:	
Application No. 11/337,862	:	DECISION ON APPLICATION
Filed: 01/23/2006	:	FOR
Atty Docket No. 057975-405030	:	PATENT TERM ADJUSTMENT
(7333USO1)	:	

This is a decision on the "RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.704(b)" filed December 20, 2010. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected to five hundred fifty-four (554) days.

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

The Office has updated the PALM and PAIR screens to reflect that the corrected Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is five hundred fifty-four (554) days. A copy of the updated PAIR screen, showing the corrected determination, is enclosed.

A review of the application history confirms that applicants' characterization of the basis for and amounts of the adjustments and reductions of patent term in this application at the time of the mailing of the notice of allowance are correct.

In view thereof, the corrected determination of patent term adjustment at the time of the mailing of the notice of allowance is **five hundred fifty-four (554) 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.

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

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PAIR Screen

Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 11/337,862

Filing or 371(c) Date:	01-23-2006	Overlapping Days Between {A and B} or {A and C}:	0
Issue Date of Patent:	-	Non-Overlapping USPTO Delays:	705
A Delays:	705	PTO Manual Adjustments:	-93
B Delays:	0	Applicant Delays:	58
C Delays:	0	Total PTA Adjustments:	554

Patent Term Adjustment History **Explanation Of Calculations**

Number	Date	Contents Description	PTO (Days)	APPL (Days)	Start
80	01-08-2011	Adjustment of PTA Calculation by PTO		93	0
70	09-21-2010	Mail Notice of Allowance			0
69	09-03-2010	Document Verification			0
68	09-03-2010	Issue Revision Completed			0
67	09-03-2010	Notice of Allowance Data Verification Completed			0
66	09-03-2010	Examiner's Amendment Communication			0
65	09-03-2010	Notice of Allowability			0
64	09-02-2010	Date Forwarded to Examiner			0
63	09-02-2010	Amendment Submitted/Entered with Filing of CPA/RCE			0
62	09-02-2010	Request for Continued Examination (RCE)		58	40
61	09-20-2010	Disposal for a RCE / CPA / R129			0
53	09-03-2010	Case Docketed to Examiner in GAU			0
50	09-02-2010	Examiner Interview Summary Record (PTOL - 413)			0
46	09-02-2010	Workflow - Request for RCE - Begin			0
45	09-01-2010	Date Forwarded to Examiner			0
44	08-30-2010	Supplemental Response			0
43	08-09-2010	Date Forwarded to Examiner			0
42	08-06-2010	Amendment after Final Rejection			0

41	08-06-2010	Request for Extension of Time - Granted		0
40	04-06-2010	Mail Final Rejection (PTOL - 326)		0
39	04-02-2010	Final Rejection		0
37	02-03-2010	Date Forwarded to Examiner		0
36	01-25-2010	Response after Non-Final Action		0
35	01-25-2010	Request for Extension of Time - Granted		0
34	02-03-2010	Mail Notice of Rescinded Abandonment		0
33	02-03-2010	Notice of Rescinded Abandonment in TCs		0
32	01-28-2010	Mail Examiner Interview Summary (PTOL - 413)		0
31	01-28-2010	Mail Abandonment for Failure to Respond to Office Action		0
30	01-25-2010	Examiner Interview Summary Record (PTOL - 413)		0
29	01-27-2010	Aband. for Failure to Respond to O. A.		0
28	07-24-2009	Mail Non-Final Rejection		0
27	07-24-2009	Non-Final Rejection		0
25	05-14-2007	Information Disclosure Statement considered		0
24	05-20-2009	Date Forwarded to Examiner		0
23	04-03-2009	Response to Election / Restriction Filed		0
22	04-03-2009	Request for Extension of Time - Granted		0
21	02-25-2009	Mail Restriction Requirement	705	-1
20	02-23-2009	Requirement for Restriction / Election		0
16	02-09-2009	Case Docketed to Examiner in GAU		0
15	09-16-2008	Change in Power of Attorney (May Include Associate POA)		0
14	09-12-2008	Correspondence Address Change		0
12	05-14-2007	Information Disclosure Statement (IDS) Filed		0
11	05-14-2007	Information Disclosure Statement (IDS) Filed		0

10	05-14-2007	Reference capture on IDS	0
9	01-04-2007	Case Docketed to Examiner in GAU	0
8	11-09-2006	IFW TSS Processing by Tech Center Complete	0
7	03-03-2006	Application Dispatched from OIPE	0
6	03-03-2006	Application Is Now Complete	0
5	02-16-2006	Cleared by L&R (LARS)	0
4	02-14-2006	Referred to Level 2 (LARS) by OIPE CSR	0
3	02-14-2006	CASE CLASSIFIED BY OIPE	0
2	02-03-2006	IFW Scan & PACR Auto Security Review	0
1	01-23-2006	Initial Exam Team nn	0

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/337,866	01/23/2006	Jason G. D. Gall	250024	5046

23460 7590 03/18/2011
LEYDIG VOIT & MAYER, LTD
TWO PRUDENTIAL PLAZA, SUITE 4900
180 NORTH STETSON AVENUE
CHICAGO, IL 60601-6731

EXAMINER
BLUMEL, BENJAMIN P

ART UNIT	PAPER NUMBER
1648	

NOTIFICATION DATE	DELIVERY MODE
03/18/2011	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):

Chgpatent@leydig.com

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MAR 1 8 2011

LEYDIG VOIT & MAYER, LTD
TWO PRUDENTIAL PLAZA, SUITE 4900
180 NORTH STETSON AVENUE
CHICAGO IL 60601-6731

In re Application of:	:
Gall, et al.	:
Serial No.: 11/337,866	: PETITION DECISION
Filed: January 23, 2006	:
Attorney Docket No.: **250024**	:

This is in response to the petition under 37 CFR § 1.181, filed March 2, 2011, requesting that the Office action of September 2, 2010 be withdrawn and the application allowed.

It is noted that applicants filed this petition under 37 CFR § 1.181 on March 2, 2011 requesting relief from the finality of the Office action mailed September 2, 2010. This petition was not filed within two months from the mailing of the final Office action and is thus untimely. Nevertheless, a decision on this petition is rendered herein.

BACKGROUND

Relevant parts of the prosecution history are summarized below.

Applicants appealed the Examiner's rejection of the examined pending claims as set forth in the final Office Action dated April 29, 2008. Applicants filed their Appeal Brief on August 25, 2008, and the Examiner mailed the Examiner's Answer on November 13, 2008. Applicants filed their Reply Brief on January 13, 2009.

In the Decision on Appeal on May 27, 2010, the Board reversed the examiner's rejection of claims 1-11, 13-17, 20-25, and 27-30 under Section 103 over Kovesdi et al., Wickham et al., and Davidson et al.

On September 2, 2010, the examiner issued a non-final Office action and rejected Claims 1-11, 13-17, 22, 23, 25 and 27-30 under 35 U.S.C. 103(a) as being unpatentable over Kovesdi et al. and Davidson et al. Claims 20, 21 and 24 were also rejected under 35 U.S.C. 103(a) as

being unpatentable over Kovesdi et al. and Davidson et al. as applied to claims 1-11, 13-17, 25 and 27-30 above, and further in view of and Wickham et al.

On March 2, 2011, applicants filed arguments traversing the examiner's rejections instituted in the non-final Office action of September 2, 2010.

In reply to the Office action of September 2, 2010, applicants also filed this petition under 37 CFR § 1.181 on March 2, 2011, requesting that the non-final Office action of September 2, 2010 be withdrawn and the application allowed.

DISCUSSION

The petition and the file history have been carefully considered.

Applicants argue that the "In the Decision on Appeal, the Board reversed the Examiner's rejection of claims 1-11, 13-17, 20-25, and 27-30 under Section 103 over Kovesdi et al., Wickham et al., and Davidson et al. The Board concluded that Examiner did not show that it would have been obvious in view of Kovesdi et al., Wickham et al., and Davidson et al. to include an adenoviral fiber protein having about 80% or more amino acid sequence identity to a subgroup C adenoviral fiber protein in a non-subgroup C adenoviral vector. In the Decision, the Board also stated:

> Davidson does not disclose including an adenoviral fiber protein having about 80% or more amino acid sequence identity to a subgroup C adenoviral fiber protein in a non-subgroup C adenoviral vector, nor has the Examiner adequately explained why one of ordinary skill in the art would have reason to do so

(Decision on Appeal at page 6, first complete paragraph).

After the Board's Decision, the Office reopened prosecution by way of the Office Action dated September 2, 2010, in which the Examiner again rejects claims 1-11, 13-17, 20-25, and 27-30 as allegedly unpatentable under 35 U.S.C. § 103(a) over the combined disclosures of Kovesdi et al., Davidson et al., and Wickham et al. In other words, the Examiner has rejected the examined pending claims on the same basis (i.e., obviousness) over the same combination of references that were considered by the Board during the Appeal."

Applicants also argue "According to the Examiner, this obviousness rejection constitutes a new ground of rejection because of "newly presented information" regarding Davidson et al (see Office Action at page 8, last paragraph). However, rather than presenting "new" information about Davidson et al., the Examiner merely refers to specific teachings in Davidson et al. that arguably support his original interpretation of the reference. The Examiner continues to rely on the same references in support of the obviousness rejection, and the wording of the

obviousness rejection has not changed. Therefore, the nature of the obviousness rejection - which was considered and ruled upon by the Board during the appeal - has not changed. As a result, the current obviousness rejection is not a "new" ground of rejection, such that the Office Action dated September 2, 2010, is improper."

Applicants' arguments have been accorded careful consideration but they are not persuasive. While the rejection is based on the same references, the present rejection incorporates different teachings found within those references from those that had previously been applied. Thus, the non-final Office action of September 2, 2010 is based on new facts, and is based on material that was not of issue in the prior case. For example, nowhere in the previously applied rejections was any reference made to Figure 1 of the Davidson reference. It is further noted that the board reversal did not indicate that the present claims were allowable over the applied prior art, but rather specifically indicated that "the Examiner has not shown that it would have been obvious to include an adenoviral fiber protein having about 80% or more amino acid sequence identity to a subgroup C adenoviral fiber protein in a non-subgroup C adenoviral vector." In essence, the Board determined that this particular limitation had not been established by the Examiner, not that the references did not suggest such a combination. As opposed to the rejection which was previously presented, the present rejection, while based on the same references, applies different teachings of these references to specifically demonstrate how the references do, in fact, suggest the claimed non-subgroup C adenoviral vector containing an adenoviral fiber protein having at least 80% amino acid sequence identity to a subgroup C adenoviral fiber protein.

Accordingly, applicants' arguments are not persuasive that the non-final Office action of September 2, 2010 be withdrawn and the application allowed.

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.

George C. Elliott

George Elliott
Director, Technology Center 1600

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MAILED
JUN 28 2011
OFFICE OF PETITIONS

In re Patent No. 7,881,892	: DECISION ON
Soyemi, et al.	: REQUEST FOR RECONSIDERATION
Application No. 11/337,912	: of PATENT TERM ADJUSTMENT
Issue Date: February 1, 2011	:
Filed: January 23, 2006	:
Attorney Docket No. 07917-0293001	:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)", filed April 1, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected from nine hundred eighty-one (981) days to one thousand one hundred thirteen (1113) days.

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

On February 1, 2011, the instant application matured into U.S. Patent No. 7,881,892 with a patent term adjustment of nine hundred eighty-one (981) days. The Office determined a patent term adjustment of 981 days based upon 662 days of Office delay pursuant to 37 CFR 1.703(a)(1), and 241 days of Office delay pursuant to 37 CFR 1.703(b), reduced by 32 days of Applicant delay pursuant to 37 CFR 1.704(b).

Patentees argue that even though they filed an RCE on September 22, 2009, they should be awarded 37 CFR 1.703(b) "over three year" delay from the time the Office mailed a Notice of Allowance on September 23, 2010 until the issue date of the patent. In other words, Patentees argue that no continued examination took place during this time period, and the Office should be accorded 373 days of delay pursuant to 37 CFR 1.703(b), not 241 days. Patentees' 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 241 days based on the application having been filed under 35 U.S.C. 111(a) on January 23, 2006 and a request for continued examination under 132(b) having been filed on September 22, 2009. In other words, the 132 day period beginning on the date of mailing of the notice of allowance to

the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay."

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1]. So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

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

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination

---

[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.

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.

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

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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.

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).

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

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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.

not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, a request for continued examination was filed on September 22, 2009, and the patent issued by virtue of that request on February 1, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on September 22, 2009 and ending on February 1, 2011 is not included in calculating Office delay.

CONCLUSION

In view thereof, it is concluded that the patent term adjustment of 981 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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United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/337,925	01/23/2006	Robert H. Isham	125.029USR3	3255

94108 7590 01/12/2011
Fogg & Powers LLC/Intersil Americas Inc.
5810 W. 78th Street
Minneapolis, MN 55439

EXAMINER
LAXTON, GARY L

ART UNIT	PAPER NUMBER
2838	

NOTIFICATION DATE	DELIVERY MODE
01/12/2011	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):

docketing@fogglaw.com

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FOGG & POWERS LLC/INTERSIL AMERICAS INC.
5810 West 78th Street
MINNEAPOLIS, MN 55439

In re Application of:	:
ROBERT H. ISHAM, et al.	: DECISION *SUA SPONTE*
Serial No.: 11/337,925	: WITHDRAWING HOLDING OF
Filed: JANUARY 23, 2006	: ABANDONMENT
Attorney Docket No.: 125.029USR3	:

This is a decision, *sua sponte*, withdrawing the holding of abandonment of the above-identified reissue application.

The application was held abandoned after a decision on appeal by the Board of Patent Appeals and Interference on October 1, 2010 affirming the rejection of claims 29-31 and a Notice of Abandonment was mailed on December 7, 2010. However, a review of the written record shows that, besides rejecting claims 29-31, the Examiner allowed claims 19-28 on May 12, 2008. In view of the above, the Notice of Abandonment was issued in error: claims 29-31 should have been cancelled and claims 19-28 should have been allowed as indicated in MPEP §1214.06.

Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. The application is restored to pending status and a Notice of Allowance will be prepared and mailed in due course.

Inquiries related to this decision should be directed to Monica Lewis at (571) 272-1838.

John W. Cabeca, TC Director
Technology Center 2800 - Semiconductors,
Electrical & Optical Systems & Components

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SUITE 3400
CHICAGO IL 60661

MAILED
MAY 25 2011
OFFICE OF PETITIONS

In re Application of	:	
Hall et al.	:	
Application No. 11/338,045	:	DECISION ON PETITION
Filed: January 23, 2006	:	
Attorney Docket No. 18277US01	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 26, 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, October 8, 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 April 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 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.

Additionally, it is not apparent whether the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute this patent application. In accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts.

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

This matter is being referred to Technology Center AU 3718 for processing of the Request for Continued Examination under 37 CFR 1.114 and the Amendment filed with the instant petition.

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

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HAVERSTOCK & OWENS LLP
162 N WOLFE ROAD
SUNNYVALE CA 94086

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APR 18 2011
OFFICE OF PETITIONS

In re Application of
Mark K. Eyer et al.
Application No. 11/338,110
Filed: January 23, 2006
Attorney Docket No. **SONY-29700**

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 03, 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 28, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on March 29, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1620, and (3) an adequate statement of unintentional delay. Accordingly, the response to the non-final office action of December 28, 2009 is accepted as having been unintentionally delayed.

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

This application is being referred to Technology Center AU 2423 for appropriate action on the concurrently filed amendment.

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/338,347	01/24/2006	Luke A. Nigliazzo	504899	4285

23903 7590 08/13/2010
INVENSYS INTELLECTUAL PROPERTY DEPARTMENT
33 COMMERCIAL STREET
B52-1J
FOXBORO, MA 02035

EXAMINER
SCHNEIDER, CRAIG M

ART UNIT	PAPER NUMBER
3753	

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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33 COMMERCIAL STREET
B52-1J
FOXBORO MA 02035

In re Application of: NIGLIAZZO, LUKE A. et al Serial No.: 11/338,347 Filed: Jan. 24, 2006 Docket:: 504889 Title: ADJUSTABLE SEAT VALVE WITH DEBRIS TRAP	DECISION ON PETITION TO ENTER AMENDMENT AFTER ALLOWANCE

This is a decision on the petition filed on May 3, 2010 to enter the amendment after allowance under 37 CFR 1.312 filed on March 19, 2010. The petition is being considered pursuant to 37 CFR 1.181 and no fee therefore is required.

The petition is **DISMISSED AS UNTIMELY.**

This application comes before the Technology Center Director for review of prosecution, in particular for review of the office letter of April 5, 2010. Petitioner opines that the examiner's refusal to enter the amendment after allowance filed on March 19, 2010 was improper because the amendment adding dependent claims 6 and 8 should be entered as a matter of right in accordance with MPEP 821.04(a).

The facts are:

1. On March 11, 2008, the petitioners received an election of species requirement, requiring election between species A (FIGS. 2-8), species B (FIGS. 9-12), and species C (FIGS. 13 and 14). In the election of species requirement, the examiner indicated claims 1 and 28 were generic claims. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. Original dependent claim 6 was dependent from claim 3. Original dependent claim 8 was dependent from claim 6.
2. On April 11, 2008, the applicant elected species A, and identified claims 1-7, 18-20, 22 and 28

as readable on species A.
3. On the May 16, 2008, a non-final Office action, the examiner treated the elected claims 1-5, 7, 18-20, 22 and 28 as readable on species A and withdrew the non-elected claims 6, 8-17, 21 and 23-27 from consideration. The examiner explained why claim 6 does not read on the elected species and withdrew from consideration.
4. On January 14, 2009, the examiner indicated that claim 5 would be allowable if rewritten into independent form.
5. On March 13, 2009, in response to the examiner's indication of the allowability of claim 5, the applicant amended claim 5 into independent form, and changed the dependency of claim 6 from claim 1 to claim 5, and also changed the dependency of claim 8 from claim 7 to claim 5.
6. On March 26, 2009, the examiner indicated in an advisory action that the amendments of claim 6 and 8 to depend from claim 5 made on March 13, 2009 do not find support in the specification.
7. On April 14, 2009, an RCE was filed with claim amendment. However, the applicant did not make any rebuttal arguments regarding the examiner's explanation why claims 6 and 8 can not be made dependent from claim 5.
8. On May 8, 2009, in the non-final Office action, the examiner continued to withdraw non-elected claims 6 and 8 from consideration.
9. In the response filed on July 23, 2009, the applicant traversed the rejection and requested the examiner to rejoin the non-elected claims and linking claims because the applicant believed the generic claims were allowable.
10. In the final rejection of October 14, 2009, the examiner allowed claims 2 and 5, rejected claims 1, 4, 18, 20, 28 and 30-33 and maintained non-elected claims 6 and 8 were withdrawn from consideration.
11. In the Rule 116 Amendment filed on January 14, 2010, the applicant canceled all claims except claims 2, 5, 6 and 8. The applicant requests that dependent claims 6 and 8 be rejoined and allowed along with the allowable independent claim 5 in view of allowable generic claim 5.
12. On March 1, 2010, the examiner issued a Notice of Allowance with an Examiners Amendment. The examiner allowed claims 2 and 5, and cancelled claims 6 and 8, without contacting the applicant because the applicant made the election without traverse and the case was in condition for allowance except the presence of those non-elected claims. However, the examiner did explain why the non-elected claims 6 and 8 were canceled. In particular, the examiner stated "that claims 6 and 8 originally depended from generic claim 1. Claim 5 is specific to Species A per the flange including an annular groove which is depicted in Figures 5 and 6. As can be seen in the Figures of Species A, the flange is not threaded on the outer surface (claim 6) and further that the closed end does not define an adjustment tool receiver (claim 8). This was further indicated in the advisory action dated 3/26/09."
13. On March 19, 2010, the applicant presented a Rule 132 Amendment seeking to re-enter claims 6 and 8 previously cancelled by the examiner without approval.
14. On April 5, 2010, the examiner denied entry of the Rule 312 Amendment, and maintained the position that there is no support for the limitations of claims 6 and 8 in combination with claim 5.
15. On April 21, 2010, the applicant was notified that the patent will be issued on May 11, 2010 with a US Patent Number of 7,712,483.
16. On May 13, 2010, the current petition was filed requesting entry of Rule 312 Amendment filed on March 19, 2010.

Issues

1. Whether or not the current petition was timely filed.
2. Regarding the substantive issue, whether or not the amended dependent claims 6 and 8 as filed under the Rule 312 amendment can be properly depended from the allowed independent claim 5.

Applicable Rules

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.
37 CFR § 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 generic 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.
37 CFR § 1.312 Amendments after allowance. No amendment may be made as a matter of right in an application after the mailing of the notice of allowance. Any amendment filed pursuant to this section must be filed before or with the payment of the issue fee, and may be entered on the recommendation of the primary examiner, approved by the Director, without withdrawing the application from issue.

Discussion and Analysis

Based on the original specification and drawings as filed on January 24, 2006, the original dependent claims 6 and 8 were depended form claim 3 and 6 respectively. In the original election species requirement of March 11, 2008, the examiner held claims 1 and 28 were generic claims. The applicant did not dispute this finding. On April 11, 2008, the petitioners elected species A, and identified claims 1-7, 18-20, 22 and 28 as readable on species A. In addition, the applicant also admitted that claim 8 readable on non-elected species C. Claims 2, 7, 18, 20 and 22 were generic claims. However, the examiner disagreed with respect to claim 6 in his non-final Office action of May 16, 2008. The examiner treated the elected claims 1-5, 7, 18-20, 22 and 28 as readable on species A and withdrew the non-elected claims 6, 8-17, 21 and 23-27 from consideration. The examiner explained why claim 6 did not read on the elected species and withdrew from consideration. On page 6 of the applicant's response of April 11, 2008, the applicant also admitted that non-elected dependent claim 8 does not read on the elected species A. In the Advisory Action of March 26, 2009, the examiner again explained why the dependent claims 6 and 8 do not read on the elected species A. It must be noted that petitioner waited almost two years from the action complained of to file the current petition requesting entry of the canceled dependent claims 6 and 8 under the Rule 312 amendment. The instant petition was filed more than two months after the mailing date of the Non-final Office action of March 16, 2008. Pursuant to 37 CFR 1.181(f), the petition is not timely filed since the petition was not filed within two months of the action complained of. As the petition was not timely filed, the requested relief to enter Rule 312 amendment will not be granted.

In the petition, petitioner argues that the re-instatement of canceled dependent claims 6 and 8 should be entered because the claims were disclosed in the original specification. Petitioner relies on the Paragraph 62 of the specification to show such added combination features. The addition of such features to form a single figure as claimed in claims 6 and 8 is not required. Petitioner also argues that the showing of these additional predictable mechanical elements as claimed in claims 6 and 8 in a single figure is not required. According to MPEP 821.04(a), the addition of dependent claims 6 and 8 should be entered and allowed as a matter of right. Therefore, the examiner's refusal to enter the Rule 312 amendment was improper.

With regard to the substantive issue, a review of the record clearly shows the allowed independent claim 5 is directed to the elected species Fig. 5. For example, the last two lines of claim 5 recite "the flange 122 includes an annular groove 124 defined therein to facilitate trapping debris therein". Whereas, dependent claim 6 of Species Fig. 8 calls for "the flange 140 is at least partially threaded on an outer surface thereof". The dependent claim 8 of Species C calls for "the closed end defines an adjustment tool 156, 159, 190 receiver therein adapted to receive an adjustment tool". Claims 5, 6 and 8 clearly recite mutually exclusive limitations. Based on the analysis of claims 5, 6 and 8, the allowed claim 5 clearly is not a generic claim. Since allowed claim 5 is not a generic claim, the non-elected dependent claims 6 and 8 simply cannot be made dependent from the allowable non-generic claim 5 in accordance with 37 CFR 1.141. Therefore, the issue of rejoinder under MPEP 821.04(a) is not applicable in this case. If the examiner had entered the Rule 312 amendment, claims 6 and 8 would have raised the issue of new matter. Under the circumstances, the examiner's refusal to recommend entry of the Rule 312 amendment was proper.

Petitioner argument regarding Paragraph 62 of the specification is not convincing. The quoted passage "any combination of the above-described elements in all possible variations thereof is encompassed by the invention unless otherwise indicated herein" is insufficient to support the newly added claim features in claims 6 and 8. This context of the passage is so vague and incomplete. Nowhere in the original specification does the applicant shows the combination of the features as claimed in claims 6 and 8 as a single species. This passage may be interpreted that the features can be used interchangeably. There is no illustration and explanation in the original specification as to what constitutes "any combination of the above-described elements in all possible variations". Therefore, the entry of Rule 312 amendment of claims 6 and 8 undoubtedly would require the examiner's further search and consideration of the issues of new matter.

Petitioner's assertion regarding adding the limitation of threads of claim 6 to claim 5 is an addition of a predictable mechanical element and such a combination is clearly met in view of the explicit disclosure pertaining to the same in the application as filed, and therefore a showing of these elements together in a single figure is not required. This line of argument is contrary to the requirements of 35 USC § 112. The claimed features in claims 6 and 8 are simply not disclosed and illustrated in the original specification as filed on January 24, 2006. The added claims 6 and claim 8 do not appear to comply with 35 USC § 112 and 37 CFR 1.183(a).

Entry of amendments after allowance is not a matter of right pursuant to 37 CFR § 1.312. The review of the record shows that the examiner was in compliance with proper examining practice

as set forth in MPEP § 714 in refusing to recommend entry of the after allowance amendment submitted on March 19, 2010. The examiner did not abuse his discretion or act in an arbitrary or capricious manner in refusing to recommend entry of the amendment after allowance for the reasons stated in the office actions of May 16, 2008, March 26, 2009, May 8, 2009, October 4, 2009, March 1, 2010 and April 5, 2010. Therefore there is no basis for granting the relief requested.

Conclusion

For the foregoing reasons, the relief requested by petitioner will not be granted. Specifically, the examiner's refusal in recommending entry of the amendment after allowance filed March 19, 2010 is proper. Since the application has become matured in U.S. Pat. 7,712,483 on May 11, 2010, then, the petition also is dismissed as moot.

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 Program Examiner, at (571) 272-4856.

The petition is dismissed as untimely.

Angela D. Sykes

Angela D. Sykes, Director
Technology Center 3700

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/338,347	01/24/2006	Luke A. Nigliazzo	504899	4285

23903 7590 11/22/2010
INVENSYS INTELLECTUAL PROPERTY DEPARTMENT
33 COMMERCIAL STREET
B52-1J
FOXBORO, MA 02035

EXAMINER
SCHNEIDER, CRAIG M

ART UNIT	PAPER NUMBER
3753	

MAIL DATE	DELIVERY MODE
11/22/2010	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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33 COMMERCIAL STREET
B52-1J
FOXBORO MA 02035

In re Application of: NIGLIAZZO, LUKE A. et al Serial No.: 11/338,347 Filed: Jan. 24, 2006 Docket:: 504889 Title: ADJUSTABLE SEAT VALVE WITH DEBRIS TRAP	DECISION ON PETITION TO ENTER AMENDMENT AFTER ALLOWANCE

This is a decision on the renewed petitions filed on October 7, 2010 to enter the amendment after allowance filed on March 19, 2010 under 37 CFR § 312. The petition is being considered pursuant to 37 CFR 1.181 and no fee therefore is required.

The petition is DENIED.

In the renewed petition, petitioner requests entry of the amendment after allowance under 37 CFR 1.312 filed on March 19, 2010. Petitioner believes the original petition of May 3, 2010 was timely filed. The Rule 312 amendment is supported by originally filed specification on Jan. 24, 2006 without raising the issue of new matter. Petitioner opines that the examiner's refusal to enter the amendment after allowance filed on March 19, 2010 was improper because the amendment adding dependent claims 6 and 8 should be entered as a matter of right in accordance with MPEP 821.04(a).

The relevant facts are:

1. On March 11, 2008, the examiner mailed an election of species requirement, requiring election between species A (FIGS. 2-8), species B (FIGS. 9-12), and species C (FIGS. 13 and 14). In the election of species requirement, the examiner indicated claims 1 and 28 were generic claims. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR §1.141. Original dependent claim 6 was dependent from claim 3. Original dependent claim 8 was dependent from claim 6.
2. On April 11, 2008, the applicant elected species A, Figs. 2-8, and identified claims 1-7, 18-20, 22 and 28 as readable on species A. Claims 1, 2, 7-13, 18-23, and 28 read on species B. Claims

1, 2, 7, 8, 14-18, 20 and 22-28 read on species C. The applicant further stated that claims 2, 7, 18, 20 and 22 are generic as readable on all species, in addition to generic claims 1 and 28 identified by the Examiner. On page 6 of the applicant's response, the applicant admitted that non-elected dependent claim 8 does not read on the elected species A (Figs. 2-8).

3. On the May 16, 2008, a non-final Office action was issued. The examiner treated the elected claims 1-5, 7, 18-20, 22 and 28 as readable on species A and withdrew the non-elected claims 6, 8-17, 21 and 23-27 from consideration. The examiner disagreed with the applicant's election regarding claim 6. In particular, claim 6 does not read on the elected species A, Figs. 2-8. The examiner withdrew claim 6 from consideration.

4. In response, the applicant filed a Rule 111 amendment on August 7, 2008 traversing the examiner's rejection. The applicant placed claim 3 in independent form and also amended dependent claim 6 from claim 3 to independent claim 1. In the response, nowhere did the applicant present any arguments regarding the examiner's withdrawal of claim 6 from consideration.

5. On October 10, 2008, the examiner issued a final rejection of claims 1, 2, 4, 5, 7, 18, 20, 22, 28 and 29. Claims 6, 8-17, 21 and 23-27 remained withdrawn from consideration.

6. On Dec. 10, 2008, the applicant filed a Rue 116 amendment. On page 7 of the Rule 116 amendment, the applicant acknowledged that "Claims 1-2, 4-11, 14-18 and 20-28 are pending in the present application. Claims 12-13 and 29 have been cancelled herein. Claims 3 and 19 were previously cancelled. Claims 6, 8-11, 14-17, 21 and 23-27 were previously withdrawn, subject to rejoinder pursuant to allowance of a generic base claim. Claims 1-2, 4-7, 18, 20, 22 and 28 stand rejected and are at issue herein. Claims 1, 2, 4, 7, 18 and 28 have been amended." The applicant still did not present any arguments regarding the examiner's withdrawal of claim 6 from consideration.

7. In response to the Rule 116 amendment, the examiner promulgated another final rejection on January 14, 2009. In the final rejection, the examiner indicated that claim 5 would be allowable if rewritten in independent form.

8. On March 13, 2009, in response to the examiner's indication of the allowability of claim 5, the applicant amended claim 5 in independent form, and changed the dependency of claim 6 from claim 1 to claim 5, and also changed the dependency of claim 8 from claim 7 to claim 5. The applicant did not present any argument regarding the examiner's withdrawal of claim 6 from consideration.

9. On March 26, 2009, the examiner indicated in an advisory action that the amendments of claim 6 and 8 to depend from claim 5 made on March 13, 2009 do not find support in the original specification.

10. On April 14, 2009, an RCE was filed with claim amendment. However, the applicant did not make any rebuttal arguments regarding the examiner's explanation why claims 6 and 8 can not be made dependent from claim 5.

11. On May 8, 2009, in the non-final Office action, the examiner continued to withdraw non-elected claims 6 and 8 from consideration.

12. In the response filed on July 23, 2009, the applicant traversed the rejection and requested the examiner to rejoin the non-elected claims and linking claims because the applicant believed the generic claims were allowable. The applicant still did not present any arguments regarding the examiner's withdrawal of claim 6 from consideration.

13. In the final rejection of October 14, 2009, the examiner allowed claims 2 and 5, rejected claims 1, 4, 18, 20, 28 and 30-33 and withdrew non-elected claims 6 and 8 from consideration.

14. In the Rule 116 Amendment filed on January 14, 2010, the applicant canceled all claims except claims 2, 5, 6 and 8. The applicant requests that dependent claims 6 and 8 be rejoined and allowed along with the allowable independent claim 5. The applicant believes that the allowable claim 5 is a generic claim.
15. On March 1, 2010, the examiner issued a Notice of Allowance with an Examiners Amendment. The examiner allowed claims 2 and 5, and cancelled non-elected claims 6 and 8 without contacting the applicant because the applicant made the election without traverse and the case was in condition for allowance except the presence of those non-elected claims. However, in the examiner's amendment, the examiner did explain why the non-elected claims 6 and 8 were canceled. In particular, the examiner stated "that claims 6 and 8 originally depended from generic claim 1. Claim 5 is specific to Species A per the flange including an annular groove which is depicted in Figures 5 and 6. As can be seen in the Figures of Species A, the flange is not threaded on the outer surface (claim 6) and further that the closed end does not define an adjustment tool receiver (claim 8). This was further indicated in the advisory action dated 3/26/09."
16. On March 19, 2010, the applicant presented a Rule 312 Amendment seeking to re-enter claims 6 and 8 previously cancelled by the examiner without approval.
17. On April 5, 2010, the examiner denied entry of the Rule 312 Amendment and maintained his position that there is no support for the limitations of claims 6 and 8 in combination with claim 5.
18. On April 21, 2010, the applicant was notified that the patent will be issued on May 11, 2010 with a US Patent Number of 7,712,483.
19. Seven days before the issuance of the patent, on May 3, 2010, a petition was filed requesting entry of Rule 312 Amendment filed on March 19, 2010.
20. On substantive ground, the decision was dismissed because the refusal to enter Rule 312 amendment was proper due to lack of support from the original filed specification. The petition was also dismissed as untimely on procedural ground.
21. On October 7, 2010, the current renewed petition was filed for reconsideration.

Applicable Rules

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.
37 CFR § 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 generic 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.
37 CFR § 1.312 Amendments after allowance. No amendment may be made as a matter of right in an application after the mailing of the notice of allowance. Any amendment filed pursuant to this section must be filed before or with the payment of the issue fee, and may be entered on the recommendation of the primary examiner, approved by the Director, without withdrawing the application from issue.

Discussion and Analysis

In the renewed petition, petitioner believes that the previous petition of May 3, 2010 was timely because the petition is directed to improper refusal to enter the Rule 312 amendment mailed on April 5, 2010. This line of arguments is not persuasive because the real issue here is whether or

not the examiner has improperly withdrawn claims 6 and 8 from consideration at the first instance. Petitioner should have filed a petition to compel examination of dependent claims 6 and 8 when the examiner repeatedly failed to examine the claims and repeatedly withdrawn the claims from consideration. Petitioner waited until after the application was allowed on March 1, 2010 to file the petition of May 3, 2010. Therefore, the petition of May 3, 2010 was untimely.

With regard to the substantive issue, petitioner argues that the re-instatement of canceled dependent claims 6 and 8 should be entered because the claims were disclosed in the original specification. Petitioner relies on the Paragraph 62 of the specification to show such added combination features. The addition of such features to form a single figure as claimed in claims 6 and 8 is not required. Petitioner also opines that the showing of these additional predictable mechanical elements as claimed in claims 6 and 8 in a single figure is not required. According to MPEP 821.04(a), the addition of dependent claims 6 and 8 should be entered and allowed as a matter of right. Therefore, the examiner's refusal to enter the Rule 312 amendment was improper.

A review of the record clearly shows the allowed independent claim 5 is directed to the elected species Fig. 5. For example, the last two lines of claim 5 recite "the flange 122 includes an annular groove 124 defined therein to facilitate trapping debris therein". Whereas, dependent claim 6 as illustrated in Figs. 9 and 13 calls for "the flange 140 is at least partially threaded on an outer surface thereof". The dependent claim 8 of Species C calls for "the closed end defines an adjustment tool 156, 159, 190 receiver therein adapted to receive an adjustment tool". Claims 5, 6 and 8 clearly recite mutually exclusive limitations. Based on the analysis of claims 5, 6 and 8, the allowed claim 5 clearly is not a generic claim. Since allowed claim 5 is not a generic claim, the non-elected dependent claims 6 and 8 simply cannot be made dependent from the allowable non-generic claim 5 in accordance with 37 CFR 1.141. Therefore, the issue of rejoinder under MPEP 821.04(a) is not applicable in this case. If the examiner had entered the Rule 312 amendment, claims 6 and 8 would have raised the issue of new matter. Under the circumstances, the examiner's refusal to recommend entry of the Rule 312 amendment was proper.

Petitioner argument regarding Paragraph 62 of the specification is not convincing. The quoted passage "any combination of the above-described elements in all possible variations thereof is encompassed by the invention unless otherwise indicated herein" is insufficient to support the newly added claim features in claims 6 and 8. This context of the passage is so vague and incomplete. Nowhere in the original specification does the applicant show the combination of the features as claimed in claims 6 and 8 as a single species. This passage may be interpreted that the features can be used interchangeably. There is no illustration and explanation in the original specification as to what constitutes "any combination of the above-described elements in all possible variations". Therefore, the entry of Rule 312 amendment of claims 6 and 8 undoubtedly would require the examiner's further search and consideration of the issues of new matter.

Petitioner's assertion regarding adding the limitation of threads of claim 6 to claim 5 is an addition of a predictable mechanical element and such a combination is clearly met in view of the explicit disclosure pertaining to the same in the application as filed, and therefore a showing of these elements together in a single figure is not required. This line of argument is speculative and contrary to the requirements of 35 USC § 112. The claimed features in claims 6 and 8 are

simply not disclosed and illustrated in the original specification as filed on January 24, 2006. The added claims 6 and claim 8 do not appear to comply with 35 USC § 112 and 37 CFR 1.183(a).

Entry of amendments after allowance is not a matter of right pursuant to 37 CFR § 1.312. The review of the record shows that the examiner was in compliance with proper examining practice as set forth in MPEP § 714 in refusing to recommend entry of the after allowance amendment submitted on March 19, 2010. The examiner did not abuse his discretion or act in an arbitrary or capricious manner in refusing to recommend entry of the amendment after allowance for the reasons stated in the office actions of May 16, 2008, March 26, 2009, May 8, 2009, October 14, 2009, March 1, 2010 and April 5, 2010. Therefore there is no basis for granting the relief requested.

Conclusion

For the foregoing reasons, the relief requested by petitioner will not be granted. Specifically, the examiner's refusal in recommending entry of the amendment after allowance filed March 19, 2010 is proper. Since the application has become matured in U.S. Pat. 7,712,483 on May 11, 2010, then, the petition also is dismissed as moot.

Accordingly, the petition is **denied.**

Any inquiry regarding this decision should be directed to Henry Yuen, Special Programs Examiner at (571) 272-4856. 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).

Angela D. Sykes

Angela D. Sykes, Director
Technology Center 3700

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MAY 17 2011

OFFICE OF PETITIONS

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

In re Patent No. 7,532,965	:
Robillard et al.	: DECISION ON REQUEST FOR
Issue Date: May 12, 2009	: RECONSIDERATION OF
Application No. 11/338,430	: PATENT TERM ADJUSTMENT
Filed: January 24, 2006	: AND NOTICE OF INTENT
Attorney Docket No. 026032-5013	: TO ISSUE CERTIFICATE OF
Title: SYSTEM AND METHOD FOR	: CORRECTION
PROVIDING USER INTERFACE	:
FUNCTIONALITY BASED ON LOCATION	:

This is a decision on the petition filed on November 5, 2009, which is being treated as a petition under 37 CFR 1.181 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 forty-two (542) days. The petition was filed within two months of a decision by the Office mailed on September 14, 2009 dismissing applicant request for reconsideration of PTA under 37 CFR 1.705(d).

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 forty-two (542)** days is **GRANTED.**

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by five hundred forty-two (542) days.

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

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

Charlema Grant
Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,532,965 B2

DATED : May 12, 2009 **DRAFT**

INVENTOR(S) : Robillard 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 434 days

Delete the phrase "by 434 days" and insert – by 542 days--

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1040 Avenue of the Americas
NEW YORK NY 10018-3738

MAILED
AUG 02 2011
OFFICE OF PETITIONS

In re Application of :
Hitoshi Ota :
Application No. 11/338,440 : DECISION ON PETITION
Filed: January 24, 2006 :
Attorney Docket No. U 016123-8 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 6, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in 37 CFR 41.37(a)(1). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed October 26, 2010. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. The appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 41.37(b). As no claim was allowed, the application became abandoned on December 27, 2010. See MPEP 1215.04. A Notice of Abandonment was mailed July 5, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of RCE (Request for Continued Examination), with the required fee of $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.

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 $2,350 extension of time fee submitted on May 27, 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 the Technology Center AU 1764 for appropriate action in the normal course of business for processing of the RCE received May 27, 2011.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

Doc Code: PET.PTA.RCAL
Document Description: Request for Recalculation in view of Wyeth

PTO/SB/131 (02-10)
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REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

Attorney Docket Number: 45658-00053	
Application Number: 11/338,506	Filing Date (or 371(b) or (f) Date): January 23, 2006
Patent Number: 7,664,343	Issue Date: February 16, 2010
First Named Inventor: WITHUM, Timothy O.	
Title: "MODIFIED LEVENSHTEIN DISTANCE ALGORITHM FOR CODING"	

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 Jon P. Deppe	Date August 16, 2010
Name (Print/Typed) Jon P. Deppe	Registration Number 65,196

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

☐ *Total of _____ forms are submitted.

The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 10 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**
If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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

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

(Not to be Submitted to the USPTO)

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

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

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

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

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

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

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

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

Privacy Act Statement

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

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

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

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Alexandria, Virginia 22313-1450
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MARSH, FISCHMANN & BREYFOGLE LLP
8055 East Tufts Avenue
Suite 450
Denver, CO 80237

Mail Date: 09/08/2010

Applicant	: Timothy O. Withum	: DECISION ON REQUEST FOR
Patent Number	: 7664343	: RECALCULATION of PATENT
Issue Date	: 02/16/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/338,506	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/23/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **887** 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 : 12/27/11

TO SPE OF : ART UNIT 2113

SUBJECT : Request for Certificate of Correction for Appl. No.: 11338510 Patent No.: 7523357

CofC mailroom date: 12/16/11

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
[redacted]

Note: Please check the Terminal Disclaimer should these changes be made or not?

Lamonte Newsome

Certificates of Correction Branch

571-272-3421

Thank You For Your Assistance

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

☐ **Approved** — **All** changes apply.

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

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

Comments: _____

_____

_____

_____

_____

_____ _____

SPE **Art Unit**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 12/27/11

TO SPE OF : ART UNIT 2113

SUBJECT : Request for Certificate of Correction for Appl. No.: 11338510 Patent No.: 7523357

CofC mailroom date: 12/16/11

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
[redacted]

Note: Please check the Terminal Disclaimer should these changes be made or not?

Lamonte Newsome

Certificates of Correction Branch

571-272-3421

Thank You For Your Assistance

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

❑ **Approved** — **All** changes apply.

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

❑ **Denied** — State the reasons for denial below.

Comments: _____

_____

_____

_____

_____

_____ _____

SPE **Art Unit**

Newsome, Lamonte

From: Beausoliel, Robert
Sent: Friday, January 20, 2012 7:25 AM
To: Newsome, Lamonte
Subject: FW: 11338510

Lamonte,

The document indicating approval of the COC has been soft scanned. Sorry for the delay.

Rob

From: Beausoliel, Robert
Sent: Thursday, January 19, 2012 4:13 PM
To: Ehne, Charles (AU2113)
Cc: Newsome, Lamonte
Subject: FW: 11338510

Charles,

Please handle ASAP.

Thanks,

Rob

From: Newsome, Lamonte
Sent: Tuesday, January 17, 2012 11:24 AM
To: Beausoliel, Robert
Subject: 11338510

2nd Request

From: Newsome, Lamonte
Sent: Tuesday, December 27, 2011 2:30 PM
To: Beausoliel, Robert
Subject: 11338510

Please review the attached document.

Examiner/SPE:

- Read the request from the attorney/applicant dated ___12/16/11_____
  - Print out the IMIS and indicate your approval, approval in part (please indicate what is denied and what is approved), or denial of the request and sign
  - Send the IMIS for scanning under the code COCX
  - Send me an email indicating that you've sent the COCX and I will look for your decision.

Thank you, I'm looking forward to hearing from you.

Lamonte M. Newsome

Certificate of Corrections

571-272-3421 (Voice)

571-273-3421 (Fax)

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Lawrence Livermore National Security, LLC
7000 East Avenue
P.O. Box 808, L-703
Livermore, CA 94550

MAILED
JUN 27 2011
OFFICE OF PETITIONS

In re Patent No. 7,569,850	:	
Issue Date: 08/04/2009	:	
Application No. 11/338,513	:	ON PETITION
Filed: 01/23/2006	:	
Attorney Docket No. IL-11422	:	

This is in response to the request filed June 7, 2011.

Patentees request correction of the front page of the Letters Patent pursuant to 37 CFR 3.81(b) to include the correct assignee data via Certificate of Correction. Additionally, patentees request that the Office issue a Certificate of Correction reflecting the corrected spelling of an inventor's name. 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.

A review of the record reveals that on April 17, 2006, patentees filed a request for a corrected filing receipt during the pendency of the application to correct a typographical error in the spelling of inventor Pieter Stroeve's name. Thereafter, the Office updated the PALM records and issued a corrected filing receipt on April 25, 2006, reflecting the correct spelling of the inventor's name.

As stated in MPEP 605.04(b),

> When a typographical or transliteration error in the spelling of an inventor's name is discovered during pendency of an application, a petition is not required, nor is a new oath or declaration under 37 CFR 1.63 needed. However, applicants are strongly encouraged to use an application data sheet such that any patent to issue will reflect the correct spelling of the inventor's name. Without an application data sheet with the corrected spelling, any patent to issue is less likely to reflect the correct spelling since the spelling of the inventor's name is taken from the oath or declaration, or any subsequently filed application data sheet.

Unfortunately, patentees did not file an application data sheet with the corrected spelling and the patent issued with the incorrect spelling of the inventor's name. Therefore, a certificate of correction is necessary for the correction of the spelling of the inventor's name to be reflected on the patent.

As all requirements have been met, the request under 37 CFR 3.81(b) to correct the assignee data and the request to reflect the corrected spelling of the inventor's name via a Certificate of Correction are 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 request and directing issuance of the requested Certificate of Correction.

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS, TX 75265

In re Application of
Kofidankwa Anim-Appiah, et al.
Application No. 11/338,570
Filed: January 24, 2006
Attorney Docket No.: TI-38510

ON PETITION

This is a decision in response to the petition, filed September 24, 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, June 25, 2009, which set a shortened statutory period for reply of three (3) months. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on September 26, 2009. A Notice of Abandonment was mailed on February 9, 2010. On September 24, 2010, the present petition was filed.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment; (2) the petition fee of $1,620; and (3) an adequate statement of unintentional delay.

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

The application is being referred to Technology Center AU 2193 for appropriate action by the Examiner in the normal course of business on the amendment received September 24 2010.

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

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: WADE J. BRADY, III
7839 CHURCHILL WAY, MS 3999
DALLAS, TX 75251

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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA, VA 22314

Mail Date: 08/03/2010

Applicant	: Zhaocheng Wang	: DECISION ON REQUEST FOR
Patent Number	: 7660228	: RECALCULATION of PATENT
Issue Date	: 02/09/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/338,645	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/25/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **552** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

Doc Code: PET.PTA.RCAL
Document Description: Request for Recalculation in view of Wyeth

PTO/SB/131 (02-10)
Approved for use through 07/31/2010. OMB 0651-0020
U.S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE
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REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

Attorney Docket Number: 47004.000405	
Application Number: 11/338,656	Filing Date (or 371(b) or (f) Date): 01/25/2006
Patent Number: 7,783,578	Issue Date:
First Named Inventor: William Frederick Mann, III	
Title: System For Providing Cardless Payment	

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

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

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

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

Signature	Date 10/25/2010
Name (Print/Typed) Robert A. King	Registration Number 42,738

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

☐ *Total of _____ forms are submitted.

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

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

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

Mail Date: 11/01/2010

Applicant	: William Frederick Mann III	: DECISION ON REQUEST FOR
Patent Number	: 7783578	: RECALCULATION of PATENT
Issue Date	: 08/24/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/338,656	: OF WYETH
Filed	: 01/25/2006	:
		:

The Patentee's Request for Recalculation is **DISMISSED.**

This Request is deemed ineligible for consideration for one or more of the following reasons:

(A). The patent for which PTA recalculation is requested is either a design or reissue application or is a reexamination proceeding;

(B). The patent for which PTA recalculation is requested resulted from a utility or plant application filed under 35 USC 111(a) before May 29, 2000 and no CPA filed in the application on/after May 29, 2000;

(C). The patent for which PTA recalculation is requested resulted from an international application in which the international filing date was before May 29, 2000 and no CPA filed in the application on/after May 29, 2000;

(D). The patent for which PTA recalculation is requested issued on/after March 2, 2010;

(E). The Request for Recalculation was filed more than 180 days after the grant date of the patent and the request was not filed within two months of a dismissal of a request for reconsideration of the of the patent term under 37 CFR 1.705(d);

(F). The Request for Recalculation is not solely limited to USPTO pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A);

or

(G). A civil action was filed pursuant to 35 U.S.C. 154(b)(4)(A)concerning the same patent at issue in this request.

Patentee may file a reply to this decision dismissing the Request for Recalculation. Patentee must file such reply within one month or thirty days, whichever is longer, of the mail date of the decision dismissing the Request for Recalculation. No fee is required if patentee is asserting in the reply that the dismissal for ineligibility is improper.

Patentee should use document code PET.OP if electronically filing a reply to this dismissal. If the USPTO finds that the request was improperly deemed ineligible, the USPTO will mail applicant a recalculation determination.

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

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

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: MIYA3017/GAL	Patent Number: 7668341
Filing Date (or 371(b) or (f) Date): 2006-01-25	Issue Date: 2010-02-23
First Named Inventor: Takayuki Miyajima	
Title: IMAGE RECOGNITION APPARATUS AND IMAGE RECOGNITION METHOD	

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 2010-08-20
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: 08/26/2010

Applicant	: Takayuki Miyajima	: DECISION ON REQUEST FOR
Patent Number	: 7668341	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/338,712	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/25/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **845** 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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Browdy and Neimark PLLC
1625 K street NW
Suite 1100
Washington DC 20006

MAILED
FEB 02 2011
OFFICE OF PETITIONS

In re Patent No. 7,522,714 :
Binder : DECISION UPON REMAND AND
Issue Date: April 21,2009 : RECONSIDERATION OF
Application No. 11/338,855 : PATENT TERM ADJUSTMENT
Filed: January 25, 2006 : AND NOTICE OF INTENT
Attorney Docket No. Binder=7c : TO ISSUE CERTIFICATE OF
Title: Telephone Outlet for : CORRECTION
implementing a Local Area :
Network Over Telephone Lines
and a Local Area Network Using
Such Outlets

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 six hundred and seventy-nine (679) 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 six hundred and seventy-nine (679) days.

Telephone inquiries specific to this matter should be directed to Senior Legal Advisor Kery A. Fries at (571) 272-7757.

/Kery A. Fries/

Kery Fries
Senior Legal Advisor Attorney
Office of Patent Legal Administration
Office of Associate Commissioner
For Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,522,714

DATED : **April 21, 2009** **DRAFT**

INVENTOR(S) : Binder

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 593 days

Delete the phrase "by 593days" and insert – by 679 days--

Day : Tuesday
Date: 1/25/2011

PALM INTRANET

Time: 13:05:29

PTA Calculations for Application: 11/338855			
Application Filing Date:	01/25/2006	PTO Delay (PTO):	593
Issue Date of Patent:	04/21/2009	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	0
Post-Issue Petitions:	0	Total PTA (days):	679
PTO Delay Adjustment:	86		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
98	01/25/2011	ADJUSTMENT OF PTA CALCULATION BY PTO	86		
89.5	04/01/2009	PTA 36 MONTHS			
89	04/21/2009	PATENT ISSUE DATE USED IN PTA CALCULATION			
88	03/23/2009	EXPORT TO FINAL DATA CAPTURE			
87	03/19/2009	FINISHED INITIAL DATA CAPTURE			
86	03/20/2009	DISPATCH TO FDC			
85	02/24/2009	APPLICATION IS CONSIDERED READY FOR ISSUE			
84	02/24/2009	WORKFLOW - QUERY REQUEST - FINISH			
83	02/20/2009	TC RETURN TO PUBS			
82	02/05/2009	STATEMENT FILED INDICATING A LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS			
81	02/05/2009	ISSUE FEE PAYMENT VERIFIED			
80	02/05/2009	ISSUE FEE PAYMENT RECEIVED			
79	01/22/2009	PUBS CASE REMAND TO TC			
78	01/26/2009	WORKFLOW - QUERY REQUEST - BEGIN			
77	01/20/2009	WORKFLOW - QUERY REQUEST - FINISH			
76	01/14/2009	TC RETURN TO PUBS			
75	01/14/2009	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
74	01/13/2009	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
73	12/17/2008	PUBS CASE REMAND TO TC			
72	12/23/2008	WORKFLOW - QUERY REQUEST - BEGIN			
71	11/10/2008	EXPORT TO INITIAL DATA CAPTURE			
70	11/07/2008	MAIL NOTICE OF ALLOWANCE	593		-1

69	11/07/2008	ISSUE REVISION COMPLETED			
68	11/06/2008	ALLOWED CASE RETURNED TO THE EXAMINER FOR CLERICAL PROCESSING			
67	11/06/2008	DOCUMENT VERIFICATION			
66	11/06/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
65	11/06/2008	NOTICE OF ALLOWABILITY			
57	03/09/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
56	05/07/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
55	05/07/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
54	05/07/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
53	05/07/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
52	05/07/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
51	08/10/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
50	10/10/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
49	01/30/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
48	01/30/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
47	01/31/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
46	02/08/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
45	10/09/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
44	10/28/2008	CASE DOCKETED TO EXAMINER IN GAU			
43	10/09/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
42	02/08/2008	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
41	01/31/2008	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
40	01/30/2008	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			

39	02/08/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
38	01/31/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
37	01/30/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
36	01/30/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
35	10/17/2007	WITHDRAW FLAGGED FOR 5/25			
34	10/16/2007	FLAGGED FOR 5/25			
33	10/10/2007	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
32	10/10/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
31	08/10/2007	REFERENCE CAPTURE ON IDS			
30	08/10/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
28	08/10/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
27	06/22/2007	REQUEST FOR REFUND			
26	06/27/2007	CASE DOCKETED TO EXAMINER IN GAU			
24	01/25/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
23	05/07/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
22	05/07/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
21	05/07/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
20	05/07/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
19	05/07/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
18	05/07/2007	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
17	05/07/2007	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
16	05/07/2007	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
15	05/07/2007	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
14	05/07/2007	ELECTRONIC INFORMATION DISCLOSURE			

		STATEMENT			
13	03/09/2007	REFERENCE CAPTURE ON IDS			
12.7	03/09/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
12	03/09/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	07/27/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
10	07/19/2006	CASE DOCKETED TO EXAMINER IN GAU			
9	03/02/2006	APPLICATION RETURN FROM OIPE			
8	03/03/2006	APPLICATION IS NOW COMPLETE			
7	03/02/2006	APPLICATION RETURN TO OIPE			
6	03/02/2006	APPLICATION DISPATCHED FROM OIPE			
5	03/02/2006	APPLICATION IS NOW COMPLETE			
4	02/15/2006	CLEARED BY OIPE CSR			
3	02/15/2006	CASE CLASSIFIED BY OIPE			
2	02/04/2006	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	01/25/2006	INITIAL EXAM TEAM NN			

Search Another: Application# Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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

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500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

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OCT 18 2011
OFFICE OF PETITIONS

In re Application of:
Christopher S. Wilson
Application No. 11/338,917
Filed: January 25, 2006
Attorney Docket No. 16352US02

: LETTER REGARDING
: PATENT TERM ADJUSTMENT

This is a decision on the petition filed October 5, 2011, under 37 C.F.R. § 1.705 requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted to 507 days.

The application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED**.

Patentee's argue that the issuance of the patent resulting from this application has been delayed due to review by the Board of Patent Appeals and Interferences under 35 U.S.C. 134 or by a Federal court under 35 U.S.C. 141 or 145, resulting in the reversal of an adverse determination of patentability. 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).

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.

In this instance a Notice of Appeal was filed February 17, 2009 and a non-Final Office Action was mailed June 26, 2009 and a second Notice of Appeal was filed June 1, 2010 followed by a notice of allowance mailed September 28, 2010. Thus there is no patent term adjustment for the periods between the filing of the Notice of Appeal and the mailing of the subsequent Office Action.

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

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MINNEAPOLIS MN 55437

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OFFICE OF PETITIONS

In re Application of	:	
Yanting Dong, et al.	:	
Application No. 11/338,935	:	DECISION ON PETITION
Filed: January 25, 2006	:	
Attorney Docket No. GDT.233.A1	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 10, 2012, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before January 11, 2012, as required by the Notice of Allowance and Fee(s) Due, mailed October 11, 2011. Accordingly, the date of abandonment of this application is January 12, 2012. The Notice of Abandonment was mailed February 7, 2012.

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 $1,740 and the publication fee of $300, (2) the petition fee of $1,860; and (3) a proper statement of unintentional delay.

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

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

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

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K&L Gates LLP
P.O. Box 1135
CHICAGO IL 60690

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JAN 11 2011

OFFICE OF PETITIONS

In re Application of	:	
BAERLOCHER, ANTHONY J.	:	DECISION ON APPLICATION
Application No. 11/338,961	:	FOR
Filed: 01/23/2006	:	PATENT TERM ADJUSTMENT
Atty Docket No. 3718611-3221	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)" filed December 16, 2010. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from 1 day to 336 days.

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

The Office has updated the PALM and PAIR screens to reflect that the corrected Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **357 days**. A copy of the updated PAIR screen, showing the corrected determination, is enclosed.

On November 16, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) was 1 day. On December 16, 2010, applicants timely submitted the instant application for patent term adjustment.[1]

[1] The Office finance records reveal that the issue fee and publication fee were paid on December 16, 2010.

Applicants dispute the reduction of 356 days for filing of the Terminal Disclaimer on October 27, 2010, after a reply had been filed. See 37 CFR 1.704(c)(8).[2] Applicants contend that they submitted the Terminal Disclaimer at the request of the examiner.

Applicants' contention is well taken. The record supports a conclusion that the supplemental reply filed October 26, 2010, was expressly requested by the examiner within the meaning of 37 CFR 1.704(c)(8). Accordingly, the reduction of 356 days is not warranted and is being removed.

Next, applicants state:

> Applicant also respectfully submits that this express request by the Examiner on October 26, 2010 appears to qualify as a response to a reply under 35 U.S.C. §132. Thus, the USPTO delay from March 5, 2010 (i.e., four months after Applicant filed a Response to Office Action on November 5, 2009) to October 26, 2010 appears to be a USPTO Delay of 235 days and the USPTO Delay of 256 days associated with the mailing of the Notice of Allowance on November 16, 2010 appears to be a USPTO Delay of 0 days (i.e., November 16, 2010 is less than 4 months after October 26, 2010).

Petition, p. 2.

Applicants' assertion is without merit. The express request by the Examiner on October 26, 2010, is not an Office action within the meaning of 35 U.S.C. 132. Accordingly, the USPTO was properly assessed a delay of 265 days, counting the number of days in the period beginning on the day after the date that is four months after the date the reply was filed, March 6, 2010,

---

[2] 37 CFR 1.704(c)(8) states:

> 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[.]

and ending on the date of mailing of the notice of allowance, November 16, 2010.

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

Submission of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fee is required.

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

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

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of updated PAIR screen

11/338,961	GAMING DEVICE HAVING OFFER AND ACCEPTANCE GAME WITH HIDDEN OFFER	01-07-2011::16:43:53

Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 11/338,961

Filing or 371(c) Date:	01-23-2006	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 Adjustments:	356
B Delays:	0	Applicant Delays:	409
C Delays:	0	Total PTA Adjustments:	357

Patent Term Adjustment History **Explanation Of Calculations**

Number	Date	Contents Description	PTO (Days)	APPL (Days)	Start
99	01-07-2011	Adjustment of PTA Calculation by PTO	356		0
88	11-16-2010	Mail Notice of Allowance	256		66
87	11-09-2010	Issue Revision Completed			0
86	11-09-2010	Document Verification			0
85	11-09-2010	Notice of Allowance Data Verification Completed			0
84	11-08-2010	Examiner's Amendment Communication			0
83	11-08-2010	Notice of Allowability			0
79	11-02-2010	Paralegal TD Accepted			0
78	10-27-2010	Terminal Disclaimer Filed		356	66
77	11-01-2010	Email Notification			0
76	11-01-2010	Mail Examiner Interview Summary (PTOL - 413)			0
75	10-26-2010	Examiner Interview Summary Record (PTOL - 413)			0
74	10-21-2010	case Inherited			0
73	10-21-2010	Case Docketed to Examiner in GAU			0
72	10-06-2010	case Inherited			0
71	10-06-2010	Case Docketed to Examiner in GAU			0
70	02-17-2010	case Inherited			0
67	12-24-2009	Date Forwarded to Examiner			0

66	11-05-2009	Response after Non-Final Action	0
65	09-28-2009	Case Docketed to Examiner in GAU	0
64	08-28-2009	Email Notification	0
63	08-28-2009	Mail Miscellaneous Communication to Applicant	0
62	08-26-2009	Miscellaneous Communication to Applicant - No Action Count	0
61	08-05-2009	Electronic Review	0
60	08-05-2009	Email Notification	0
59	08-05-2009	Mail Non-Final Rejection	0
58	08-03-2009	Non-Final Rejection	0
57	06-25-2009	Date Forwarded to Examiner	0
56	06-22-2009	Amendment Submitted/Entered with Filing of CPA/RCE	0
55	06-25-2009	Date Forwarded to Examiner	0
54	06-22-2009	Request for Continued Examination (RCE)	0
53	06-25-2009	Disposal for a RCE / CPA / R129	0
52	06-22-2009	Workflow - Request for RCE - Begin	0
51	06-03-2009	Email Notification	0
50	06-03-2009	Mail Advisory Action (PTOL - 303)	0
49	06-01-2009	Advisory Action (PTOL-303)	0
48	05-27-2009	Date Forwarded to Examiner	0
47	05-22-2009	Amendment after Final Rejection	0
46	03-26-2009	Electronic Review	0
45	03-26-2009	Email Notification	0
44	03-26-2009	Mail Final Rejection (PTOL - 326)	0
43	03-24-2009	Final Rejection	0
42	02-26-2009	Date Forwarded to Examiner	0

41	01-05-2009	Response after Non-Final Action	26	37
40	01-05-2009	Request for Extension of Time - Granted		0
39	09-10-2008	Electronic Review		0
38	09-10-2008	Email Notification		0
37	09-10-2008	Mail Non-Final Rejection		0
36	09-08-2008	Non-Final Rejection		0
35	07-02-2008	Paralegal TD Accepted		0
34	05-12-2008	Terminal Disclaimer Filed	0	32
33	07-01-2008	Date Forwarded to Examiner		0
32	05-12-2008	Response after Non-Final Action	25	25
31	05-12-2008	Request for Extension of Time - Granted		0
30	05-12-2008	Email Notification		0
29	05-12-2008	Mail Examiner Interview Summary (PTOL - 413)		0
28	04-30-2008	Examiner Interview Summary Record (PTOL - 413)		0
27	01-19-2008	Electronic Review		0
26	01-18-2008	Email Notification		0
25	01-17-2008	Mail Non-Final Rejection		0
24	01-14-2008	Non-Final Rejection		0
23	12-11-2007	Paralegal TD Accepted		0
22	11-26-2007	Terminal Disclaimer Filed	0	20
21	12-09-2007	Date Forwarded to Examiner		0
20	11-26-2007	Response after Non-Final Action	2	16
19	11-26-2007	terminal disclaimer fee paid		0
18	08-28-2007	Electronic Review		0
17	08-25-	Email Notification		0

	2007			
16	08-24-2007	Mail Non-Final Rejection	154	-1
15	08-20-2007	Non-Final Rejection		0
11	01-23-2006	Information Disclosure Statement considered		0
10	06-25-2007	Case Docketed to Examiner in GAU		0
9	01-24-2007	IFW TSS Processing by Tech Center Complete		0
8	01-24-2007	Case Docketed to Examiner in GAU		0
7	01-23-2006	Reference capture on IDS		0
6.7	01-23-2006	Information Disclosure Statement (IDS) Filed		0
6	01-23-2006	Information Disclosure Statement (IDS) Filed		0
5	02-28-2006	Application Dispatched from OIPE		0
4	02-28-2006	Application Is Now Complete		0
3	02-08-2006	Cleared by OIPE CSR		0
2	02-04-2006	IFW Scan & PACR Auto Security Review		0
1	01-23-2006	Initial Exam Team nn		0

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DEC 13 2010

OFFICE OF PETITIONS

In re Patent No. 7,671,258	:	
Zhang et al.	:	
Application Number: 11/338,987	:	DECISION ON APPLICATION
Issued: March 2, 2010	:	FOR
Filed: January 25, 2006	:	PATENT TERM ADJUSTMENT
Atty. Dkt. No. 4041.3002 US1	:	

This is a decision on the THIRD REQUEST FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705 filed on June 30, 2010, which is treated as a request for reconsideration under 37 CFR 1.705(d), requesting that the determination of patent term adjustment at the mailing of the notice of allowance be corrected from 0 days to 412 days.

The application for patent term adjustment is **GRANTED TO THE EXTENT INDICATED**.

Patentees are given **TWO (2) MONTHS** to respond to this decision. No extensions of time will be granted under § 1.136.

On February 20, 2009, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. Then applicants were advised that the patent term adjustment to date was 0 days.

A request for reconsideration of patent term adjustment was timely filed on March 31, 2009.[1] Prior to the issuance of a decision on this request, the application issued as U.S. Patent No. 7,671,258 on March 2, 2010, with a patent term adjustment of

[1] A review of Office PALM records indicates that the issue fee was paid on May 6, 2009.

0 days. On March 4, 2010, a second request under 37 CFR 1.705 was filed, requesting that the patent term adjustment be revised from 0 days to 989 days. On May 10, 2010, a decision was mailed in response to both requests stating that the patent term adjustment was 0 days.

On June 30, 2010, the subject request for reconsideration was filed.

Petitioners again assert that the following adjustment and reductions should be made to the patent term adjustment:

- The 58 day reduction[2] should be removed because the reply filed on April 12, 2007 was not a response to the November 14, 2006, Office action and did not correct an omission in the reply of February 13, 2007.

- The 120 day reduction[3] for the filing of an amendment or other paper after the mailing of the notice of allowance in connection with the filing of the paper styled as a request for refund, filed on July 10, 2009, should be removed, and a period of delay of 34 days should be entered.

- A 28 day period of adjustment for Office delay[4] removed in the prior decision should be entered for in connection with the notice of allowance mailed on February 20, 2009, asserted to have been mailed four (4) months and 28 days after the filing of an appeal brief.

- A 120 day period of adjustment for Office delay for the period between the day after the date four months after the filing of an amendment after final rejection on June 23, 2008, and the mailing of the notice of allowance mailed on February 20, 2009, because the amendment after final rejection was in compliance with § 1.113(c).

- A 376 day reduction in the "B" delay, for the period from the date a Notice of Appeal was filed, on June 23, 2008, to the day after the date three years after the date the application was filed, should be removed.

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[2] See PAIR Item No. 28.
[3] See PAIR Item No. 90.
[4] See PAIR Item No. 66.

- The period of overlap with the "B" period of adjustment for three years delay begins on September 6, 2009, not September 26, 2009, and ends on March 2, 2010, and is 177 days, rather than 159 days, as calculated by the Office.

Petitioners' arguments have been considered, and are persuasive, to a point.

With regard to the 58 day period of reduction, a review of the record reveals that on March 30, 2007, the Office mailed a notice stating the reply of February 13, 2007, was not fully response to the prior Office action. On April 12, 2007, then applicants filed a reply arguing that the reply of February 13, 2007 was not non-compliant. On July 9, 2007, an Office action was issued in response to the reply filed on February 13, 2007. As the showing of record is that the examiner accepted petitioners' argument that the reply was not non-compliant, the 58-day period of reduction pursuant to 37 CFR 1.704(c)(7) is not warranted and will be removed.

With regard to the 120 day reduction for the filing of a request for refund on June 30, 2009, petitioners' argument has been again considered, but is not persuasive.

Simply put, petitioners' apparent contention that the request for refund was necessitated by an Office error which occurred prior to the mailing of the notice of allowance has no bearing on the reduction for applicant delay as a result of filing a request for refund after the mailing of the notice of allowance.

MPEP 2701 states, in pertinent part:

> Certain papers filed after allowance are not considered to be a failure to engage in reasonable efforts to conclude processing or examination of an application. See Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance has been Mailed, 1247 Off. Gaz. Pat. Office 111 (June 26, 2001). The submission of the following papers after a "Notice of Allowance" is not considered a failure to engage in reasonable efforts to conclude processing or examination of an application: (1) Fee(s) Transmittal (PTOL-85B); (2) Power of Attorney; (3) Power to Inspect; (4) Change of Address; (5) Change of Status (small/not small entity status); (6) a response to the

> examiner's reasons for allowance or a request to correct an error or omission in the "Notice of Allowance" or "Notice of Allowability;" and (7) letters related to government interests (e.g., those between NASA and the Office). Papers that **will** be considered a failure to engage in reasonable efforts to conclude processing or examination of an application include: (1) a request for a refund; (2) a status letter; (3) amendments under 37 CFR 1.312; (4) late priority claims; (5) a certified copy of a priority document; (6) drawings; (7) letters related to biologic deposits; and (8) oaths or declarations. 37 CFR 1.704(c)(10) provides that in such a case the period of adjustment set forth in 37 CFR 1.703 shall be reduced by the lesser of: (1) the number of days, if any, beginning on the date the amendment under 37 CFR 1.312 was filed and ending on the mailing date of the Office action or notice in response to the amendment under 37 CFR 1.312 or such other paper; or (2) four months. The phrase "lesser of …or [f]our months" is to provide a four-month cap for a reduction under 37 CFR 1.704(c)(10) if the Office takes longer than four months to issue an Office action or notice in response to the amendment under 37 CFR 1.312 or other paper.

It is undisputed that the paper filed on July 10, 2009, is entitled as a request for refund and requests refund of the appeal brief fee and extension of time fee. As stated above, a request for refund is considered a failure to engage in reasonable efforts to conclude processing or examination, regardless of the effect of the filing of said paper on the processing and/or examination of the application.

Further, while petitioners assert that a paper was mailed on August 13, 2009 in response to the request for refund, a review of the record reveals that no paper was mailed on August 13, 2009, or at any other time prior to the issuance of the patent. As no Office communication was mailed in response to this paper, the 120 day reduction for applicant delay is warranted and will not be removed.

Turning to petitioners' assertion that the amendment after final rejection was "'a reply in compliance with 1.113(c)'", is not well taken. Specifically, while the Notice of Allowance mailed on February 20, 2009, states that the amendment of June 23, 2008

has been entered, the terminal disclaimer filed on January 15, 2009 was also accepted. The showing of record is, therefore, that the terminal disclaimer of January 15, 2009, was required to make the reply comply with § 1.113(c).

Furthermore, the Notice of Allowance stated, in the examiner's statement of reasons for allowance, that the 112/1 rejection set forth in the final Office action mailed on January 23, 2008, was withdrawn in light of the reasons stated in the "Interview Summary." As such, the determination of allowability was based, in part, on the Interview Summary of January 15, 2009. Accordingly, the showing of record is that the examiner had properly determined that amendment after final rejection was not in compliance with § 1.113(c) on July 17, 2008, but was provided additional information during the interview, as set forth in the Interview Summary, which placed the application in condition for allowance. Simply put, the amendment of June 23, 2008, by itself, did not place the application in condition for allowance.

Pursuant to 35 U.S.C. 154(b)(1)(A)(i)&(ii), applicants are only entitled to day-to-day restoration of term lost as a result of delay created by the failure of the Office to (i) provide at least one of the notifications under section 132 of this title or a notice of allowance under section 151 of this title not later than 14 months after the date on which an application was filed under section 111(a) of this title; or (ii) respond to a reply under section 132, or to an appeal taken under section 134, within 4 months after the date on which the reply was filed or the appeal was taken.

Further to this point, the Office has no authority to grant an extension or adjustment of the term due to administrative delays except as authorized by 35 U.S.C. § 154.

As the Notice of Allowance mailed on February 20, 2009, was mailed within four (4) months of January 15, 2009, the date the terminal disclaimer was filed and the Interview Summary was mailed, no adjustment for Office delay is warranted.

With respect to the "B" delay, it is undisputed that a notice of appeal was filed on June 23, 2008. On February 20, 2009, 243 days after the notice of appeal was filed, a notice of allowance was mailed. In this regard, 37 CFR 1.703(b)(4) states that the sum of the number of days beginning on the date a notice of appeal was filed until a notice of allowance is mailed is

excluded from the three year delay period. Simply put, it is immaterial, with regard to determining the excluded period, whether the notice of appeal was filed prior to or after the date three years after the date the application was filed. As such, the 243 day period was properly excluded from the calculation under 37 CFR 1.702(b).

Lastly, with regards to the overlapping period in connection with the payment of the issue fee fee, petitioners are correct. In this regard, a portion of the period of Office delay from four months from the payment of the issue fee to the issuance of the patent overlaps with the "B" delay. The overlapping period begins on the day after the date that is four months after the date the issue fee was paid, May 6, 2009, and ends on the date the patent issued, March 2, 2010, and is 177 days. Thus, the "B" delay is 0 days (401 - 243 excluded - 177 overlap).

The patent term adjustment is updated to 0 days (177 days of Office delay and 204 (271 - 9 - 58) days of applicant delay.

In view thereof, the petition is **GRANTED** to the extent that the PTA calculations will be updated. The PTA, however, remains 0 days.

No further action will be taken with regard to this request.

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 Douglas I. Wood, Senior Petitions Attorney, at (571) 272-3231.

Anthony Knight
Director
Office of Petitions

Encl: Updated PAIR Calculation

PALM Resource Center

Patent Term Adjustments

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

Application Number*: 11338987 Search Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application: 11338987

Application Filing Date 01/25/2006	Overlapping Days Between (A and B) or (A and C) 159
Issue Date of Patent 03/02/2010	Non-Overlapping USPTO Delays: 205
A Delays 205	PTO Manual Adjustment 39
B Delays 159	Applicant Delay (APPL) 271
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
111	12/10/2010		P028	Adjustment of PTA Calculation by PTO	58		0
107	05/08/2010		P028	Adjustment of PTA Calculation by PTO	9		0
106	05/08/2010		P028	Adjustment of PTA Calculation by PTO		20	0
105	05/08/2010		P028	Adjustment of PTA Calculation by PTO		12	0
104	05/08/2010		P028	Adjustment of PTA Calculation by PTO	12		0
100.5	03/02/2010	01/25/2009	PTA36M	PTA 36 Months	153		0
100	03/02/2010	09/06/2009	PTAC	Patent Issue Date Used in PTA Calculation	177		81
99	02/09/2010		TCPUB	TC Return to Pubs			0
96	01/20/2010		QURF	Workflow - Query Request - Finish			0
94	12/11/2009		EFDC	Export to Final Data Capture			0
93	12/11/2009		QURI	Workflow - Query Request - Begin			0
95	12/03/2009		PUBTC	Pubs Case Remand to TC			0
92	11/30/2009		D1935	Dispatch to FDC			0
91	11/30/2009		D1935	Dispatch to FDC			0
90	07/10/2009		LET.	Miscellaneous Incoming Letter		120	74
89	06/30/2009		PILS	Application Is Considered Ready for Issue			0
88	06/30/2009		MEX.A	Mail Examiner's Amendment			0
87	06/30/2009		EX.A	Examiner's Amendment Communication			0
86	06/30/2009		MPTDI	Mail-Petition Decision - Dismissed			0
85	06/29/2009		PTDI	Petition Decision - Dismissed			0
84	05/19/2009		PET.	Petition Entered			0
83	05/11/2009		MPTDE	Mail-Petition Decision - Denied			0
82	05/11/2009		PTDE	Petition Decision - Denied			0
81	05/06/2009		N084	Issue Fee Payment Verified			0
80	05/06/2009		IFEE	Issue Fee Payment Received	21		0
79	05/05/2009		PUBTC	Pubs Case Remand to TC			0
77	04/16/2009		FIDC	Finished Initial Data Capture			0
78	04/15/2009		PET.	Petition Entered			0
76	04/07/2009		QURF	Workflow - Query Request - Finish			0
74	04/07/2009		MM327	Mail Miscellaneous Communication to Applicant			0
73	03/31/2009		PET.	Petition Entered			0
75	03/30/2009		LET.	Miscellaneous Incoming Letter		9	74
72	03/30/2009		M327	Miscellaneous Communication to Applicant - No Action Count			0
70	03/16/2009		QURI	Workflow - Query Request - Begin			0
71	03/11/2009		PUBTC	Pubs Case Remand to TC			0
68	03/06/2009		CRFT	Sequence Forwarded to Pubs on Tape			0
67	02/23/2009		EIDC	Export to Initial Data Capture			0
66	02/20/2009	01/23/2009	MN/=.	Mail Notice of Allowance	28		45
65	02/03/2009		IREV	Issue Revision Completed			0
64	02/03/2009		N/=.	Notice of Allowance Data Verification Completed			0
63	02/03/2009		DOCK	Case Docketed to Examiner in GAU			0
62	01/31/2009		ACRE	Allowed Case Returned to the Examiner for Clerical Processing			0
61	01/31/2009		DVER	Document Verification			0
59	01/26/2009		CNTA	Notice of Allowability			0
58	01/21/2009		P574	Paralegal TD Accepted			0
60	01/15/2009		DIST	Terminal Disclaimer Filed			0
57	01/15/2009		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
56	01/06/2009		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
55	11/25/2008		APBR	Appeal Brief Review Complete			0
54	11/25/2008		FWDX	Date Forwarded to Examiner			0
53	11/13/2008		AP.B	Appeal Brief Filed			0
52	11/07/2008		APBD	Notice -- Defective Appeal Brief			0
51	11/05/2008		APBR	Appeal Brief Review Complete			0
50	11/05/2008		FWDX	Date Forwarded to Examiner			0
49.1	10/23/2008		APBI	Defective //Incomplete Appeal Brief Filed			0
49	10/23/2008		AP.B	Appeal Brief Filed			0
48	10/08/2008		APBD	Notice -- Defective Appeal Brief			0
47	10/03/2008		APBR	Appeal Brief Review Complete			0
46	10/03/2008		FWDX	Date Forwarded to Examiner			0
45.1	09/23/2008		APBI	Defective / Incomplete Appeal Brief Filed			0
45	09/23/2008		AP.B	Appeal Brief Filed			0
44	09/23/2008		XT/G	Request for Extension of Time - Granted			0
43	07/17/2008		MCTAV	Mail Advisory Action (PTOL - 303)			0
42	07/16/2008		CTAV	Advisory Action (PTOL-303)			0
41	07/09/2008		FWDX	Date Forwarded to Examiner			0
40	06/23/2008		AP/A	Amendment/Argument after Notice of Appeal			0
39	06/23/2008	04/23/2008	N/AP	Notice of Appeal Filed		61	37
38	06/23/2008		XT/G	Request for Extension of Time - Granted			0
37	01/23/2008		MCTFR	Mail Final Rejection (PTOL - 326)			0
36	01/18/2008		CTFR	Final Rejection			0
35	11/07/2007		FWDX	Date Forwarded to Examiner			0
34	11/01/2007	10/09/2007	A...	Response after Non-Final Action		23	32
33	11/01/2007		XT/G	Request for Extension of Time - Granted			0
32	07/09/2007		MCTNF	Mail Non-Final Rejection			0
31	06/25/2007		CTNF	Non-Final Rejection			0
29	04/24/2007		FWDX	Date Forwarded to Examiner			0
28	04/12/2007	02/13/2007	A...	Response after Non-Final Action		58	25
27	03/30/2007		NINA	Mail Notice of Informal or Non-Responsive Amendment			0
26	02/28/2007		FWDX	Date Forwarded to Examiner			0
25.1	02/13/2007		A.I.	Informal or Non-Responsive Amendment after Examiner Action			0
25	02/13/2007		A...	Response after Non-Final Action			0
23	11/14/2006		MCTNF	Mail Non-Final Rejection			0
24	11/09/2006		A.PE	Preliminary Amendment			0
22	11/09/2006		CTNF	Non-Final Rejection			0
20	10/12/2006		DOCK	Case Docketed to Examiner in GAU			0
19	06/28/2006		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
17	06/28/2006		DOCK	Case Docketed to Examiner in GAU			0
21	06/19/2006		IDSC	Information Disclosure Statement considered			0
16	06/19/2006		RCAP	Reference Capture on IDS			0
15.7	06/19/2006		M844	Information Disclosure Statement (IDS) Filed			0
15	06/19/2006		WIDS	Information Disclosure Statement (IDS) Filed			0
14	06/12/2006		WRDIPE	Application Return from OIPE			0
13	06/12/2006		COMP	Application Is Now Complete			0
10	05/22/2006		CRFE	CRF Is Good Technically / Entered into Database			0
12	05/15/2006		ADDFLFEE	Additional Application Filing Fees			0
11	05/15/2006		SEQLIST	A set of symbols and procedures, provided to the PTO on a set of computer listings, that describe in			0
9	03/13/2006		SQPR	SEQUENCE ERRORS			0
6	03/06/2006		COMP	Application Is Now Complete			0
8	03/04/2006		RDIPE	Application Return TO OIPE			0
7	03/04/2006		OIPE	Application Dispatched from OIPE			0
5	02/16/2006		LI28	Cleared by L&R (LARS)			0
4	02/15/2006		LI98	Referred to Level 2 (LARS) by OIPE CSR			0
3	02/15/2006		CLSS	CASE CLASSIFIED BY OIPE			0
2	02/04/2006		SCAN	IFW Scan & PACR Auto Security Review			0
10	01/25/2006		A.PE	Preliminary Amendment			0
1	01/25/2006		IEXX	Initial Exam Team nn			0

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OFFICE OF PETITIONS

In re Patent No. 7,671,258	:	DECISION ON REQUEST
Zhang et al.	:	FOR
Issue Date: 03/02/2010	:	RECONSIDERATION OF
Application No. 11/338,987	:	PATENT TERM ADJUSTMENT
Filed: 01/25/2006	:	AND
Atty Docket No.	:	NOTICE OF INTENT TO ISSUE
4041.3002 US1	:	CERTIFICATE OF CORRECTION

This is a decision on the petition styled under 37 CFR 1.181(e), filed on February 11, 2011, which is being treated as a request for reconsideration under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by at least fifty-nine (59) days. For the reasons stated below, the request for reconsideration will be treated as a petition requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by fifty-eight (58) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by fifty-eight (58) days is **GRANTED TO THE EXTENT INDICATED**.

Petitioners again assert that the following adjustments and reductions should be made to the patent term adjustment:

- The 120 day reduction[1] for the filing an amendment or other paper after the mailing of the notice of allowance in connection with the filing of the paper styled as a request for refund, filed on July 10, 2009, should be removed, and a period of delay of 34 days should be entered.

- A 28 day period of adjustment for Office delay[2] removed in the decision mailed on May 10, 2010 should be entered in connection with the notice of allowance mailed on February 20, 2009, asserted to have been mailed four (4) months and 28 days after the filing of an appeal brief.

- A 376 day reduction in the "B" delay, for the period from the date that a Notice of Appeal was filed, on June 23, 2008, to the day after the date three years after the date the application was filed, should be removed.

With regard to the 120 day reduction for the filing of a request for refund on June 30, 2009, petitioner's argument has once again been considered. It is noted that petitioners have provided a copy of an Office communication, mailed on August 13, 2009, denying the request for refund.

Section MPEP 2701 states, in pertinent part:

> 37 CFR 1.704(c)(10) establishes submission of an amendment under 37 CFR 1.312 or other paper after a notice of allowance has been given or mailed as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. The submission of amendments (or other papers) after an application is allowed may cause substantial interference with the patent issue process.
>
> Certain papers filed after allowance are not considered to be a failure to engage in reasonable efforts to conclude processing or examination of an

[1] See PAIR Item No. 90.
[2] See Pair Item No. 66.

> application. See Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance has been Mailed, 1247 Off. Gaz. Pat. Office 111 (June 26, 2001). The submission of the following papers after a "Notice of Allowance" is **not** considered a failure to engage in reasonable efforts to conclude processing or examination of an application: (1) Fee(s) Transmittal (PTOL-85B); (2) Power of Attorney; (3) Power to Inspect; (4) Change of Address; (5) Change of Status (small/not small entity status); (6) a response to the examiner's reasons for allowance or a request to correct an error or omission in the "Notice of Allowance" or "Notice of Allowability;" and (7) letters related to government interests (e.g., those between NASA and the Office). Papers that **will be** considered a failure to engage in reasonable efforts to conclude processing or examination of an application include: (1) a request for a refund; (2) a status letter; (3) amendments under 37 CFR 1.312; (4) late priority claims; (5) a certified copy of a priority document; (6) drawings; (7) letters related to biologic deposits; and (8) oaths or declarations. 37 CFR 1.704(c)(10) provides that in such a case the period of adjustment set forth in 37 CFR 1.703 shall be reduced by the lesser of: (1) the number of days, if any, beginning on the date the amendment under 37 CFR 1.312 was filed and ending on the mailing date of the Office action or notice in response to the amendment under 37 CFR 1.312 or such other paper; or (2) four months. The phrase "lesser of …or [f]our months" is to provide a four-month cap for a reduction under 37 CFR 1.704(c)(10) if the Office takes longer than four months to issue an Office action or notice in response to the amendment under 37 CFR 1.312 or other paper.
>
> (emphasis in original)

Petitioners first argue that the request for refund was "reasonable and did not cause any delay". The gravamen of petitioner's argument is that the request for refund concerned a fee for an Appeal Brief, the filing said Appeal Brief which petitioner believes was necessitated by an Office error which

delayed prosecution. Petitioner further argues that a 120 day reduction is not warranted because the Office responded to the request for refund on August 13, 2009, 34 days after the request was filed.

Petitioners' argument is not well-taken. The salient point is not whether petitioners believe the request was "reasonable" but whether the request for refund falls within the types of papers which have been determined by the USPTO to constitute a failure to engage in reasonable efforts to conclude processing or examination. It is undisputed that this paper was filed after the mailing of the notice of allowance and is listed as a type of paper which will be considered a failure to engage in reasonable efforts to conclude processing or examination as set forth in MPEP 2701. It is further noted that petitioner has provided no reason why this paper could not have been filed at a point at which it would not be considered a "failure to engage" (*i.e.*, before the mailing of the notice of allowance or after the patent had issued).

Nevertheless, in view of the copy of the Office letter mailed on August 13, 2009, denying applicants request for refund of the appeal brief fee, the appropriate period for delay pursuant to 37 CFR 1.704(c)(10) is the period beginning on July 10, 2009, the date the request for refund was filed, and ending on August 13, 2009, the date the Office communication in response to the letter was filed, or 35 days. Accordingly, the period of reduction of 120 days for applicant delay will be removed, and a period of reduction of 35 days for applicant delay will be entered.

Turning to petitioners' assertion that the amendment after final rejection was "'a reply in compliance with 1.113(c)'", is not well taken. Specifically, while the Notice of Allowance mailed on February 20, 2009, states that the amendment of June 23, 2008 has been entered, the terminal disclaimer filed on January 15, 2009 was also accepted. The showing of record is, therefore, that the terminal disclaimer of January 15, 2009, was required to make the reply comply with § 1.113(c).

Furthermore, the Notice of Allowance stated, in the examiner's statement of reasons for allowance, that the 112/1 rejection set forth in the final Office action mailed on January 23, 2008, was withdrawn in light of the reasons stated in the "Interview

Summary." As such, the determination of allowability was based, in part, on the Interview Summary of January 15, 2009. Accordingly, the showing of record is that the examiner had properly determined that amendment after final rejection was not in compliance with § 1.113(c) on July 17, 2008, but was provided additional information during the interview, as set forth in the Interview Summary, which placed the application in condition for allowance. Simply put, the amendment of June 23, 2008, by itself, did not place the application in condition for allowance.

Pursuant to 35 U.S.C. 154(b)(1)(A)(i)&(ii), applicants are only entitled to day-to-day restoration of term lost as a result of delay created by the failure of the Office to (i) provide at least one of the notifications under section 132 of this title or a notice of allowance under section 151 of this title not later than 14 months after the date on which an application was filed under section 111(a) of this title; or (ii) respond to a reply under section 132, or to an appeal taken under section 134, within 4 months after the date on which the reply was filed or the appeal was taken.

Further to this point, the Office has no authority to grant an extension or adjustment of the term due to administrative delays except as authorized by 35 U.S.C. § 154.

As the Notice of Allowance mailed on February 20, 2009, was mailed within four (4) months of January 15, 2009, the date the terminal disclaimer was filed and the Interview Summary was mailed, no adjustment for Office delay is warranted.

Patentees again 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).

With respect to the "B" delay, it is undisputed that a notice of appeal was filed on June 23, 2008. On February 20, 2009, 243 days after the notice of appeal was filed, a notice of allowance was mailed. In this regard, 37 CFR 1.703(b)(4) states that the sum of the number of days beginning on the date a notice of appeal was filed until a notice of allowance is mailed is excluded from the three year delay period. Simply put, it is immaterial, with regard to determining the excluded period, whether the notice of appeal was filed prior to or after the date three years after the date the application was filed. As such, the 243 day period was properly excluded from the calculation under 37 CFR 1.702(b).

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 patent term adjustment is updated to 58 (177 days of Office delay and 119 (204 - 120 + 35) 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. See 37 CFR 1.323(a)(4).

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

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by fifty-eight (58) days.

Telephone inquiries specific to this matter should be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.

Anthony Knight
Director
Office of Petition

Encl: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,671,258 B2

DATED : **Mar. 2, 2010** **DRAFT**

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 0 days.

Delete the phrase "by 0 days" and insert – by 58 days--

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Paper No.

GUY V. MANNING
1407 TEXAS STREET
SUITE 102
FORT WORTH TX 76102

MAILED
JUN 21 2011
OFFICE OF PETITIONS

In re Application of	:	
David Allen	:	DECISION ON PETITION
Application No. 11/339,072	:	
Filed: January 25, 2006	:	
Atty Docket No. 0491M-001	:	

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) filed May 22, 2011.

The petition is **GRANTED**.

On November 23, 2009, a non-final Office action was mailed in the above-identified application. 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 received and no extension of time obtained, the application became abandoned. A courtesy Notice of Abandonment was mailed on July 7, 2010.

The petition includes the required reply in the form of an amendment, the required statement of unintentional delay and payment of the petition fee set forth in 37 CFR § 1.17(m). No terminal disclaimer is required.

All requirements of 37 CFR 1.137(b) have been met.

Technology Center AU 3633 has been advised of this decision. The application is, thereby, forwarded to the examiner for consideration of the amendment filed May 22, 2011.

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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BANNER & WITCOFF, LTD
AND ATTORNEYS FOR CLIENT NUMBER 011738
10 SOUTH WACKER DRIVE
SUITE 3000
CHICAGO, IL 60606

MAILED
APR 21 2011
OFFICE OF PETITIONS

In re Application	:	
Ivan Osorio	:	DECISION ON PETITION
Application No. 11/339,108	:	TO WITHDRAW
Filed: January 25, 2006	:	FROM RECORD
Attorney Docket No. 539.3177.1	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed April 5, 2011.

The request is **DISMISSED** because it is moot.

A review of the file record indicates that Banner & Witcoff, LTD, was revoked as attorney of record on April 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.

A. Kelley

Alicia Kelley
Petitions Examiner
Office of Petitions

cc: FREDRIKSON & BYRON, P.A.
INTELLECTUAL PROPERTY GROUP, MDT PATENTS
200 SOUTH SIXTH STREET, SUITE 4000
MINNEAPOLIS, MN 55402

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED
DEC 13 2010
OFFICE OF PETITIONS

In re Application :
Wilson :
Application No. 11/339,153 : PATENT TERM ADJUSTMENT
Filing or 371(c) Date: January 25, 2006 :
Dkt. No.: 16349US02 :

This is in response to the application for patent term adjustment under 37 CFR 1.705(b), filed November 19, 2010.

Applicant submits that the correct patent term adjustment to be indicated on the patent is 1,163 days, not 547 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction on the basis that the Office will take in excess of three years to issue this patent.

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

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

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

Applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time

of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

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

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

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

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

/ALESIA M. BROWN/

Alesia M. Brown
Petitions Attorney
Office of Petitions

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

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JUL 19 2011
OFFICE OF PETITIONS

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

In re Patent No. 7,870,332
Issued: January 11, 2011
Application No. 11/339,153
Filing or 371(c) Date: January 25, 2006
Dkt. No.: 16349US02

: DECISION ON APPLICATION FOR
: PATENT TERM ADJUSTMENT

This is a decision on the petition filed March 7, 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 1099 days.

The petition is **DISMISSED**.

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 165 day period consumed by appellate review began on March 15, 2010, the date of filing of the notice of appeal, and ended on August 26, 2010, the mailing date of the Notice of Allowance. Thus, the 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) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/339,208	01/25/2006	Michail V. Sitkovsky	4030.3001 US1	6564

38473 7590 10/18/2010
ELMORE PATENT LAW GROUP, PC
515 Groton Road
Unit 1R
Westford, MA 01886

EXAMINER
KASSA, TIGABU

ART UNIT	PAPER NUMBER
1619	

MAIL DATE	DELIVERY MODE
10/18/2010	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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OCT 1 8 2010

ELMORE PATENT LAW GROUP, PC
515 Groton Road
Unit 1R
Westford MA 01886

In re Application of:	:
Sitkovsky et al.	:
Serial No.: 11/339,208	: PETITION DECISION
Filed: January 25, 2006	:
Attorney Docket No.: **4030.3001 US1**	:

This is in response to the petition under 37 CFR § 1.181, filed July 22, 2010, requesting that the finality of the Office action of July 6, 2010 be withdrawn.

BACKGROUND

The examiner mailed a non-final Office action on December 16, 2008, setting a three month statutory limit for reply. At the time of this non-final Office action, claims 1-22 were pending and claims 18 and 19 were withdrawn from consideration. Claims 20 and 21 were rejected under 35 USC 112, first paragraph, as failing to comply with the written description requirement. Claims 1, 7-8, 12, 15, and 17 were rejected under 35 U.S.C. § 102(b) as being anticipated by Werns et al. Claims 1 and 11 were rejected under 35 U.S.C. § 102(b) as being anticipated by Kanwar et al. Claims 1-5 and 9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Werns et al. Claims 1 and 6 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Werns et al. in view of Shikunova. Claims 1, 10 and 22 were rejected under 35 U.S.C. § 103(a) as being as being unpatentable over Werns et al. in view of Sullivan et al. Claims 1, 13-14, and 16 were rejected under 35 U.S.C. § 103(a) as being as being unpatentable over Werns et al. in view of Warrell et al.

On June 16, 2009, applicants submitted a response including arguments and amendments to the claims.

On October 28, 2009, the examiner mailed a final Office action setting a three month statutory limit for reply. At the time of this final Office action, claims 1, 3-19 and 22-23 were pending. Claim 23 was rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written

description requirement. Claim 23 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1, 3-5, 7-9, 11, 15, and 17 are rejected under 35 U.S.C. § 102(b) as being anticipated by George et al. Claim 6 was rejected under 35 U.S.C. 103(a) as being unpatentable over George et al. as applied to claims 1, 3-5, 7-9, 11, 15, and 17 above, and further in view of Shikunova. Claims 10 and 22 were rejected under 35 U.S.C. 103(a) as being unpatentable over George et al. as applied to claims 1, 3-5, 7-9, 11, 15, and 17 above, and further in view of Sullivan et al. Claims 12-14 and 16 were rejected under 35 U.S.C. 103(a) as being unpatentable over George et al. as applied to claims 1, 3-5, 7-9, 11, 15, and 17 above, and further in view of Warrell et al. Claim 23 was rejected under 35 U.S.C. 103(a) as being unpatentable over George et al. as applied to claims 1, 3-5, 7-9, 11, 15, and 17 above, and further in view of Yasui et al. and Grzelak et al.

On April 28, 2010, applicants submitted a response including arguments and amendments to the claims and filed a Notice of Appeal.

On July 6, 2010, applicants submitted an amendment after final.

On July 6, 2010, the examiner mailed a new final Office action setting a three month statutory limit for reply, having withdrawn the final Office action of October 28, 2009. At the time of this final Office action, claims 1, 3-19 and 22-23 were pending. Claim(s) 1, 3-10, and 13-17 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement because the claims recite "preventing". Claims 1, 3-5, 7-11, 15, and 17 were rejected under 35 U.S.C. 103(a) as being unpatentable over George et al. in view of in view of Sullivan et al. Claim 6 was rejected under 35 U.S.C. 103(a) as being unpatentable over George et al. in view of Sullivan et al. as applied to claims 1, 3-5, 7-11, 15, and 17 above, and further in view of Shikunova. Claims 12-14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over George et al in view of Sullivan et al. as applied to claims 1, 3-5, 7-11, 15, and 17 above, and further in view of Warrell et al.

In response thereto, applicants filed this petition on July 22, 2010, requesting that the finality of the Office action of July 6, 2010 be withdrawn.

DISCUSSION

The petition and the file history have been carefully considered.

Petitioners argue that "In accordance with MPEP §706.07(a), an Office Action can not be made final where there is a new ground of rejection introduced by the Examiner which was not necessitated by an amendment to the claims. In the Final Office Action dated July 6, 2010, the Examiner rejects claims 1, 3-10 and 13-17 under 35 U.S.C. §112, first paragraph, for new reasons not cited in any of the previous office actions. Briefly, the Examiner asserts that there is no guidance in the specification as to the preventing of an iatrogenic response as is recited in pending claim 1. In Applicants' Amendment after Final dated April 28, 2010, which was in response to the previous Final Office Action dated October 28, 2009, Applicants' amendment to

claim 1 did not include any amendment relating to term "preventing" which was already present in claim 1 prior to Applicants' Amendment after Final dated April 28, 2010. Thus, Applicants' Amendment after Final did not necessitate the new § 112 rejection now present in the new Final Office Action dated July 6, 2010. The finality of the rejection is improper under these circumstances. Applicants respectfully request that this petition be granted and that the finality of the Examiner's rejection in the Office Action be withdrawn."

Petitioners' argument has been carefully considered but it is not persuasive. It is pointed out that the finality of the Office action of October 28, 2009 was withdrawn because the examiner inadvertently omitted the rejection of "preventing" under 354 USC 112, first paragraph. Specifically, the finality of the October 28, 2009 was withdrawn in order to fix the issue of not having made the rejection over applicant's amendment of the claims adding prevention. Thus, was the reason for the language in the final Office action of July 6, 2010 which stated "The finality of the prior Office Action is WITHDRAWN. A new Final Office Action is set forth herein, necessitated by Applicant's amendments filed on 6/19/2009 and 4/28/2010. This Office Action is F1NAL." While the examiner could have vacated the final Office action of October 29, 2009, the examiner chose to withdraw the final of October 29, 2009 and issue a new final Office action of July 6, 2010 wherein all rejections were properly set forth. Consequently, the final Office action of July 6, 2010 is not considered improper and the finality of said Office action will not be withdrawn.

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.

Remy Yucel
Director, Technology Center 1600

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DAVID I. ROCHE
BAKER & MCKENZIE LLP
130 EAST RANDOLPH DRIVE
CHICAGO IL 60601

MAILED

MAR 13 2012

OFFICE OF PETITIONS

In re Application of	:	
Yu-Chuan Liu	:	
Patent No. 7,335,523	:	
Issued: February 26, 2008	:	NOTICE
Application No. 11/339,251	:	
Filed: January 25, 2006	:	
Attorney Docket No. **TEK-002005-DIV-US**	:	

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

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

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

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

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

JoAnne Burke
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

FEB 28 2011

OFFICE OF PETITIONS

MARGARET ANDERSON
106 E. 6TH STREET, SUITE 900
AUSTIN, TX 78701

In re Application of

Edward K.Y. Jung et al
Application No. 11/339,316
Filed: January 25, 2006
Attorney Docket No.: QQI-0175US

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 25, 2011.

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 request is filed by Lewis C. Lee on behalf of the practitioners of record associated with Customer Number 49651.

The Office no longer accepts an address change to the new practitioner identified in the request, absent the filing of a power of attorney to the new representative. The Office will, however, change the correspondence address of record to the most current address provided for (1) the intervening assignee of the entire interest or (2) the first named inventor.

The request to withdraw from record cannot be approved at this time, since the Customer Number provided (55922) does not identify the intervening assignee of the entire interest or 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 undersigned at 571-272-3210. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

Irvin Dingle
Petitions Examiner
Office of Petitions

cc: Lewis C. Lee
601 W. Riverside Suite 1400
Spokane, WA 99201

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 04/02/12

TO SPE OF : ART UNIT 2893

SUBJECT : Request for Certificate of Correction for Appl. No.: 11339361 Patent No.: 7687287

CofC mailroom date: 03/21/12

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Note: Should the Foreign Application Priority Data be added?

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.

Best Available Copy

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

☒ **Approved** — All changes apply.

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

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

Comments: _____

Tom Thomas — 2893

SPE — **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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

WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP
1250 CONNECTICUT AVENUE, NW
SUITE 700
WASHINGTON, DC 20036

Mail Date: 01/12/2011

Applicant	: Keishiro Okamoto	: DECISION ON REQUEST FOR
Patent Number	: 7622184	: RECALCULATION of PATENT
Issue Date	: 11/24/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 11/339,511	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/26/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **607** 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 : 6/10/11

TO SPE OF : ART UNIT 3724

SUBJECT : Request for Certificate of Correction for Appl. No.: 11339602 Patent No.: 7617751

CofC mailroom date: 6/03/11

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580
You can fax the Directors/SPE response to 571-270-9990

Note: Claim

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 apropriate box.

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

Comments:

BOYER D. ASHLEY
SUPERVISORY PATENT EXAMINER
SPE

3724
Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 08-20-10

TO SPE OF : ART UNIT 2627

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/339684 Patent No.: 76600065

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Angela Green 703-756-1541
Certificates of Correction Branch
703-756-1814

Thank You For Your Assistance

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

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

Comments: _____

/JOSEPH FEILD/ 2627

SPE **Art Unit**

1924.74548 PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Nobuyuki Suzuki
Serial No.:	11/339,684
Patent No.:	7,660,065
Conf. No.:	5194
Filed:	01/25/2006
Issued:	February 9, 2010
For:	DISK POSITIONING INFORMATION WRITING METHOD AND APPARATUS, INFORMATION RECORDING/ REPRODUCTION APPARATUS AND RECORDING MEDIUM
Art Unit:	2627
Examiner:	Olson, Jason C.

APPROVED: /JO/

REQUEST FOR CERTIFICATE OF CORRECTION UNDER RULE 322

Certificate of Corrections Branch
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In accordance with 37 C.F.R. § 1.322, patentee, through its attorneys, respectfully requests that a Certificate of Correction be issued in the above-referenced patent.

The error(s) occurred as a result of mistake(s) on the part of the Patent and Trademark Office and the change(s) include the following:

In the Claims:

Claim 21, Col. 19, Line 9 Please delete "in claim 9" and insert --in claim 19-- in its place.

[In Amendment B filed June 23, 2009, page 11, line 18, claim 23 is dependent on claim 21; therefore, in the issued patent, renumbered claim 21 is dependent on claim 19]

REMARKS

A Certificate of Correction incorporating the delineated change(s) is enclosed herewith. Since the mistake(s) were on the part of the Patent and Trademark Office, a Certificate of Correction should be issued without expense to the patentee and such is respectfully requested.

Respectfully submitted,

GREER, BURNS & CRAIN, LTD.

By

Patrick G. Burns
Registration No. 29,367

Customer No. 24978

July 19, 2010
300 South Wacker Drive
Suite 2500
Chicago, Illinois 60606
Telephone: 312.360.0080
Facsimile: 312.360.9315

PTO/SB/44 (02-01)
Approved for use through 01/31/2004. OMB 0651-0033
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO : 7,660,065 B2

DATED : Feb. 9, 2010

INVENTOR(S) : Suzuki

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

In the Claims:

Claim 21, Col. 19, Line 9 Delete "in claim 9" and insert --in claim 19-- in its place.

MAILING ADDRESS OF SENDER:
Patrick G. Burns
GREER, BURNS & CRAIN, LTD.
300 South Wacker Drive, 25th Floor
Chicago, IL 60606

PATENT NO 7,660,065

 No. of additional copies 1 1924.74548

Burden Hour Statement: This form is estimated to take 1.0 hour to complete. Time will vary depending upon the needs of the individual case. Any comment on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MOTOROLA MOBILITY, INC
600 NORTH US HIGHWAY 45
W2-55BB
LIBERTYVILLE, IL 60048-5343

MAILED

JAN 18 2011

OFFICE OF PETITIONS

In re Application of
Francis P. Bourque
Application No. 11/339,763
Filed: January 25, 2006
Attorney Docket No. CS26876RL

DECISION ON PETITION

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

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, February 1, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on May 2, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1620, and (3) a proper statement of unintentional delay.

In view of the above, the petition is **GRANTED**.

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

This application is being referred to Technology Center AU 2617 for appropriate action by the Examiner in the normal course of business on the reply received December 1, 2010.

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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MCCARTER & ENGLISH, LLP HARTFORD
CITYPLACE I
185 ASYLUM STREET
HARTFORD, CT 06103

MAILED
SEP 21 2011
OFFICE OF PETITIONS

In re Patent of Daniel Py et al.	:	DECISION ON REQUEST
Patent No. 7,954,521	:	FOR RECONSIDERATION OF
Issue Date: June 7, 2011	:	PATENT TERM ADJUSTMENT
Application No. 11/339,966	:	AND NOTICE OF INTENT TO
Filing Date: January 25, 2006	:	ISSUE CERTIFICATE OF
Attorney Docket No. 97818.00212	:	CORRECTION

This is a decision on the petition filed August 8, 2011, which is being treated as a petition under 37 C.F.R. § 1.705(d) requesting the patent term adjustment indicated on the patent be corrected to indicate the term of the patent is extended or adjusted by one thousand three hundred eighty-six (1,386) days.

The petition to correct the patent term adjustment indicated on the patent to indicate the term of the patent is extended or adjusted by one thousand three hundred eighty-six (1,386) days is **GRANTED**.

As a result of Office PALM records indicating an amendment under 37 C.F.R. § 1.312 was filed August 20, 2010, the Office calculated the period of delay under 37 C.F.R. § 1.704(c)(10) as 126 days instead of 120 days.

The petition asserts the PALM entry indicating an amendment was filed August 20, 2010, is incorrect because an amendment was not actually filed on August 20, 2010. The Office has reviewed its records and verified an amendment was not filed August 20, 2010. Therefore, the correct period of delay under 37 C.F.R. § 1.704(c)(10) is 120 days, not 126 days, and the correct patent term adjustment is 1,386 days, not 1,380 days.

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

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the patent is extended or adjusted by **one thousand three hundred eighty-six (1,386)** days..

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO.	:	7,954,521 B2
APPLICATION NO.	:	11/339,966
DATED	:	June 7, 2011
INVENTOR(S)	:	Daniel Py et al.

DRAFT

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

On the Title page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 1380 days.

Delete the phrase "by 1380 days" and insert -- by 1386 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Decision Date : May 3,2011

In re Application of :

Anna Prestezog

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11339975

Filed : 25-Jan-2006

Attorney Docket No : VNUS.023A3

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed May 3,2011 , 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 3773 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	11339975
Filing Date	25-Jan-2006
First Named Inventor	Anna Prestezog
Art Unit	3773
Examiner Name	MARK MASHACK
Attorney Docket Number	VNUS.023A3
Title	METHOD AND APPARATUS FOR IMPEDING MIGRATION OF AN IMPLANTED OCCLUSIVE STRUCTURE

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	/Brent M. Dougal/
Name	Brent M. Dougal
Registration Number	58449

UNITED STATES 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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SEP 08 2010

OFFICE OF PETITIONS

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

In re Patent No. 7,721,658
Issued: May 25, 2010
Application No. 11/339,988
Filed: January 25, 2006
Dkt. No.: 3591-1442

: DECISION ON APPLICATION FOR
: PATENT TERM ADJUSTMENT and
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION
:

This is a decision on the petition filed July 7, 2010 in response to the decision mailed June 7, 2010, requesting review of the calculation of patent term adjustment.

The petition is **GRANTED to the extent indicated herein.**

The instant patent matured into U.S. Pat. No. 7,721,658 on May 25, 2010. The patent issued with a patent term adjustment of 1091 days. The instant request was timely filed within one month of the mail date of the decision mailed June 7, 2010. Patentees herein request review of the calculation of adjustment and suggest that the information disclosure statement (IDS) filed December 29, 2009 and the drawings filed April 22, 2010 may subject the patent to a reduction in the patent term adjustment.

The patent is entitled to an overall adjustment of 981 days.

The patent is entitled to an adjustment of 640 days per § 1.702(a)(1) in connection with the restriction requirement mailed December 24, 2008.

The patent is entitled to an adjustment of 2 days per § 1.702(a)(2) in connection with the non-final Office action mailed May 28, 2009. The adjustment commenced May 27, 2009 and ended May 28, 2009.

The patent is entitled to an adjustment of 11 days per § 1.702(a)(2) in connection with the mailing of the Notice f Allowance on January 8, 2010. The adjustment commenced December 29, 2009 and ended January 8, 2010.

The application is entitled to an adjustment of 485 days per § 1.702(b) in connection with the date of issuance of the patent on May 25, 2010.

The patent term adjustment is subject to a reduction of 34 days per § 1.704(c)(10)(i) in connection with the drawings submitted April 22, 2010. The reduction commenced April 22, 2010 and ended May 25, 2010, the date of issuance of the patent.

The patent term adjustment is subject to a further reduction of 123 days per § 1.704(c)(8) in connection with the supplemental reply (IDS) filed December 29, 2009. The reduction commenced August 29, 2009 and ended December 29, 2009.

In view thereof, the patent is entitled to an overall adjustment of 981 days (653 days under § 1.702(a) + 485 days under § 1.702(b)– 157 days of applicant delay under § 1.704)).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136. See 37 CFR 1.323(a)(4).

The 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 981 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 the submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this 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 : 7,721,658

DATED : May 25, 2010 **DRAFT**

INVENTOR(S) : Dral, 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 1091 days

Delete the phrase "by 1091 days" and insert – by 981 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

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

SCOTT A.WHITAKER, PH.D., J.D.
SR. INTELLECTUAL PROPERTY COUNSEL
BIONUMERIK PHARMACEUTICALS, INC., SUITE 1250
8122 DATAPOINT DRIVE
SAN ANTONIO TX 78229

MAILED
JAN 3 1 2011
OFFICE OF PETITIONS

In re Application of	:	
Zejun XIAO et al.	:	
Application No. 11/340,048	:	NOTICE UNDER 37 CFR. 1.28(c)
Patent No. 7,238,823	:	
Filed: January 26, 2006	:	
Attorney Docket No. X-0247		

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

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

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

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

Inquiries related to this communication should be directed to Michelle R. Eason at (571) 272-4231.

Thurman K. Page
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

GLAXO SMITH KLINE
C/O THE NATH LAW GROUP
112 SOUTH WEST ST.
ALEXANDRIA, VA 22314-2825

MAILED
MAR 14 2011
OFFICE OF PETITIONS

In re Application	:	
Charles W. Stiefel	:	DECISION ON PETITION
Application No. 11/340,073	:	TO WITHDRAW
Filed: January 26, 2006	:	FROM RECORD
Attorney Docket No. 271877	:	

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 8, 2011.

The request is **DISMISSED**.

A review of the file record indicates that Customer Number 90434, Glaxo Smith Kline c/o The Nath Law Group, was revoked by the assignee of record. A new Power of Attorney was filed on February 15, 2011. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is not applicable.

All future communications from the Office will be directed to the current correspondence address of record until otherwise notified by applicant.

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

A. Kelley

Alicia Kelley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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COHEN & GRIGSBY PC
625 LIBERTY AVENUE
PITTSBURGH PA 15222-3152

In re
Roesler
Application No. 11/340,283
Filed: January 26, 2006
Patent No. 7,255,229
Issued: August 14, 2007

DECISION

This is a decision on the fee deficiency submission under 37 CFR 1.28(c), filed October 5, 2011.

The fee deficiency submission under 37 CFR 1.28 of $640 for the 3.5 year maintenance fee is hereby accepted.

The change of status to large entity has been entered.

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

Cliff Congo
Petitions Attorney
Office of Petitions

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: 60130-2626	Patent Number: 7665746
Filing Date (or 371(b) or (f) Date): 01/26/2006	Issue Date: 02/23/2010
First Named Inventor: Platner	
Title: METHOD OF MOUNTING A KING PIN AT AN END OF A HOLLOW AXLE	

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 /Kerrie A. Laba/	Date 8-23-2010
Name (Print/Typed) Kerrie A. Laba	Registration Number 42777

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

☐ *Total of _____ forms are submitted.

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

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

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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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CARLSON, GASKEY & OLDS, P.C.
400 WEST MAPLE ROAD
SUITE 350
BIRMINGHAM, MI 48009

Mail Date: 09/01/2010

Applicant	: David K. Platner	: DECISION ON REQUEST FOR
Patent Number	: 7665746	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/340,290	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/26/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **767** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

Doc Code: PET.PTA.RCAL
Document Description: Request for Recalculation in view of Wyeth

PTO/SB/131 (01-10)
Approved for use through 02/28/2011. OMB 0651-0020
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: Brueck 8-4-5-2-32 (S)-US-NP	Patent Number: 7,660,279
Filing Date (or 371(b) or (f) Date): January 27, 2006	Issue Date: February 9, 2010
First Named Inventor: Stefan Brueck	
Title: Method of scheduling uplink resource in a wireless communication system	

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

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

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

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

Signature /Gregory J. Murgia/	Date August 9, 2010
Name (Print/Typed) Gregory J. Murgia	Registration Number 41,209

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

☑ *Total of 1 forms are submitted.

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

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

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HARNESS, DICKEY & PIERCE, P.L.C.
P.O. BOX 8910
RESTON, VA 20195

Mail Date: 08/16/2010

Applicant	: Stefan Brueck	: DECISION ON REQUEST FOR
Patent Number	: 7660279	: RECALCULATION of PATENT
Issue Date	: 02/09/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/340,613	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/27/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **786** 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.

Receipt date: 01/27/2011 11340641 - GAU: 1777

OK TO ENTER: /MW/ (02/17/2011)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent No.	:	US 7,867,779 B2
Applicant	:	Wayne Thomas McDermott
Filed	:	January 27, 2006
For	:	System And Method Comprising Same For Measurement And/Or Analysis Of Particles In Gas Stream
Issued:	:	January 11, 2011
Serial No.	:	11/340,641
Docket No.	:	06678ZP USA
Customer No.	:	23543

☐ CERTIFICATE OF FACSIMILE TRANSMISSION	☐ CERTIFICATE OF MAILING	☒ CERTIFICATE OF ELECTRONIC FILING TRANSMISSION
I CERTIFY THAT THIS PAPER IS BEING FACSIMILE TRANSMITTED TO THE PATENT AND TRADEMARK OFFICE ON THE DATE SHOWN BELOW. PTO Fax No.	I CERTIFY THAT THIS PAPER (ALONG WITH ANY PAPER REFERRED TO AS BEING ATTACHED OR ENCLOSED) IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE WITH SUFFICIENT POSTAGE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO: COMMISSIONER FOR PATENTS P.O. BOX 1450 ALEXANDRIA, VA 22313-1450	I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING ELECTRONICALLY TRANSMITTED TO THE UNITED STATES PATENT AND TRADEMARK OFFICE ON THE DATE SHOWN BELOW.
Rosaleen P. Morris-Oskanian Type or print name of person submitting paper)		
/Rosaleen P. Morris-Oskanian/ Signature of person submitting paper		January 27, 2011 Date

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

REQUEST FOR CERTIFICATE OF CORRECTION

A Certificate of Correction is requested for the above-identified patent.

☒ The errors involved were those of the Patent Office and, accordingly, no fee is required.

☐ The errors involved were those of Applicant. Enclosed is authorization to charge the fee under 1.20(a) to our deposit account.

Respectfully submitted,

/Rosaleen P. Morris-Oskanian/
Rosaleen P. Morris-Oskanian
Patent Attorney
Reg. No. 47,321
7201 Hamilton Boulevard
Allentown, PA 18195-1501
(610) 481-1174

Receipt date: 01/27/2011
OK TO ENTER: /MW/ (02/17/2011)

11340641 - GAU: 1777

PTO/SB/44 (09-07)
Approved for use through 08/31/2013. OMB 0651-0033
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
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(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,867,779 B2

APPLICATION NO.: 11/340,641

ISSUE DATE : January 11, 2011

INVENTOR(S) : Wayne Thomas McDermott, Richard Carl Ockovic, Dean Van-John Roth

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

Column 15, Line 56

In claim 4 insert ";" after the word counter

Column 16, Line 42

In claim 13 insert ";" after the word counter

Column 17, Line 16

In claim 15 insert ";" after the word counter

Column 18, Line 27

Insert "passing at least a portion of the gas feed stream to the purifying device to provide a purifed gas feed stream, wherein the purifying device removes substantially all of the moleculr impurities in the purified gas feed stream but does not substantially remove the particles contained within the purified gas feed stream;"

Column 18, Line 31

Delete the word "purified"

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

Patent Department
Air Products and Chemicals, Inc.
7201 Hamilton Boulevard

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.

Receipt date: 01/27/2011 11340641 - GAU: 1777

OK TO ENTER: /MW/ (02/17/2011)

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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OLIFF & BERRIDGE, PLC
P.O. BOX 320850
ALEXANDRIA, VA 22320-4850

MAILED
OCT 2 0 2010
OFFICE OF PETITIONS

In re Application of	:	
Akimitsu EBIHARA	:	
Application No. 11/340,680	:	DECISION GRANTING PETITION
Filed: January 27, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **125767.01**	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed October 19, 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 2882 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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ALEXANDRIA, VA 22320-4850

MAILED

MAR 10 2011

OFFICE OF PETITIONS

In re Application of :
Akimitsu EBIHARA :
Application No. 11/340,680 : DECISION GRANTING PETITION
Filed: January 27, 2006 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **125767.01** :

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

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

This application is being referred to Technology Center AU 2882 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.*

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	11340680
Filing Date	27-Jan-2006
First Named Inventor	Akimitsu Ebihara
Art Unit	2882
Examiner Name	HUNG NGUYEN
Attorney Docket Number	125767.01
Title	EXPOSURE APPARATUS, AND DEVICE MANUFACTURING METHOD

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	/Mario Costantino/
Name	Mario A. Costantino
Registration Number	33565

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Decision Date : June 15,2011

In re Application of :

Akimitsu Ebihara

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11340680

Filed : 27-Jan-2006

Attorney Docket No : 125767.01

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed June 15,2011 , 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 2882 for processing of the request for continuing examination under 37 CFR 1.114 .

Office of Petitions

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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MAY 18 2011
OFFICE OF PETITIONS

ROBERT K TENDLER
65 ATLANTIC AVENUE
BOSTON MA 02110-3704

In re Application of	:	
Daniel G. Roy	:	
Application No. 11/340,779	:	ON PETITION
Filed: January 26, 2006	:	
Attorney Docket No. 20050002	:	

This is in response to petition to revive an unintentionally abandoned application 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 further petition fee is required for a renewed petition.

The above-identified application became abandoned for failure to timely file a proper response to the final Office action mailed October 13, 2010, which set a shortened statutory period for reply of three months. Applicant filed an Amendment on March 8, 2011, made timely by obtaining a two month extension of time. However, by Advisory Action mailed March 25, 2011, the Examiner informed Applicant that the Amendment would not be entered because it failed to place the application in condition for allowance. No further reply with an extension of time having been received, the application became abandoned on March 14, 2011. The mailing of this decision precedes the mailing of a courtesy Notice of Abandonment.

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by (1) The reply required to the outstanding Office action or notice, unless previously filed; (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 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 CFR 1.20(d)) required pursuant to paragraph (d) of this section.

The instant petition has not satisfied requirement (1). Applicant has not submitted a proper reply to the October 13, 2010 final Office action. As set forth above, a proper response to a final office action consists of either: (1) an amendment that *prima facie* (i.e. on its face) places the application in condition for allowance; (2) a Notice of Appeal (and the required fee); (3) a Request for Continued Examination (and the required fee), or (4) a continuing application. Here, the Examiner has determined that the Amendment submitted with the instant petition does not place the application in condition for allowance.

Accordingly, on renewed petition, applicant must submit either a Notice of Appeal, an RCE, or a continuing application.

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

By mail: Mail Stop Petitions
Commissioner for Patents
PO Box 1450
Alexandria VA 22313-1450

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

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
www.uspto.gov

ROBERT K TENDLER
65 ATLANTIC AVENUE
BOSTON MA 02110-3704

MAILED

JUL 29 2011

OFFICE OF PETITIONS

In re Application of	:	
Daniel G. Roy	:	
Application No. 11/340,779	:	ON PETITION
Filed: January 26, 2006	:	
Attorney Docket No. 20050002	:	

This is in response to the renewed petition to revive an unintentionally abandoned application under 37 CFR 1.137(b), filed July 21, 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 October 13, 2010, which set a shortened statutory period for reply of three months. Applicant filed an Amendment on March 8, 2011, made timely by obtaining a two month extension of time. However, by Advisory Action mailed March 25, 2011, the Examiner informed Applicant that the Amendment would not be entered because it failed to place the application in condition for allowance. No further reply with an extension of time having been received, the application became abandoned on March 14, 2011. 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 18, 2011. The petition was dismissed because the Examiner had determined that the Amendment submitted with the petition did not *prima facie* place the application in condition for allowance.

With the instant renewed petition, applicant has filed an RCE. 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 application is being forwarded to Group Art Unit 3624 for consideration of the RCE, filed July 21, 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
www.uspto.gov

SCOTT A. WHITAKER, PH.D. J.D. SR.
INTELLECTUAL PROPERTY COUNSEL
BIONUMERIK PHARMACEUTICALS, INC.
8122 DATAPOINT DRIVE, SUITE 1250
SAN ANTONIO TX 78229

MAILED

DEC 29 2010

OFFICE OF PETITIONS

In re Application of	:	
Zejun Xiao et al.	:	
Application No. 11/340,805	:	NOTICE
Patent No. 7,759,488	:	
Filed: January 26, 2006	:	
Attorney Docket No. **X-0249**		

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.

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.

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

/Tredelle D. Jackson/
Paralegal Specialist
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Scott A. Whitaker, Ph.D., J.D., Sr.
Intellectual Property Counsel
BioNumerik Pharmaceuticals, Inc.
8122 Datapoint Drive, Suite 1250
San Antonio TX 78229

MAILED
DEC 22 2010
OFFICE OF PETITIONS

In re Patent No. 7,268,244	:	
Issued: 09/11/2007	:	
Application No. 11/340,806	:	NOTICE
Filed: 01/26/2006	:	
Attorney Docket No. X-0248	:	

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

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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.
11/340,902	01/27/2006	Frank Liao	USP3153A-SCLI	9401

30265 7590 03/13/2012
DAVID AND RAYMOND PATENT FIRM
108 N. YNEZ AVE., SUITE 128
MONTEREY PARK, CA 91754

EXAMINER
LEUNG, PHILIP H

ART UNIT	PAPER NUMBER
3742	

MAIL DATE	DELIVERY MODE
03/13/2012	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.

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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DAVID AND RAYMOND PATENT FIRM
108 N. YNEZ AVE., SUITE 128
MONTEREY PARK CA 91754

In re Patent No. 7,183,528
Serial No. 11/340,902
Issue Date: Feb. 27, 2007
Appl. No: 11/181,450
Filed: Jan. 27, 2006
For: Correction of Inventorship

This is a decision on the petition filed Sep. 24, 2010, to correct inventorship under 37 CFR 1.324.

The petition is **GRANTED**.

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

/Henry C. Yuen/

Henry C. Yuen
Supervisory Patent Examiner Art Unit 3742
Technology Center 3700

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE

Patent No. 7,183,528
Patented: Feb. 27, 2007

On petition requesting issuance of a certificate for correction of inventorship pursuant to 35 U.S.C. 256, it has been found that the above-identified patent, through error and without deceptive intent, improperly sets forth the inventorship. Accordingly, it is hereby certified that the correct inventorship of this patent is:

FRANK LIAO, City of Industry, California, U.S.A. and DAVID HAN, Los Angeles, California, U.S.A.

Henry C. Yuen
Supervisory Patent Examiner
Art Unit 3742
Technology Center 3700

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Richard A. Heggem
411A Wright Avenue
Morgan Hill CA 95037

MAILED

FEB 14 2011

OFFICE OF PETITIONS

In re Application of :
Richard A. Heggem :
Application No. 11/340,905 : DECISION ON PETITION
Filed: January 27, 2006 :
Attorney Docket No. **60098-0013** :

This is a decision on the petition, filed July 9, 2010, captioned "PETITION TO WITHDRAW WITHOLDING OF ABANDONMENT; PEITION TO WITHRDAW THE NOTICE OF ABANDONMENT," which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely respond to the non-final Office action of September 3, 2009, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on May 20, 2010.

Petitioner states that a timely reply (Amendment) with a three (3) months extension of time was mailed via certificate of mailing on March 3, 2010, which included the following papers: Amendment with a three (3) months extension of time. Petitioner has submitted a copy of the previously mailed transmittal form indicating the above mention items, which bears a certificate of mailing dated March 3, 2010, which would have rendered the reply timely if received.

The file record does include the originally submitted papers. Failure to receive correspondence which includes a certificate of mailing or certificate of facsimile transmission is addressed in 37 CFR 1.8(b), reproduced below:

> In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a)

of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely file a reply to the non-final Office action of September 3, 2009, is hereby withdrawn and the application restored to pending status.

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

This application is being referred to Technology Center AU 2165 for appropriate action in the normal course of business on the reply received on March 8, 2010.

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
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Paper No.

MAILED

SEP 20 2010

OFFICE OF PETITIONS

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

In re Patent No. 7,635,343	:	DECISION ON REQUEST
McIntosh et al.	:	FOR
Issue Date: December 22, 2009	:	RECONSIDERATION OF
Application No. 11/341,153	:	PATENT TERM ADJUSTMENT
Filed: January 27, 2006	:	and
Atty Docket No. 37272-523001US	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on February 22, 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 eight hundred fifty-seven (857) 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 fifty-seven (857) days is **GRANTED**.

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 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 fifty-seven (857)** 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 : 7,635,343 B2

DATED : **December 22, 2009** **DRAFT**

INVENTOR(S) : McIntosh 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 528 days

Delete the phrase "by 528 days" and insert – by 857 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED

NOV 16 2010

OFFICE OF PETITIONS

In re Application of	:	
Kevin D. McIntosh et al.	:	
Application No. 11/341,153	:	NOTICE
Filed: January 27, 2006	:	
Attorney Docket No. 37272-523001US	:	

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

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

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

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

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.

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

/Tredelle D. Jackson/
Paralegal Specialist
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	11341253
Filing Date	26-Jan-2006
First Named Inventor	Cornelia Alzer
Art Unit	1767
Examiner Name	MICHAEL PEPITONE
Attorney Docket Number	512425-2119
Title	DISPERSING RESINS COMPRISING POLYETHERS/POLYESTERS

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	/Joseph W. Treloar/
Name	Joseph W. Treloar
Registration Number	60975

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Decision Date : March 16, 2012

In re Application of :

Cornelia Alzer

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11341253

Filed : 26-Jan-2006

Attorney Docket No : 512425-2119

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed March 16, 2012 , to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

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

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

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

This application file is being referred to Technology Center AU 1767 for processing of the request for continuing examination under 37 CFR 1.114 .

Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

LAW OFFICES OF BRIAN S. STEINBERGER
101 BREVARD AVENUE
COCOA FL 32922

MAILED

JAN 30 2012

OFFICE OF PETITIONS

In re Patent No. 7,396,212 :
Issued: July 8, 2008 :
Application No. 11/341,280 : ON PETITION
Filed: January 27, 2006 :
Attorney Docket No: **UCF-566CIP** :

This is a decision regarding your request under 37 CFR 1.28. for acceptance of a fee deficiency submission filed January 9, 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 $565, 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
Alexandria, VA 22313-1450
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GREENBERG TRAURIG, LLP (CHI)
77 WEST WACKER DRIVE
SUITE 3100
CHICAGO IL 60601-1732

MAILED
JUN 21 2011
OFFICE OF PETITIONS

In re Patent No. 7,783,205 :
Issue Date: August 24, 2010 :
Application No. 11/341,347 : DECISION ON PETITION
Filed: January 26, 2006 :
Attorney Docket No. 81230.715US1 :

This is a decision on the Request For Correction Of Assignee Name On Issued Patent (37 CFR §3.81(b)), filed February 10, 2011, which is being treated as a Petition Under 37 CFR §3.81(b), to identify the correct assignee's name. A completed Certificate of Correction Form (PTO/SB/44) was submitted with Petition.

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

Petitioner requests that the present Petition was submitted to correct the assignee's name on the previously submitted PTOL 85B. Accordingly, petitioner requests that a Certificate of Correction (PTO/SB/44) be issued to correct assignee's name to the Title Page of the Letters Patent.

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

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

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

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

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (703)756-1814.

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. 7,783,205.

Cheryl Gibson Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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CONNOLLY BOVE LODGE & HUTZ LLP
1875 EYE STREET, N.W.
SUITE 1100
WASHINGTON, DC 20006

MAILED
SEP 27 2010
OFFICE OF PETITIONS

In re Application of	:	
Pamela J. Martinez	:	
Application No. 11/341,457	:	DECISION ON PETITION
Filed: January 30, 2006	:	
Attorney Docket No. 22330-00001-US1	:	

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

The petition is **GRANTED**.

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 July 23, 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 September 24, 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 $405, and the submission required by 37 CFR 1.114; (2) the petition fee of $810; and (3) a proper statement of unintentional delay.

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

This application is being referred to Technology Center AU 3685 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

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: PAT 2545-2	
Application Number: 11/341,573	Filing Date (or 371(b) or (f) Date): January 30, 2006
Patent Number: 7,668,925	Issue Date: February 23, 2010
First Named Inventor: Heng LIAO et al.	
Title: METHOD AND APPARATUS FOR ROUTING IN SAS USING LOGICAL ZONES	

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 /Leslie A. Kinsman/	Date August 23, 2010
Name (Print/Typed) Leslie A. Kinsman	Registration Number 45,291

***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.

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

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

(Not to be Submitted to the USPTO)

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

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

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

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

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

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

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

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

Privacy Act Statement

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

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

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

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United States Patent and Trademark Office
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BORDEN LADNER GERVAIS LLP
Anne Kinsman
WORLD EXCHANGE PLAZA
100 QUEEN STREET SUITE 1100
OTTAWA, ON K1P 1J9
CANADA

Mail Date: 08/31/2010

Applicant	: Heng Liao	: DECISION ON REQUEST FOR
Patent Number	: 7668925	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/341,573	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/30/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1061** 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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MOFFAT-RIM
427 LAURIER AVENUE W.
SUITE 1200
OTTAWA ON K1R 7Y2 CA
CANADA

MAILED

DEC 21 2010

OFFICE OF PETITIONS

In re Application of Vahid Moosavi Application No. 11/341,661 Filed: January 30, 2006 Attorney Docket No. 2173-217	: : : : :	DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 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 October 13, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed July 13, 2010. Accordingly, the date of abandonment of this application is October 14, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1510 and the publication fee of $300, (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 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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : February 12, 2012

TO SPE OF : ART UNIT 2629

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/341,715 Patent No.: US 7624417 B2

Co f C mailroom date: 1-18-2012

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: _____

_____

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: Corrections are appropriate.

/Sumati Lefkowitz/ — SPE
2629 — Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Michael Berns
Maloney Parkinson & Berns
135 West Main Street
Urbana IL 61801

MAILED

JUN 06 2011

OFFICE OF PETITIONS

In re Application of	:	
James R. Kesan	:	
Application No. 11/341,759	:	DECISION ON PETITION
Filed: January 27, 2006	:	
Attorney Docket No. KESAN	:	

This is a decision on the petition filed April 14, 2011 to revive the above identified application.

The petition is **dismissed**.

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition to revive an abandoned application for patent based on unintentional delay or to accept an unintentionally delayed payment of a fee for issuing a patent. In this instance, the fee required by law is $1,620. If applicant can qualify as a "small entity" and does so prior to or together with the payment of the fee, the fee will be one-half of the amount indicated. See 37 CFR 1.27.

The petitioner submitted the incorrect fee for the filing of this petition. The petitioner submitted $540 and the required fee is $810. The amount of $270 is due to complete the petition filing fee.

The petition in the above-identified application was not accompanied by the required fee. No consideration on the merits can be given to the petition until the required fee is received.

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

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

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

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

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

Any questions concerning this matter may be directed to the undersigned at (571) 272-2991.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

cc: **Michael Berns**
PO Box 755
Chicago, IL 61803

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MAILED
SEP 26 2011
OFFICE OF PETITIONS

MICHAEL BERNS
P.O. Box 755
URBANA IL 61803

In re Application of	:	
James R. Kesan	:	
Application No. 11/341,759	:	ON PETITION
Filed: January 27, 2006	:	
Attorney Docket No. KESAN	:	

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

The petition is **DISMISSED**.

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

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of January 21, 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). The application became abandoned on April 22, 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 Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lacks item(s) (1).

The petition is not accompanied by the required reply.

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
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Randolph Building
401 Dulany Street
Alexandria, VA 22314

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

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

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

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JAN 03 2012

OFFICE OF PETITIONS

In re Application of	:	
James R. Kesan	:	
Application No. 11/341,759	:	ON PETITION
Filed: January 27, 2006	:	
Attorney Docket No. **KESAN**	:	

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

The petition is **DISMISSED.**

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

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed January 21, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on April 22, 2010. The Notice of Abandonment was mailed September 30, 2010.

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

The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that prima facie places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). The amendment filed herewith petition ***does not*** prima facie place the application in condition for allowance.

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

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

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

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

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

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

Enclosed: Examiner's Advisory Action PTOL-303

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MICHAEL BERNS
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MAILED
APR 03 2012
OFFICE OF PETITIONS

In re Application of	:	
James R. Kesan	:	
Application No. 11/341,759	:	ON PETITION
Filed: January 27, 2006	:	
Attorney Docket No. KESAN	:	

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed March 5, 2012, to revive the above-identified application.

The petition is **DISMISSED**.

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

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed January 21, 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 April 22, 2010. The Notice of Abandonment was mailed September 30, 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).

No reply was filed. Also the reply filed with previously filed petition on November 15, 2011 does not prima facie place the application in condition for allowance. Please see attached Examiner's Advisory Action.

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

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

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

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

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

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

Enclosure: Advisory Action Before the Filing of an Appeal Brief (PTOL-303)

Advisory Action Before the Filing of an Appeal Brief	Application No. 11/341,759	Applicant(s) KESAN, JAMES R.	
	Examiner COREY SKURDAL	Art Unit 3782	

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

THE REPLY FILED 15 November 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 6 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: *20 and 22-27*.
   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: _____.

/ Corey N. Skurdal /

Continuation of 3. NOTE: the amended claims recite two generally c-shaped members, as opposed to one as previous filed, which would require further search and consideration.

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NOV 22 2010
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WHITHAM, CURTIS & CHRISTOFFERSON
& COOK, P.C.
11491 SUNSET HILLS ROAD
SUITE 340
RESTON VA 20190

In re Patent No. 7,233,132	:	
Issue Date: June 19, 2007	:	
Application No. 11/341,874	:	NOTICE
Filed: January 30, 2006	:	
Attorney Docket No. 01640551AA	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed October 15, 2010. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

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

Your fee deficiency submission under 37 CFR 1.28 is hereby accepted. The petition is **GRANTED**.

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

This file is being forwarded to Files Repository.

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

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

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Alexandria, VA 22313-1450
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SOFER & HAROUN LLP.
317 MADISON AVENUE, SUITE 910
NEW YORK NY 10017

MAILED

FEB 14 2011

OFFICE OF PETITIONS

In re Application of

Pines, et al.

Application No. 11/341,885

Filed: January 27, 2006

Attorney Docket No. **886-003div1c1**

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(a) filed December 23, 2010. The petition is being treated as a petition under 37 CFR 1.181(a) to withdraw the holding of abandonment.

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

This application was held abandoned on May 10, 2009, after it was believed that no response was received to the final Office action mailed February 10, 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 February 22, 2010, indicating that a reply to the notice was not received.

A review of the application file record did reveal that response to the final Office was filed on August 10, 2009, in the form of a Notice of Appeal and fee along with an extension of time within the third month. Based on the aforementioned, it appears that the application was improperly held abandoned as a response was received prior to expiration of the shortened statutory period for reply. The holding of abandonment is withdrawn, accordingly.

The petition fee of $540.00 will be refunded, in due course.

The application file is being forwarded Technology Center GAU 2614, for further processing.

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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RSW IP Law
IBM CORPORATION
3039 CORNWALLIS RD.
DEPT. T81 / B503, PO BOX 12195
RESEARCH TRIANGLE PARK NC 27709

MAILED
FEB 18 2011
OFFICE OF PETITIONS

In re Application of :
David M. Ogle, et al. :
Application No. 11/341,934 : DECISION ON PETITION
Filed: January 26, 2006 :
Attorney Docket No. RSW920050121US1 :

This is a decision on the petition to revive under 37 CFR 1.137(b), filed September 1, 2010. The present petition has been treated as a petition requesting withdrawal of the holding of abandonment for which no petition fee is required.

The petition is **GRANTED**.

The Notice of Abandonment is **WITHDRAWN**.

On November 4, 2008, the Office mailed a non-final Office action, which set a three(3) months shortened statutory period to reply. The application was held to be abandoned by operation of law as of January 4, 2009, for failure to submit a timely response to the non-final Office action. On July 27, 2009, the Office mailed a Notice of Abandonment.

On September 1, 2010, petitioner's filed a response to non-final Office action mailed November 4, 2008. Petitioner urges that the response was timely filed on January 5, 2009, to the non-final Office action with a certificate of mailing. Petitioner also urges that after consultation with the USPTO, it was discovered that the response had not been entered and a duplicative copy was requested. The copy was transmitted by facsimile on May 4, 2009. Subsequently, petitioner's received a Notice of Abandonment stating that the copy received on May 4, 2009 time period had expired.

Nevertheless, the response that was filed January 5, 2009, displayed an incorrect Application No. 11/34**2**,934. However, since the filing date; first named inventor; and attorney docket number were correct on the response, the papers were transferred into the corrected Application No. 11/34**1**,934. Therefore, a review of Office records reveals that the response mailed January 5, 2009 was timely.

Because the Examiner has not considered petitioner's timely filed January 5, 2009 response, it is appropriate to withdrawal the holding of abandonment and refer the application to the Examiner for proper consideration thereof.

The Notice of Abandonment mailed July 27, 2009, is hereby vacated and the holding of abandonment withdrawn.

Therefore, since the holding of abandonment is withdrawn, the $1620.00 petition fee submitted was unnecessary and it will be refunded to petitioner's deposit account.

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

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3213.

This application is being referred to Technology Center AU 3643 for appropriate action by the Examiner in the normal course of business on the reply received January 5, 2009.

Cheryl Gibson-Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

cc: Rudolph J. Buchel, Jr.
P.O. Box 702526
Dallas, TX 75370-2526

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DAVID R. MCKINNEY, P.C.
P.O. BOX 1460
SANDY UT 84091

MAILED
FEB 08 2011
OFFICE OF PETITIONS

In re Application of	:	
James F. Wilcox	:	
Application No. 11/342,121	:	DECISION ON PETITION
Filed: January 26, 2006	:	
Attorney Docket No. 21.003.NP.CON	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 24, 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 final Office action mailed, August 5, 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 November 6, 2009. A Notice of Abandonment was mailed on February 19, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a RCE (Request for Continued Examination, with the required fee of $405, (2) the petition fee of $810, and (3) a proper statement of unintentional delay. Accordingly, the RCE is accepted as being unintentionally delayed.

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 $490 extension of time fee submitted with the petition on February 23, 2010 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's credit card.

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

This application is being referred to Technology Center AU 3632 for appropriate action by the Examiner in the normal course of business on the RCE received February 24, 2010.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

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SEP 13 2010

OFFICE OF PETITIONS

CLARK & ELBING LLP
101 FEDERAL STREET
BOSTON MA 02110

In re Application of	:	
Fuh, et al.	:	
Application No. 11/342,249	:	ON APPLICATION FOR
Filed: January 27, 2006	:	PATENT TERM ADJUSTMENT
Atty Docket No. 50474/016006	:	

This is in response to the APPLICTION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705, filed June 30, 2010. The petition will be treated under 37 CFR 1.705(b). Applicants submit that the correct patent term adjustment to be indicated on the patent is fifty-five (55) days, not zero (0) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

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

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

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

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

The $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b) will be charged to deposit account no. 03-2095.

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

---

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

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

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

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

M1

Paper No.: _____

DATE : April 19 ,2011

TO SPE OF : ART UNIT 1644
SUBJECT : Request for Certificate of Correction for Appl. No. 11/342249 patent No.:7811785
C of C mailroom date:--04-13-11

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

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

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

Magdalene Talley

Certificates of Correction Branch

571-272- 0423

Thank You For Your Assistance

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

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

Comments: "Column. 2, line 66" should have been -- Col. 2, line 67 --. In Column 19, line 54, replace "polypeptides" with -- polypeptide --, the word "polypeptides" is not found. Further, the word "polypeptide" is already there to begin with. As such, no correction should be made.

"Column 55, Line 54" should have been -- Column 55, line 55 --

Phuong N Huynh Acting SPE 1644

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Zilka-Kotab, PC
P.O. Box 721120
San Jose, CA 95172-1120

MAILED

APR 12 2011

OFFICE OF PETITIONS

In re Application of
Christopher John Dixon
Application No. 11/342,250
Filed: January 26, 2006
Attorney Docket No. NAI1P535/06.052.01

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 25, 2011.

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

A review of the file record indicates that the power of attorney to Zilka-Kotab, PC, has been revoked by the assignee of the patent application on February 28, 2011. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Patent Capital Group
6119 McCommas Blvd.
Dallas, TX 75214

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WILMERHALE/BOSTON
60 STATE STREET
BOSTON, MA 02109

Mail Date: 08/03/2010

Applicant	: Sri-Rajasekhar Kothapalli	: DECISION ON REQUEST FOR
Patent Number	: 7653232	: RECALCULATION of PATENT
Issue Date	: 01/26/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/342,254	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/27/2006	: 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.

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	11342288
Filing Date	27-Jan-2006
First Named Inventor	John Cox
Art Unit	3774
Examiner Name	ANDREW IWAMAYE
Attorney Docket Number	USGINZ05400
Title	Methods and apparatus for revision of obesity procedures

◉ 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

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Decision Date : October 7,2011

In re Application of :

John Cox

Application No : 11342288

Filed : 27-Jan-2006

Attorney Docket No : USGINZ05400

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

MAILED
MAR 22 2011
OFFICE OF PETITIONS

In re Application of	:	
Suresh, et al.	:	
Application No. 11/342,296	:	ON PETITION
Filed: January 27, 2006	:	
Attorney Docket No. 5838-06704	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 11, 2011, to revive the above-identified application.

The petition is GRANTED.

The application became abandoned July 2, 2010 for failure to timely submit a proper reply to the non-final Office action mailed April 1, 2010. The non-final Office action set a three month shortened statutory period of time for reply. No petition for extension of time pursuant to 37 CFR 1.136(a) was timely submitted. Notice of Abandonment was mailed November 12, 2010.

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

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuing application No. 13/025,929.

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

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

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P.O. BOX 721120
SAN JOSE, CA 95172-1120

MAILED
APR 01 2011
OFFICE OF PETITIONS

In re Application of Dixon et al. Application No. 11/342,319 Filed: January 26, 2006 Attorney Docket No. NAI1P541/06.058.01	: : : : :	DECISION ON PETITION TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 25, 2011.

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

A review of the file record indicates that on March 10, 2011 the power of attorney to Zilka-Kotab, PC was revoked by the assignee of the patent application. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

Telephone inquires concerning this decision should be directed to the undersigned at 571-272- 7751. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: Patent Capital Group
6119 McCommas Blvd
Dallas TX 75214

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APR 01 2011
OFFICE OF PETITIONS

In re Application of Dixon et al. Application No. 11/342,322 Filed: January 26, 2006 Attorney Docket No. NAI1P539/06.056.01	: : : : :	DECISION ON PETITION TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 25, 2011.

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

A review of the file record indicates that on March 10, 2011 the power of attorney to Zilka-Kotab, PC was revoked by the assignee of the patent application. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

Telephone inquires concerning this decision should be directed to the undersigned at 571-272- 7751. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: Patent Capital Group
6119 McCommas Blvd
Dallas TX 75214

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1100 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

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AUG 12 2010

OFFICE OF PETITIONS

In re Application of :
NOUREDDINE FAHMI ET AL. :
Application No. 11/342,339 : NOTICE
Filed: January 27, 2006 :
Attorney Docket No. **2824.0030001/RWE/SLE** :

This is a notice regarding your request filed May 12, 2010, for acceptance of a fee deficiency submission under 37 CFR 1.28.

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

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

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

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

/JoAnne Burke/
JoAnne Burke
Petitions Examiner
Office of Petitions

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OFFICE OF PETITIONS

ZILKA-KOTAB, PC
P.O. BOX 721120
SAN JOSE, CA 95172-1120

In re Application of	:	
DIXON, et al	:	
Application No. 11/342,342	:	DECISION ON PETITION
Filed: January 26, 2006	:	TO WITHDRAW
Attorney Docket No. NAI1P538/06.055.01	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 24, 2011.

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

A review of the file record indicates that the power of attorney to Kevin J. Zilka and the attorneys associated with Customer No. 28875, has been revoked by the assignee of the patent application on February 28, 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 undersigned at (571) 272-6735.

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

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SAN JOSE, CA 95172-1120

MAILED
APR 15 2011
OFFICE OF PETITIONS

In re Application of	:	
DIXON, et al	:	
Application No. 11/342,343	:	DECISION ON PETITION
Filed: January 26, 2006	:	TO WITHDRAW
Attorney Docket No. NAI1P542/06.059.01	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 24, 2011.

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

A review of the file record indicates that the power of attorney to Kevin J. Zilka and the attorneys associated with Customer No. 28875, has been revoked by the assignee of the patent application on February 28, 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 undersigned at (571) 272-6735.

/Diane C. Goodwyn/
Diane C. Goodwyn
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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ALSTON & BIRD LLP
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE NC 28280-4000

MAILED
APR 08 2011
OFFICE OF PETITIONS

In re Patent No. 7,635,473	:	
Issue Date: December 22, 2009	:	
Application No. 11/342,353	:	DECISION ON PETITION
Filed: January 27, 2006	:	
Attorney Docket No. 057436-392528	:	

This is a decision on the petition filed February 04, 2011, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

A Certificate of Correction was issued on March 15, 2011.

Telephone inquiries concerning this decision may be directed to Michelle R. Eason at (571) 272-4231. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

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

Thurman K. Page
Petitions Examiner
Office of Petitions

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

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ROYLANCE ABRAMS BERDO &
GOODMAN LLP
1300 19TH STREET NW
SUITE 600
WASHINGTON DC 20036

MAILED
AUG 02 2010
OFFICE OF PETITIONS

In re Application of	:	
Cho, et al.	:	
Application No. 11/342,622	:	ON REQUEST FOR
Filed: January 31, 2006	:	RECONSIDERATION OF
Attorney Docket Number: 49952	:	PATENT TERM ADJUSTMENT

This is a decision on the petition under 37 CFR 1.705(b), filed May 14, 2010. Applicants believe that they should be accorded an additional PTA of 180 days. Applicants request 178 days of this correction solely on the basis that the Office will take in excess of three years to issue this patent. In addition, Applicants assert that they should not have been assessed the 2 days of Applicant delay accorded.

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].

With respect to the 2 days of Applicant delay that Applicants assert was erroneously assessed, Applicants' argument has been considered, but is not persuasive. The Office mailed a non-final Office action on August 28, 2009. Applicants filed a reply on November 30, 2009, made timely for purposes of avoiding abandonment because November 28, 2009 fell on a Saturday. See 37 CFR 1.7(a). However, with respect to the date used in the patent term adjustment calculation, the date of filing (37 CFR 1.6) will be used. "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." MPEP 2731.

In view thereof, the correct determination of PTA at the time of the mailing of the Notice of Allowance is **four hundred thirty (430) days** (432 days of PTO delay, reduced by 2 days of Applicant delay).

The $200.00 fee set forth in 37 CFR 1.18(e) has been charged to Deposit Account No. 18-2220, as authorized.

The application is being forwarded to the Office of Data Management for issuance of the patent.

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

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

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
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Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/342,760	01/30/2006	Shufeng Han	17514-US	3802

78833 7590 04/19/2012
DUKE W. YEE
YEE & ASSOCIATES P.C.
P.O. BOX 802333
DALLAS, TX 75380

EXAMINER
KEITH, JACK W

ART UNIT	PAPER NUMBER
3646	

NOTIFICATION DATE	DELIVERY MODE
04/19/2012	ELECTRONIC

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

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

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

ptonotifs@yeeiplaw.com
mgamez@yeeiplaw.com

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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April 19, 2012

DUKE W. YEE
YEE & ASSOCIATES P.C.
P.O. BOX 802333
DALLAS TX 75380

In re Application of	:	
Shufeng Han et al.	:	**DECISION ON PETITION**
Application No. 11342760	:	
Filed: 1/30/2006	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. 17514-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) January 30, 2006.

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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EASTMAN KODAK COMPANY
PATENT LEGAL STAFF
343 STATE STREET
ROCHESTER NY 14650-2201

MAILED
NOV 07 2011
OFFICE OF PETITIONS

In re Application of	:	
Jeffrey J. VanEpps et al.	:	
Application No. 11/342,789	:	DECISION ON PETITION
Filed: January 30, 2006	:	
Attorney Docket No. 90979RRS	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 19, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before September 30, 2011, as required by the Notice of Allowance and Fee(s) Due, mailed June 30, 2011. Accordingly, the date of abandonment of this application is October 1, 2011. A Notice of Abandonment was mailed on October 13, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,740 and the publication fee of $300, (2) the petition fee of $1,860, and (3) a proper statement of unintentional delay. Accordingly, the issue and publication fees 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 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

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	11342976
Filing Date	31-Jan-2006
First Named Inventor	Tomonori Kubota
Art Unit	2611
Examiner Name	LIHONG YU
Attorney Docket Number	05-40841
Title	MOVING PICTURE ENCODING DEVICE, FADE SCENE DETECTION DEVICE AND STORAGE MEDIUM

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:
(1) Petition fee;
(2) Reply and/or issue fee;
(3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995; and for all design applications;
(4) Statement that the entire delay was unintentional.

Petition fee
The petition fee under 37CFR 1.17(m) is attached.

☐ Applicant claims SMALL ENTITY status. See 37 CFR 1.27.

☐ Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

☐ Applicant(s) status remains as SMALL ENTITY.

☒ Applicant(s) status remains as other than SMALL ENTITY.

Issue Fee and Publication Fee :

Issue Fee and Publication Fee must accompany ePetition.

☒ Issue Fee Transmittal is attached

Drawing corrections and/ or other deficiencies.

- (●) Drawing corrections and/ or other deficiencies are not required
- ( ) I certify, in accordance with 37 CFR 1.4.(D)(4), that drawing corrections and/ or other deficiencies have previously been filed on
- ( ) Drawing corrections and/ or other deficiencies are attached.
- [x] STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

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

- (●) An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application.
- ( ) An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity.
- ( ) A sole inventor
- ( ) A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors.
- ( ) A joint inventor; all of whom are signing this e-petition.
- ( ) The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71.

Signature	/Raphael A. Valencia/
Name	Raphael A. Valencia
Registration Number	43216

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Decision Date : November 30, 2011

In re Application of :

Tomonori Kubota

Application No : 11342976

Filed : 31-Jan-2006

Attorney Docket No : 05-40841

DECISION ON PETITION

UNDER CFR 1.137(b)

This is an electronic decision on the petition under 37 CFR 1.137(b), filed November 30, 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

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The Dow Chemical Company
P.O. BOX 1967
2040 Dow Center
Midland MI 48641

MAILED
JAN 31 2012
OFFICE OF PETITIONS

In re Application of

Hild, et al.

Application No. 11/342,992

Filed: January 30, 2006

Attorney Docket No. **PO8636 WW-5645**

DECISION ON PETITION

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181(a), filed January 12, 2012.

The petition is **dismissed**.

This application was held abandoned December 25, 2010, after no reply was received to the non-final Office action mailed September 24, 2010. 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 December 25, 2010. A Notice of Abandonment was mailed June 21, 2011. The instant petition was filed on January 12, 2012. Petitioner maintains that the notice of September 24, 2010, was never received.

A review of the application file history reveals that on April 2, 2009, the assignee requested that the application's correspondence address be associated with that of Customer Number 00109. The request was accompanied by a statement under 37 CFR 3.73(b) and should have been entered, but was not. The record makes clear that the non-final Office action mailed September 24, 2010, was sent to an inaccurate address. Notwithstanding, a successful petition to withdraw the holding of abandonment where applicant is alleging non-receipt of an Office action still requires that petitioner making the showing as set forth in Section 711.03(c) of the *Manual of Patent Examining Procedure*. 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 not made the evidentiary showing specified above. The petition is dismissed accordingly. The renewed petition must be accompanied by a copy of petitioner's **master docket record**, or, if a master docket does not exists, the renewed petition should so state.

Alternatively, petitioner may revive the application based on unintentional abandonment under 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply, the required petition fee, and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

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

By mail: Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

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

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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2040 Dow Center
Midland MI 48641

MAILED
MAR 13 2012
OFFICE OF PETITIONS

In re Application of

Hild, et al.

Application No. 11/342,992

Filed: January 30, 2006

Attorney Docket No. **PO8636 WW-5645**

DECISION ON PETITION

This is a decision on the renewed petition to withdraw the holding of abandonment under 37 CFR 1.181(a), filed February 29, 2012.

The petition is **dismissed**.

This application was held abandoned December 25, 2010, after no reply was received to the non-final Office action mailed September 24, 2010. 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 December 25, 2010. A Notice of Abandonment was mailed June 21, 2011. A petition under 37 CFR 1.181 was filed on January 12, 2012. The petition was dismissed by a decision mailed January 31, 2012.

A review of the application file history reveals that on April 2, 2009, the assignee requested that the application's correspondence address be associated with that of Customer Number 00109. The request was accompanied by a statement under 37 CFR 3.73(b) and should have been entered, but was not. The record makes clear that the non-final Office action mailed September 24, 2010, was sent to an inaccurate address. Notwithstanding, a successful petition to withdraw the holding of abandonment where applicant is alleging non-receipt of an Office action still requires that petitioner making the showing as set forth in Section 711.03(c) of the *Manual of Patent Examining Procedure*. It is noted that while the Office may have sent the Office action to an incorrect address, it is possible that petitioner may have obtained the Office action within the period for reply by other means. Such would have been noted in the petitioner's docket records had it been received. The absence of the Office action in the docket record is corroborative evidence that the Office action was not received from the Office or any other source. Accordingly, where, 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 not made the evidentiary showing specified above. The petition is dismissed accordingly. The renewed petition must be accompanied by a copy of petitioner's master docket record, or, if a master docket does not exists, the renewed petition should so state.

Alternatively, petitioner may revive the application based on unintentional abandonment under 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply, the required petition fee, and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

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

By mail: Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

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

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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2040 Dow Center
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OFFICE OF PETITIONS

In re Application of

Hild, et al.

Application No. 11/342,992

Filed: January 30, 2006

Attorney Docket No. **PO8636 WW-5645**

DECISION ON PETITION

This is a decision on the second renewed petition to withdraw the holding of abandonment under 37 CFR 1.181(a), filed March 19, 2012.

The petition is **granted**.

This application was held abandoned December 25, 2010, after no reply was received to the non-final Office action mailed September 24, 2010. 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 December 25, 2010. A Notice of Abandonment was mailed June 21, 2011. A petition under 37 CFR 1.181 was filed on January 12, 2012. The petition was dismissed by a decision mailed January 31, 2012. A renewed petition was filed February 29, 2012, and dismissed by decision mailed March 13, 2012.

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 GAU 1623 for further processing that will include re-mailing 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

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General Counsel's Office
The Aerospace Corporation
2350 East El Segundo Boulevard
El Segundo CA 90245

MAILED
JUN 20 2011
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In re Patent No. 7,157,715
Issued: January 2, 2007
Application No.: 11/342,997
Filed: January 30, 2006
Attorney Docket No: **D550**

NOTICE

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

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

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

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

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

cc:
Malvern Griffin III
Sutherland Asbill & Brennan, LLP
999 Peachtree Street, NE
Atlanta, GA 30309-3996

UNITED STATES PATENT AND TRADEMARK OFFICE

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

General Counsel's Office
The Aerospace Corporation
2350 East El Segundo Boulevard
El Segundo CA 90245

MAILED
JUN 20 2011
OFFICE OF PETITIONS

In re Patent No. 7,223,979 :
Issued: May 29, 2007 :
Application No.: 11/342,998 : NOTICE
Filed: January 30, 2006 :
Attorney Docket No: **D551** :

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

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

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

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

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

cc:
Malvern Griffin III
Sutherland Asbill & Brennan, LLP
999 Peachtree Street, NE
Atlanta, GA 30309-3996

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AUG 17 2010

OFFICE OF PETITIONS

NOVO NORDISK, INC.
INTELLECTUAL PROPERTY DEPARTMENT
100 COLLEGE ROAD WEST
PRINCETON NJ 08540

In re Patent No.7,615,532	:	
Jonassen, et al.	:	DECISION FOR REQUEST
Issue Date : November 10, 2009	:	FOR RECONSIDERATION
Application No. 11/343,005	:	OF PATENT TERM
Filed: January 30, 2006	:	ADJUSTMENT
Attorney Docket No. **6630.204-US**	:	

This is a decision on the "Request for Review of Patent Term Adjustment" filed May 19, 2010. Patentees request that the patent term adjustment indicated on the face of the Letters of Patent be corrected from three hundred and seven (307) days to three hundred (300) days.

The request for reconsideration of the patent term adjustment under 37 CFR 1.705(d) is **DISMISSED**.

On November 10, 2009, the above-identified application matured into U.S. Patent No. 7,615,532, with a revised patent term of 316 days. A Request for Recalculation of Patent Term Adjustment in View of Wyeth was filed on February 8, 2010. A decision was mailed on April 20, 2010, indicating that the patent term adjustment had been determined to be three hundred and seven (307) days. The instant request for reconsideration filed May 19, 2010, was timely filed within one month of the date the petition recalculation decision was mailed. Patentees assert that the patent term adjustment is 300 days and state specifically:

> ...Applicants believe the PTA was, due to USPTO error, improperly increased by 7 days to the indicated 307 days. Applicants respectfully request that the submission of an RCE on May 1, 2009 did not require a USPTO response within 4 months under 35 U.S.C. 132 (i.e., by September 1, 2009). Thus, the Notice of Allowance dated September 8, 2009, was improperly determined to be USPTO delay, resulting in a 7 day credit to Applicants. Accordingly, Applicants respectfully assert that the total PTA to be 300 days.

Excerpt taken from "Request for Review of Patent Term Adjustment" filed May 19, 2010, p. 1.

Patentees' argument has been considered, but is not well taken. A review of the file history reveals that a Request for Continued Examination was filed on May 1, 2009. On July 21, 2009, patentees filed a supplemental response for which a reduction to the patent term adjustment of 81 days was entered pursuant to 37 CFR 1.704(c)(8). On September 8, 2009, a Notice of Allowance was mailed. The Notice of Allowance was mailed three months and seven days after a reply

under 35 USC 132, i.e., the Request for Continued Examination, was filed. The fact that applicant filed a supplemental paper on July 21, 2009, does not toll the time period for reply as set forth in 37 CFR 1.702(a)(2) that was started by the filing of the reply under 35 U.S.C. 132. Accordingly, the adjustment to the patent term of 7 days was appropriate and will not be removed.

In view thereof, the patent term adjustment of 307 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 14-1447 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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110322

DATE : March 22, 2011

TO SPE OF : ART UNIT 3627

SUBJECT : Request for Certificate of Correction on Patent No.: 7895079

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:

OK to enter all changes.

SPE: /F. Ryan Zeender/ **Art Unit** 3627

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

TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS TX 75265

MAILED
FEB 15 2011
OFFICE OF PETITIONS

In re Application of	:	
Gregory R. Conti	:	
Application No. 11/343,061	:	ON PETITION
Filed: March 30, 2006	:	
Attorney Docket No. TI-39616	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 20, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the final Office action mailed, March 5, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on June 6, 2010. A Notice of Abandonment was mailed on September 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 a Notice of Appeal, with the required fee of $540 and an Appeal Brief, with the required fee of $540, (2) the petition fee of $1,620, and (3) a proper statement of unintentional delay. Accordingly, the Notice of Appeal and Appeal Brief 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 Kimberly Inabinet at (571) 272-4618.

This application is being referred to the Board of Patent Appeals and Interferences for processing of the response in the normal course of business.

/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

ROCKWELL COLLINS, INC.
ATTENTION: KYLE EPPELE
400 COLLINS RD. NE
M/S 124-323
CEDAR RAPIDS, IA 52498

MAILED
AUG 04 2010
OFFICE OF PETITIONS

In re Application of
David C. Nicholas
Application No. 11/343,139
Filed: January 30, 2006
Attorney Docket No. 05CR326/KE

DECISION ON PETITION

This is a decision on the petition, filed June 25, 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**.

This application was held abandoned for failure to timely pay the issue and publication fees on or before May 26, 2010, as required by the Notice of Allowance and Fee(s) Due (Notice), mailed February 14, 2010. A Notice of Abandonment was mailed June 15, 2010.

Petitioner asserts that the Notice dated February 26, 2010 was not received.

A review of the written record indicates no irregularity in the mailing of the Notice, and, in the absence of any irregularity, there is a strong presumption that the Notice was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. In this regard, the showing required to establish the failure to receive the Notice must consist of the following:

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

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition fails to satisfy all of the above-stated requirements. In this regard, the copy of the docket report filed with the petition is not legible and is therefore inadmissible.

Accordingly, absent the required evidence to establish non-receipt of the Notice of Allowance, the petition requesting withdrawal of the holding of abandonment cannot be granted at this time.

If petitioner cannot supply the evidence necessary to withdraw the holding of abandonment, or simply does not wish to, petitioner should consider filing a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the $1620 petition fee.

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

Any request for reconsideration of this decision should be filed within **TWO (2) MONTHS** from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

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

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

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

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

Telephone inquiries concerning this decision should be directed to April M. Wise at (571) 272-1642. All other inquiries concerning this application should be directed to the Office of Data Management at their hotline 571-272-4200.

/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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ROCKWELL COLLINS, INC.
ATTENTION: KYLE EPPELE
400 COLLINS RD. NE
M/S 124-323
CEDAR RAPIDS, IA 52498

MAILED

SEP 30 2010

OFFICE OF PETITIONS

In re Application of :
David C. Nicholas :
Application No. 11/343,139 : ON PETITION
Filed: January 30, 2006 :
Attorney Docket No.: 05CR326/KE :

This is a decision on the petition, filed August 11, 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 timely pay the issue fee on or before May 26, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed February 26, 2010, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on May 27, 2010. A Notice of Abandonment was subsequently mailed on June 15, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the $1,510 issue fee; (2) the petition fee of $1,620; and (3) an adequate statement of unintentional delay.

The application is being referred to the Office of Data Management to be processed into a patent.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing as a patent should be directed to (571) 272-4200.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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	11343182
Filing Date	31-Jan-2006
First Named Inventor	Hiroyuki Masatsugu
Art Unit	2611
Examiner Name	JAMES PEREZ
Attorney Docket Number	1826.1152
Title	FRAME BUFFER MANAGEMENT PROGRAM, PROGRAM STORAGE MEDIUM AND MANAGEMENT METHOD

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	/Richard A. Gollhofer/
Name	Richard A. Gollhofer
Registration Number	31106

UNITED STATES 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 : September 6,2011

In re Application of :

Hiroyuki Masatsugu

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11343182

Filed : 31-Jan-2006

Attorney Docket No : 1826.1152

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed September 6,2011, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

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

Petitioner is advised that the issue fee paid 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 2611 for processing of the request for continuing examination under 37 CFR 1.114 .

Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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NOV 22 2010
OFFICE OF PETITIONS

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

In re Patent No. 7,649,434	:	
Issue Date: January 19, 2010	:	
Application No. 11/343,204	:	NOTICE
Filed: January 31, 2006	:	
Attorney Docket No. 01640545AA	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed October 15, 2010. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

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

Your fee deficiency submission under 37 CFR 1.28 is hereby accepted. The petition is **GRANTED**.

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

This file is being forwarded to Files Repository.

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

/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

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

MAILED

NOV 17 2010

OFFICE OF PETITIONS

In re Application of	:	
Pollack, et al.	:	
Application No. 11/343,284	:	DECISION
Filed/Deposited: 30 January, 2006	:	
Attorney Docket No. 060885-00016.D003	:	

This is a decision on the petition pursuant to 37 C.F.R. §1.182, filed on 29 January, 2010, to change the order of the names of the inventors.

The petition pursuant to 37 C.F.R. §1.182 is **GRANTED**.

The guidance in the Commentary at MPEP §605.04(f) provides, in pertinent part:

> **§605.04(f) Signature on Joint Applications - Order of Names [R-3]**
>
> The order of names of joint patentees in the heading of the patent is taken from the order in which the typewritten names appear in the original oath or declaration. Care should therefore be exercised in selecting the preferred order of the typewritten names of the joint inventors, before filing, as requests for subsequent shifting of the names would entail changing numerous records in the Office. Since the particular order in which the names appear is of no consequence insofar as the legal rights of the joint applicants are concerned, no changes will be made except when a petition under 37 C.F.R. §1.182 is granted. The petition should be directed to the attention of the Office of Petitions. The petition to change the order of names must be signed by either the attorney or agent of record or all the applicants. Applicants are strongly encouraged to submit an application data sheet showing the new order of inventor names to ensure appropriate printing of the inventor names in any patent to issue. It is suggested that all typewritten and signed names appearing in the application papers should be in the same order as the typewritten names in the oath or declaration. (Emphasis supplied.)

***

The petition herein is signed by Counsel herein E. Eric Mills (Reg. No. 47,795), who seeks the following order of inventors: Michael G. Pollack, Vamsee K. Parmula and Richard B. Fair.

The $400.00 fee for the petition pursuant to 37 C.F.R. §1.182 was paid.

Office records are being corrected to reflect the change in the order of the named inventors. An updated filing receipt is enclosed. (Out of an abundance of caution, to ensure that the correction has been entered into Office records, the application is being referred to the Office of Patent Application Processing (OPAP) for review to ensure changes have been or are entered into Office records as to the order of inventors and the mailing of an updated filing receipt reflecting those changes consistent with this decision before the application is forwarded to the Technology Center for further processing 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[1]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

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

[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

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

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

MAILED

APR 12 2011

OFFICE OF PETITIONS

In re Application of :
Jong-Won Seo :
Application No. 11/343,302 : DECISION ON PETITION
Filed: January 31, 2006 :
Attorney Docket No. 678-2359 :

This is a decision on the petition, filed March 4, 2011, 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 Notice of Allowance mailed September 20, 2010, which set a three (3) month statutory period for reply. A Notice of Abandonment was mailed on January 4, 2011.

Petitioner asserts that the Notice of Allowance dated September 20, 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. The statement should also describe the system used for recording an Office action received at the correspondence address of record and establish that the docketing system was sufficiently reliable;

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 master docket for the firm docket record where the nonreceived Office action would have been entered had it been received must be attached to and referenced in the practitioner's statement. If no master docket exists, the practitioner should so state and provide other evidence such, as but not limited: to the application file jacket, incoming mail log; calendar; reminder system or 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 2617 for re-mailing the Notice of Allowance of September 20, 2010. The period for reply will run from the mailing date of the Notice of Allowance.

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

Charlema Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Medtronic, Inc. (CRDM)
710 MEDTRONIC PARKWAY NE
MS: LC340 Legal Patents
MINNEAPOLIS MN 55432-9924

MAILED

SEP 14 2011

OFFICE OF PETITIONS

In re Application of	:	
HOWARD et al.	:	
Application No. 11/343,320	:	DECISION DISMISSING PETITIONS
Filed: January 31, 2006	:	UNDER 37 CFR 1.78(a)(3) AND (a)(6)
Attorney Docket No.: P0007860.03/LG10126	:	

This is a decision on the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed July 22, 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 (1).

The reference to the prior applications must identify all of the prior applications and indicate the relationship (i.e., continuation, divisional, or continuation-in-part) between each nonprovisional application in order to establish copendency throughout the entire chain of prior applications.

Appropriate references must be made in each intermediate application in the chain of prior applications. Here, (1) both application serial no. 11/131,079 and application serial no. 09/067,208 state that application serial no. 09/067,208 is a continuation-in-part of application serial no. 08/430,532; (2) application serial no. 08/430,532 claims priority from provisional application 60/072,223; and (3) application serial no. 09/067,208 does not claim priority from provisional application 60/072,223. The chain of priority must follow the chain of priority in parent application serial number 11/131,079. *See* MPEP Section 201.11 III.C., Reference to Prior Nonprovisional Applications. The amendment fails to comply with the provisions of 37 CFR 1.78(a)(2)(i) and is therefore unacceptable.

Before the petition under 37 CFR §§ 1.78(a)(3) 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:

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

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

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

Any questions concerning this matter may be directed to Jose' G Dees at (571) 272-1569.

David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Medtronic, Inc. (CRDM)
710 MEDTRONIC PARKWAY NE
MS: LC340 Legal Patents
MINNEAPOLIS MN 55432-9924

MAILED

NOV 22 2011

OFFICE OF PETITIONS

In re Application of	:	
HOWARD et al.	:	
Application No. 11/343,320	:	DECISION DISMISSING PETITIONS
Filed: January 31, 2006	:	UNDER 37 CFR 1.78(a)(3) AND (a)(6)
Attorney Docket No.: P0007860.03/LG10126	:	

This is a decision on the renewed petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed November 2, 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 (1).

The reference to the prior applications must identify all of the prior applications and indicate the relationship (i.e., continuation, divisional, or continuation-in-part) between each nonprovisional application in order to establish copendency throughout the entire chain of prior applications.

Appropriate references must be made in each intermediate application in the chain of prior applications. Here, application serial no. 11/131,079 does not claim priority from provisional application 60/072,223. *See* MPEP Section 201.11 III.C., Reference to Prior Nonprovisional Applications. The amendment fails to comply with the provisions of 37 CFR 1.78(a)(2)(i) and is therefore unacceptable.

Before the petition under 37 CFR §§ 1.78(a)(3) 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:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
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By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

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

Any questions concerning this matter may be directed to Jose' G Dees at (571) 272-1569.

Jose Dees
Petitions Examiner
Office of Petitions

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Alexandria, VA 22313-1450
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710 MEDTRONIC PARKWAY NE
MS: LC340 Legal Patents
MINNEAPOLIS MN 55432-9924

MAILED

FEB 13 2012

OFFICE OF PETITIONS

In re Application of	:
HOWARD et al.	:
Application No. 11/343,320	: DECISION ON PETITION
Filed: January 31, 2006	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No.: P0007860.03/LG10126	:

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed January 19, 2012 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 petitions are **GRANTED**.

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

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

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

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

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

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

Any inquiries concerning this decision may be directed to Jose' G Dees at (571) 272-1569. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to Technology Center Art Unit 1727 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed applications.

Jose G Dees
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
11/343,320	01/31/2006	1727	1830	P0007860.03/LG10126	30	4

CONFIRMATION NO. 4960

CORRECTED FILING RECEIPT

27581
Medtronic, Inc. (CRDM)
710 MEDTRONIC PARKWAY NE
MS: LC340 Legal Patents
MINNEAPOLIS, MN 55432-9924

OC000000052547385

Date Mailed: 02/13/2012

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)

William G. Howard, Roseville, MN;
Joseph F. Lessar, Coon Rapids, MN;

Assignment For Published Patent Application

Medtronic, Inc.

Power of Attorney: The patent practitioners associated with Customer Number 27581

Domestic Priority data as claimed by applicant

This application is a CIP of 11/131,079 05/17/2005 ABN
which is a CON of 09/067,208 04/28/1998 PAT 6893772

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: 03/03/2006

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/343,320**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

LOW STIFFNESS-VARIATION CURRENT COLLECTOR

Preliminary Class

429

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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The United States represents the largest, most dynamic marketplace in the world and is an unparalleled location for business investment, innovation and commercialization of new technologies. The USA offers tremendous resources and advantages for those who invest and manufacture goods here. Through SelectUSA, our nation works to encourage, facilitate, and accelerate business investment. To learn more about why the USA is the best country in the world to develop technology, manufacture products, and grow your business, visit SelectUSA.gov.

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BROOKS KUSHMAN P.C. /Oracle America/ SUN / STK
1000 TOWN CENTER, TWENTY-SECOND FLOOR
SOUTHFIELD, MI 48075-1238

Mail Date: 08/06/2010

Applicant	: Dale R. Eichel	: DECISION ON REQUEST FOR
Patent Number	: 7656608	: RECALCULATION of PATENT
Issue Date	: 02/02/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/343,420	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/31/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1039** 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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QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO, CA 92121

Mail Date: 08/03/2010

Applicant	: Joel Brenner	: DECISION ON REQUEST FOR
Patent Number	: 7643542	: RECALCULATION of PATENT
Issue Date	: 01/05/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/343,444	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/31/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **897** 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
MAY 20 2011
OFFICE OF PETITIONS

BRIDGESTONE AMERICAS, INC.
1200 FIRESTONE PARKWAY
AKRON OH 44317

In re Application of	:	
John B. Letts et al.	:	
Application No. 11/343,466	:	ON PETITION
Filed: January 30, 2006	:	
Attorney Docket No. P03094US2ABFDP	:	

This is a decision on the petition under 37 CFR 1.182, filed May 3, 2011, to change the order of the names of the inventors.

The petition is **GRANTED**.

The order of the names of the inventors will be changed as follows:

1. John B. Letts

2. Gregory A. Brandt

Our records have been updated and a corrected Filing Receipt, which sets forth the changes as requested. A copy will be attached to this decision.

This application is being forwarded to Technology Center 3633.

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

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/343,466	01/30/2006	3633	1836	P03094US2ABFDP	18	4

CONFIRMATION NO. 4686

CORRECTED FILING RECEIPT

48985
BRIDGESTONE AMERICAS, INC.
1200 FIRESTONE PARKWAY
AKRON, OH 44317

OC000000047693846

Date Mailed: 05/17/2011

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)

John B. Letts, Carmel, IN;
Gregory A. Brandt, Carmel, IN;

Power of Attorney: The patent practitioners associated with Customer Number 48985

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/649,385 02/01/2005

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: 03/03/2006

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/343,466**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

HIGH DENSITY POLYURETHANE AND POLYISOCYANURATE CONSTRUCTION BOARDS AND COMPOSITE BOARDS

Preliminary Class

428

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

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The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where

the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

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

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

NOT GRANTED

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

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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February 10, 2012

SCULLY SCOTT MURPHY & PRESSER, PC
400 GARDEN CITY PLAZA
SUITE 300
GARDEN CITY NY 11530

In re Application of	:	
V. Ravi Chandran	:	**DECISION ON PETITION**
Application No. 11343557	:	
Filed: 01/30/2006	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. **17690**	:	***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) January 30, 2006.

The petition is **GRANTED**.

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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ORRICK, HERRINGTON & SUTCLIFFE, LLP
IP PROSECUTION DEPARTMENT
4 PARK PLAZA
SUITE 1600
IRVINE CA 92614-2558

MAILED

FEB 01 2011

OFFICE OF PETITIONS

In re Application of	:	
Kirill Mostov	:	
Application No. 11/343,560	:	DECISION ON PETITION
Filed: January 30, 2006	:	
Attorney Docket No. 13811-4004	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 7, 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 4, 2009, as required by the Notice of Allowance and Fee(s) Due mailed February 2, 2009. Accordingly, the date of abandonment of this application is May 5, 2009. A Notice of Abandonment was mailed May 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 payment of the issue fee of $755.00 and the publication fee of $300.00, (2) the petition fee of $810.00; and (3) a proper statement of unintentional delay.

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

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

Joan Olszewski
Petitions Examiner
Office of Petitions

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COMMISSIONER FOR PATENTS
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ORRICK, HERRINGTON & SUTCLIFFE, LLP
IP PROSECUTION DEPARTMENT
4 PARK PLAZA
SUITE 1600
IRVINE CA 92614-2558

MAILED
MAR 09 2011
OFFICE OF PETITIONS

In re Application of	:	
Kirill Mostov	:	
Application No. 11/343,560	:	DECISION GRANTING PETITION
Filed: January 30, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 13811-4004	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed March 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 7, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 2612 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the IDS filed February 10, 2011.

/Karen Creasy/
Karen Creasy
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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United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/343,628	01/31/2006	Sheng-Ping Zhong	04-0217	5801

27774 7590 09/27/2010
MAYER & WILLIAMS PC
251 NORTH AVENUE WEST
2ND FLOOR
WESTFIELD, NJ 07090

EXAMINER
DICKINSON, PAUL W

ART UNIT	PAPER NUMBER
1618	

MAIL DATE	DELIVERY MODE
09/27/2010	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
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www.uspto.gov

SEP 2 7 2010

David B. Bonham
MAYER & WILLIAMS PC
251 NORTH AVENUE WEST
2ND FLOOR
WESTFIELD NJ 07090

In re Application of	:
Zhong	:
Serial No.: 11/343,628	: PETITION DECISION
Filed: 31 January 2006	:
Attorney Docket No.: 04-0217	:

This is in response to the petition under 37 CFR 1.181 and 1.144, filed 7 September 2010, requesting reconsideration of the restriction requirement mailed 1 September 2009 and withdraw of the finality of the Office action mailed 8 July 2010.

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 18 June 2008, after one round of prosecution on pending claims 1-3, 5-7, 9-13, 15-18 and 22-34, applicants filed a request for continued examination.

On 1 September 2009, the examiner mailed an election of species requirement between the originally filed and already examined claims 23 (non-biodegradable portion) and claim 25 (biodegradable portion).

On 30 September 2009, Applicant elected claim 25, with traverse and stated that all claims other than claim 23 read upon the elected species.

On 9 December 2009, in a non-final action, prepared following applicant's election the examiner withdrew the election of species requirement mailed 1 September 2009. The examiner stated that no prior art was found against the elected species. The examiner then withdrew all claims but independent generic claim 1. Claim 1 was rejected under 35 U.S.C. 103.

On 8 July 2010, claims 2-14, 17, 18, 24-31 and 33-36 were again withdrawn from consideration. Claim 1 was rejected under 35 U.S.C. 103. The action was made final.

On 7 September 2010, Applicants filed this petition.

DISCUSSION

The petition and file history have been carefully considered. The petition requests re-instatement of claims 2, 3, 5-7, 9-13, 17-18, 22-31 and 33-34 which read upon the elected invention. The petition also requests withdraw of the finality of the action mailed 8 July 2010.

MPEP 803 provides the follow criteria for restriction between patentably distinct inventions:

> There are two criteria for a proper requirement for restriction between patentably distinct inventions:
> (A) The inventions must be independent (see MPEP § 802.01, §806.06, § 808.01) or distinct as claimed (see MPEP § 806.05 - §806.05(j)); and
> (B) There would be a serious burden on the examiner if restriction is not required (see MPEP § 803.02, § 808, and § 808.02).

Concerning election of species requirements, Rule 37 CFR 1.146 states:

> 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.

Here, because the Office has already examined claims 1-3, 5-7, 9-13, 15-18, 22-34, together on the merits through one round of prosecution, there would be no serious burden to continue to examine these claims. For this reason, the election of species requirement set forth on 1 September 2009 (which the examiner himself withdrew on 9 December 2009) is counter to the guidance in MPEP 803 and 37 CFR 1.146.

Because claims that had already been examined on the merits and should continue to be examined were withdrawn from examination in the Office actions mailed 9 December 2009 and 8 July 2010, those actions are incomplete. Accordingly, the finality of the Office action dated 8 July 2010 was not warranted.

DECISION

For these reasons, the petition is **GRANTED**.

The second election of species requirement mailed 1 September 2009 is withdrawn. Claims 1-3, 5-7, 9-13, 17-18, 24-31, and 33-36 will be rejoined and examined together concurrently in this application.

The Office action mailed 8 July 2010 is incomplete for not addressing improperly withdrawn claims on the merits. The finality of the Office action dated 8 July 2010 has been withdrawn.

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

Doc Code: PET.PTA.RCAL
Document Description: Request for Recalculation in view of Wyeth

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

REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

Attorney Docket Number: TI-39303	Patent Number: 7,662,690
Filing Date (or 371(b) or (f) Date): 01-31-2006	Issue Date: 02/16/2010
First Named Inventor: Shaoping Tang	
Title: METHOD OF PREPARING A SEMICONDUCTOR SUBSTRATE UTILIZING PLURAL IMPLANTS UNDER AN ISOLATION REGION TO ISOLATE ADJACENT WELLS	

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

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

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

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

Signature / Wade J. Brady III /	Date August 2, 2010
Name (Print/Typed) Wade J. Brady III	Registration Number 32,080

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

☑ *Total of 1 forms are submitted.

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

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

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TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS, TX 75265

Mail Date: 08/17/2010

Applicant	: Shaoping Tang	: DECISION ON REQUEST FOR
Patent Number	: 7662690	: RECALCULATION of PATENT
Issue Date	: 02/16/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/343,695	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/31/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **391** 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.:20110516

DATE : May 16, 2011

TO SPE OF : ART UNIT 2626

SUBJECT : Request for Certificate of Correction on Patent No.: 7693714

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:

/RICHEMOND DORVIL/
Supervisory Patent Examiner.Art Unit 2626

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 12-14-10

TO SPE OF : ART UNIT 1621

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/343947 Patent No.: 7311166

CofC mailroom date: 12-01-10

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: _____

J. Shriver — **SPE**

3618 — **Art Unit**

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SENNIGER POWERS LLP (BLN)
100 NORTH BROADWAY
17TH FLOOR
ST LOUIS MO 63102

MAILED

AUG 02 2010

OFFICE OF PETITIONS

In re Application of	:	
Warmolts et al.	:	
Application No. 11/343,982	:	
Filed: January 31, 2006	:	ON APPLICATION FOR
Attorney Docket No. 05-840	:	PATENT TERM ADJUSTMENT
Title: FIRE STOP CLAMP	:	

This is in response to the "PETITION FOR PATENT TERM ADJUSTMENT PURSUANT TO 37 CFR §1.705(d)" filed April 20, 2010. This request is properly treated under 37 CFR 1.705(b). Applicants submit that the correct patent term adjustment to be indicated on the patent is nine hundred eighty-four (984) days, not five hundred thirty-six (536) 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.

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

1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office cannot make a determination on the correctness of the patent term adjustment until the patent has issued.

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

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

---

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

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

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

Telephone inquiries specific to this matter should be directed to Petitions Attorney Charlema Grant at (571) 272-3215.

Anthony Knight
Director
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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CARLSON, GASKEY & OLDS, P.C.
400 WEST MAPLE ROAD
SUITE 350
BIRMINGHAM, MI 48009

Mail Date: 08/06/2010

Applicant	: Peter L. Vigeant	: DECISION ON REQUEST FOR
Patent Number	: 7654556	: RECALCULATION of PATENT
Issue Date	: 02/02/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/343,992	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/31/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **154** 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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PAUL, HASTINGS, JANOFSKY & WALKER LLP
875 15TH STREET, NW
WASHINGTON DC 20005

MAILED
MAR 16 2012
OFFICE OF PETITIONS

In re Patent No. 7,329,841	:	
Issued: February 12, 2008	:	
Application No. 11/344,047	:	NOTICE
Filed: February 1, 2006	:	
Attorney Docket Number: EPX0022-US	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed February 10, 2012.

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

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

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

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

It is not apparent whether the person signing the request was ever given a power of attorney or authorization of agent regarding this patent. In accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts. While, a courtesy copy of this decision is being mailed to the address given on the request, 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: Charles J. Gross
McGuire Woods LLP
1750 Tysons Boulevard, Suite 1800
McLean, VA 22102

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 09/27/10

TO SPE OF : ART UNIT 3765

SUBJECT : Request for Certificate of Correction for Appl. N 11/344092.-Pt.7269859

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: _____

/Gary L. Welch/ — **SPE**

3765 — **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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MAILED
APR 05 2011
OFFICE OF PETITIONS

Mr. Guy Yonay
Pearl Cohen Zedek Latzer, LLP
1500 Broadway
12th Floor
New York, New York 10036

In re Application of	:	
Jason Gallovich	:	ON PETITION
Application No. 11/344,181	:	
Filed: 1 February 2006	:	
Atty. Docket No.: P-74674-US	:	

This is a decision on the petition, filed 4 January 2011, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Notice of Non-compliant Amendment mailed June 9, 2010 ("Notice"), which set a statutory reply period of one (1) month. The application thus became abandoned on 10 July 2010, with notification mailed 21 December 2010.

A grantable petition under 37 CFR 1.181 requires evidence that an Office action was not received. The showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner;

2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and

3. a copy of the docket record where the nonreceived Office action would have been entered had it been received must be attached to and referenced in the practitioner's statement.

See MPEP §711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of

Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The instant petition satisfies the conditions for withdrawal of the holding of abandonment, by including a declaration from Alexander Abecassis that asserts the Office action was not received, a search of docket records and file indicate that the Office action was not received, and a copy of the docket record where the Office action would have been entered had it been received.

Telephone inquiries relating to this decision should be directed to Robert DeWitty (571-272-8427), or, if unavailable, the undersigned at 571-272-7099.

The application file will be referred to Technology Center Art Unit 3626 for further action on the filed Response.

David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MILLER PATENT SERVICES
2500 DOCKERY LANE
RALEIGH, NC 27606

MAILED

SEP 10 2010

OFFICE OF PETITIONS

In re Application of
Leo M. Pedlow Jr.
Application No. 11/344,292
Filed: January 31, 2006
Attorney Docket No. SNY-V8139.01

DECISION ON PETITIONS
UNDER 37 CFR 1.78(a)(3) AND (a)(6)

This is a decision on the petitions under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed February 12, 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.

Any questions concerning this matter may be directed to Irvin Dingle at (571) 272-3210. 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 2621 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
Petition 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
11/344,292	01/31/2006	2621	1750	SNY-V8139.01	31	4

CONFIRMATION NO. 7834

CORRECTED FILING RECEIPT

24337
MILLER PATENT SERVICES
2500 DOCKERY LANE
RALEIGH, NC 27606

OC000000043438350

Date Mailed: 09/10/2010

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)

Leo M. Pedlow JR., Ramona, CA;

Power of Attorney:

Jerry Miller--30779
Peter Toto--36293
Frederick Zustak--36728
Harold Fujii--38458
Jaime Siegel--39027
Mark Gorman--43641
Milton Frazier--44687
Christopher Allenby--45906
Hans Mahr--46138

Domestic Priority data as claimed by applicant

This application is a CIP of 11/292,256 12/01/2005
which claims benefit of 60/636,504 12/15/2004
and claims benefit of 60/637,305 12/16/2004

Foreign Applications

If Required, Foreign Filing License Granted: 03/02/2006

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/344,292**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Content substitution editor

Preliminary Class

386

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

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

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

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

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

NOT GRANTED

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

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/344,330	01/31/2006	Evan Moran	418268286US	7642

7590 03/15/2011
PERKINS COIE LLP/MSFT
P. O. BOX 1247
SEATTLE, WA 98111-1247

EXAMINER
AMIN, JWALANT B

ART UNIT	PAPER NUMBER
2628	

NOTIFICATION DATE	DELIVERY MODE
03/15/2011	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 15, 2011

PERKINS COIE LLP/MSFT
P. O. BOX 1247
SEATTLE WA 98111-1247

In re Application of	:	
Evan Moran et al.	:	**DECISION ON PETITION**
Application No. 11344330	:	
Filed: 1/31/2006	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. 418268286US	:	***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) January 31, 2006.

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

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	11344583
Filing Date	31-Jan-2006
First Named Inventor	Philip Spivak
Attorney Docket Number	0012920.0519733
Title	Particle blast cleaning apparatus with pressurized container

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; and
(4) Statement that the entire delay was unintentional

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.

2. Reply and/or fee

- ○ I certify, in accordance with 37 CFR 1.4(d)(4) that the amendment and response have already been filed in the above-identified application on
- ◉ Amendment and response are attached

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
- ○ RCE Request, Submission, and Fee are attached

Notice of Appeal

○ I certify, in accordance with 37 CFR 1.4(d)(4) that the Notice of Appeal and Fee have already been filed in the above-identified application on

○ Notice of Appeal and Fee are attached

3. Terminal Disclaimer is not required, since the Electronic Petition format is not support for Design applications and applications filed before June 8, 1995. Please file using regular petition format for review by the Office of Petitions.

☒ 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	/Edwin R. Acheson, Jr./
Name	Edwin R. Acheson, Jr.
Registration Number	31808

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Decision Date January 23, 2012

In re Application of Philip Spivak

Application No. 11344583

Filed: 31-Jan-2006

Attorney Docket No. 0012920.051973

DECISION ON PETITION

UNDER CFR 1.137(b)

This is an electronic decision on the petition under 37 CFR 1.137(b), January 23, 2012 , to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the outstanding Office communication. The date of abandonment is the day after the last day of the period set for reply in the Office action plus any applicable extensions of time properly requested.

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 aresponse; (2) the petition fee as set forth in 37 CFR 1.17 (m); and (3) the required statement of unintentional delay have been received. Accordingly, the response 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 Technology Center.

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

FOX ROTHSCHILD LLP
BLUE BELL
997 LENOX DRIVE
BUILDING 3
LAWRENCEVILLE, NJ 08648-2311

MAILED

OCT 27 2010

OFFICE OF PETITIONS

In re Application of :
Daniel J. Raulerson, et al. :
Application No.: 11/344,616 : ON PETITION
Filed: February 1, 2006 :
Attorney Docket No.: MED-0084 :

This is a decision on the petition, filed October 19, 2010, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

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

The petition is **GRANTED**.

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 24, 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 3736 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

cc: ANTON P. NESS
FOX ROTHSCHILD LLP
TEN SENTRY PARKWAY, SUITE 200
P.O. BOX 3001
BLUE BELL, PA 19422-3001

---

[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

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

MAILED
AUG 27 2010
OFFICE OF PETITIONS

In re Application of	:	
Satoshi Morita, et al.	:	
Application No. 11/344,656	:	DECISION ON PETITION
Filed: January 31, 2006	:	UNDER 37 CFR 1.313(c)(1)
Attorney Docket No. 088245-3885	:	

This is a decision on the petition under 37 CFR 1.313(c), filed August 20, 2010, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **DISMISSED**.

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.

Upon payment of the issue fee, an application will not be withdrawn from issue upon petition except for the reasons enumerated in 37 CFR 1.313(c). The circumstances of the above-identified application do not fall within any of those exceptions.

For the reason stated above, the petition under 37 CFR 1.313(c) cannot be granted.

Petitioner is reminded that the filing of any renewed petition to withdraw from issue may not be recognized or effective if not received by the appropriate deciding official in time to act prior to issuance. *Note* 37 CFR 1.313(d). It is recommended that the facsimile number listed below be used to file the renewed petition.

The petition is not signed by an attorney of record. Nevertheless, in accordance with 37 CFR 1.34, the signature of Mr. John E, Gunther appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts. If Mr. Gunther desires to receive future correspondence regarding this file, the appropriate power of attorney documents must be submitted. A courtesy copy of this decision is being mailed to petitioner herein. However, until otherwise instructed, all future correspondence regarding this application file will be directed solely to the above-noted correspondence address of record.

A further review of the record shows that the petitioner does not have authorization or charge fees to deposit account 19-0741. Since the petition fee of $130 under 37 CFR 1.17(h), could not be charges without proper authorization, the petition to withdraw this application from issue could not be granted at the present time.

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) 273-0025**
Office of Petitions

Telephone inquiries concerning this matter may be directed to undersigned at (571) 272-1642.

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

cc: SOCAL IP LAW GROUP, LLP
310 N. WESTLAKE BLVD.
SUITE 120
WESTLAKE, CA 91362

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 01/12/11

TO SPE OF : ART UNIT: 2873 Attn: MACK RICKY L (SPE)

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/344656 Patent No.: 7830582

CofC Mailroom date: 01/03/11

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

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

Comments: _____

TIMOTHY THOMPSON 2
PRIMARY EXAMINER

/Ricky Mack/ 3
SPE

2873 4
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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DLA PIPER LLP (US)
4365 EXECUTIVE DRIVE
SUITE 1100
SAN DIEGO CA 92121-2133

MAILED
MAY 09 2011
OFFICE OF PETITIONS

In re Application of :
Turnell, et al. :
Application No. 11/344,689 : DECISION
Filed: 31 January, 2006 :
Attorney Docket No. MEDIV2060-3 :

This is a decision on the petition filed on 14 March, 2011, for revival of an application abandoned due to unintentional delay pursuant to 37 C.F.R. §1.137(b) .

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

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.137(b)."

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

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee

Petitioner does not appear to have satisfied the requirements under the Rule.

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(II).

BACKGROUND

Petitioner failed to reply timely and properly to the non-final Office action mailed on 1 June, 2009, with reply due absent extension of time on or before 1 September, 2009.

The application went abandoned by operation of law after midnight 1 September, 2009.

The Office mailed the Notice of Abandonment on 11 January, 2010.

On 14 March, 2011, Petitioner filed, *inter alia*, a petition pursuant to 37 C.F.R. §1.137(b), with fee, and a statement of unintentional delay that did not comport with the regulation—Petitioner will do well to use the form available at the Office website—with a reply in the form of an amendment, and, for reasons wholly unexplained, a request and fee for extension of time that Petitioner as one registered to practice before the Office is aware is not appropriate or proper after expiration of the statutory period. Moreover, it appears that, despite the extended period of abandonment—some eighteen (18) months after abandonment and fourteen (14) months after Notice thereof—Petitioner has made no showing in support of the averment 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).

Petitioner has failed to satisfy the requirements under the Rule and discussed above.

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

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

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[2]

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

[2] 35 U.S.C. §133 provides:

35 U.S.C. §133 Time for prosecuting application.

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority.

Unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[3]))

Again, Petitioner's attentions are directed to the guidance in the Commentary at MPEP §711.03(c).

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee

As of this writing it appears that Petitioner has failed to satisfy the requirements under the Rule.

CONCLUSION

Accordingly, the petition under 37 C.F.R. §1.137(b) is **dismissed**.

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

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

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

[3] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

Application No. 11/344,689

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.

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SAN DIEGO CA 92121-2133

MAILED

JUL 01 2011

OFFICE OF PETITIONS

In re Application of :
Turnell, et al. :
Application No. 11/344,689 :
Filed: 31 January, 2006 :
Attorney Docket No. MEDIV2060-3 :

DECISION

This is a decision on the petition filed on 31 May, 2011, for revival of an application abandoned due to unintentional delay pursuant to 37 C.F.R. §1.137(b) .

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

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.137(b)."

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

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee

Petitioner does not appear to have satisfied the requirements under the Rule.

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(II).

BACKGROUND

Petitioner failed to reply timely and properly to the non-final Office action mailed on 1 June, 2009, with reply due absent extension of time on or before 1 September, 2009.

The application went abandoned by operation of law after midnight 1 September, 2009.

The Office mailed the Notice of Abandonment on 11 January, 2010.

On 14 March, 2011, Petitioners Edward D. Robinson (Reg. No. 43,049) and Lisa A. Haile (Reg. No. 38,347) filed, *inter alia*, a petition pursuant to 37 C.F.R. §1.137(b), with fee, and a statement of unintentional delay that did not comport with the regulation—Petitioner will do well to use the form available at the Office website—with a reply in the form of an amendment, and, for reasons wholly unexplained, a request and fee for extension of time that Petitioner as one registered to practice before the Office is aware is not appropriate or proper after expiration of the statutory period. Moreover, it appears that, despite the extended period of abandonment—some eighteen (18) months after abandonment and fourteen (14) months after Notice thereof—Petitioner made no showing in support of the averment of unintentional delay. The petition was dismissed on 9 May, 2011.

On 31 May, 2011, Petitioners re-advanced their petition, pointed to the reply previously submitted and made a statement of unintentional delay, but again provided no explanation of the extended delay averred to have been unintentional.

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c) as to the showing regarding unintentional delay and a petition pursuant to 37 C.F.R. §1.137(b).

Petitioner has failed to satisfy the requirements under the Rule and discussed above.

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

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

[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).

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[2]
The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority.

Unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[3]))

Again, Petitioner's attentions are directed to the guidance in the Commentary at MPEP §711.03(c).

As to the Allegations of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee

As of this writing it appears that Petitioner has failed to satisfy the requirements under the Rule.

CONCLUSION

Accordingly, the petition under 37 C.F.R. §1.137(b) is **dismissed**.

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

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

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[2] 35 U.S.C. §133 provides:
35 U.S.C. §133 Time for prosecuting application.
Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

[3] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

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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4365 EXECUTIVE DRIVE
SUITE 1100
SAN DIEGO CA 92121-2133

MAILED

OCT 03 2011

OFFICE OF PETITIONS

In re Application of :
Turnell, et al. :
Application No. 11/344,689 : DECISION
Filed: 31 January, 2006 :
Attorney Docket No. MEDIV2060-3 :

This is a decision on the petition filed on 1September, 2011, for revival of an application abandoned due to unintentional delay pursuant to 37 C.F.R. §1.137(b) .

NOTE:

The record (including the petitions filed on 14 March, 31 May and 1 September, 2011,) does not necessitate a finding that the delay between midnight 1 September, 2009 (the date of abandonment), and 1 September, 2011 (the date of the filing of grantable petition), was not unintentional.

Rather, the Patent and Trademark Office is relying in this matter on the duty of candor and good faith of Petitioners/Counsel Lisa Haile (Reg. No. 38,347) and Edwin Robinson (Reg. No. 43049) when accepting Petitioners' representation that the delay in filing the response was unintentional.[1]

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

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee

[1] See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. ' 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 C.F.R. ' 1.137(b) to the Patent and Trademark Office).

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(II).

BACKGROUND

Petitioner failed to reply timely and properly to the non-final Office action mailed on 1 June, 2009, with reply due absent extension of time on or before 1 September, 2009.

The application went abandoned by operation of law after midnight 1 September, 2009.

The Office mailed the Notice of Abandonment on 11 January, 2010.

On 14 March, 2011, Petitioners Edward D. Robinson (Reg. No. 43,049) and Lisa A. Haile (Reg. No. 38,347) filed, *inter alia*, a petition pursuant to 37 C.F.R. §1.137(b), with fee, and a statement of unintentional delay that did not comport with the regulation—Petitioner will do well to use the form available at the Office website—with a reply in the form of an amendment, and, for reasons wholly unexplained, a request and fee for extension of time that Petitioner as one registered to practice before the Office is aware is not appropriate or proper after expiration of the statutory period. Moreover, it appears that, despite the extended period of abandonment—some eighteen (18) months after abandonment and fourteen (14) months after Notice thereof—Petitioner made no showing in support of the averment of unintentional delay. The petition was dismissed on 9 May, 2011.

On 31 May, 2011, Petitioners re-advanced their petition, pointed to the reply previously submitted and made a statement of unintentional delay, but again provided no explanation of the extended delay averred to have been unintentional. The petition was dismissed on 1 July, 2011.

On 1 September, 2011, Petitioner again re-advanced her petition, this time submitting with the petition, fee, reply in the form of an amendment and terminal disclaimer for consideration of the TC/AU, and a showing of the basis of the unintentional delay..

As noted above, the record (including the petitions filed on 14 March, 31 May and 1 September, 2011,) does not necessitate a finding that the delay between midnight 1 September, 2009 (the date of abandonment), and 1 September, 2011 (the date of the filing of grantable petition), was not unintentional.

Rather, the Patent and Trademark Office is relying in this matter on the duty of candor and good faith of Petitioners/Counsel Lisa Haile (Reg. No. 38,347) and Edwin Robinson (Reg. No. 43049) when accepting Petitioners' representation that the delay in filing the response was unintentional.[2]

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[2] See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. ' 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 C.F.R. ' 1.137(b) to the Patent and Trademark Office).

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c) as to the showing regarding unintentional delay and a petition pursuant to 37 C.F.R. §1.137(b).

Petitioner has failed to satisfy the requirements under the Rule and discussed above.

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[3]

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[4]
The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority.

Unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[5]))

Again, Petitioner's attentions are directed to the guidance in the Commentary at MPEP §711.03(c).

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

[4] 35 U.S.C. §133 provides:

35 U.S.C. §133 Time for prosecuting application.

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

[5] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

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

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 Office of Technology Center/AU 1796 for further processing in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the instant decision to ensure that the revival has been acknowledged by the TC/AU in response to this decision. It is noted that all inquiries with regard to status need be directed to the TC/AU where that change of status must be effected—that does not occur in the Office of Petitions.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however , that all practice before the Office is in writing (see: 37 C.F.R. §1.2[6]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

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

[6] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing. The personal attdance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

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APR 16 2012

OFFICE OF PETITIONS

DLA PIPER LLP (US)
4365 EXECUTIVE DRIVE
SUITE 1100
SAN DIEGO CA 92121-2133

In re Application of	:	
CARPENTER, et al	:	
Application No. 11/344,689	:	DECISION ON PETITION
Filed: January 31, 2006	:	TO WITHDRAW
Attorney Docket No. MEDIV2060-3	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 14, 2012.

The request is **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 Lisa Haile on behalf of the attorneys of record associated with Customer No. 28213.

The attorneys of record associated with Customer No. 28213 have been withdrawn.

Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address indicated below until otherwise properly notified by the applicant.

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

/Diane Goodwyn/
Diane Goodwyn
Petitions Examiner
Office of Petitions

cc: MEDIVAS, LLC
P.O. BOX 33419
SAN DIEGO CA 92163

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
11/344,689	01/31/2006	William G. Turnell	MEDIV2060-3

CONFIRMATION NO. 7427

POWER OF ATTORNEY NOTICE

28213
DLA PIPER LLP (US)
4365 EXECUTIVE DRIVE
SUITE 1100
SAN DIEGO, CA 92121-2133

OC000000053729617

Date Mailed: 04/16/2012

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 03/29/2012.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/dcgoodwyn/

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

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AUG 04 2010
OFFICE OF PETITIONS

BING-HUA JIANG
1012 BRETTWALD DRIVE
MORGANTOWN WV 26508

In re Application of	:	
Bing-Hua Jiang, et al.	:	
Application No. 11/344,725	:	DECISION ON PETITION
Filed: January 31, 2006	:	
	:	

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed March 26, 2010 and resubmitted on July 6, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, October 9, 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 10, 2008. The Notice of Abandonment was mailed April 14, 2008.

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

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

This application is being referred to Technology Center AU 1612 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

MAILED

DEC 09 2010

OFFICE OF PETITIONS

Elizabeth R. Hall
Elizabeth R. Hall & Associates, P.C.
P.O. Box 66629
HOUSTON TX 77266-6629

In re Patent No. 7,527,450	:	
Issue Date: May 5, 2009	:	
Application No. 11/344,727	:	ON PETITION
Filed: February 1, 2006	:	
Attorney Docket No. ABOT-P003US	:	

This is a decision on the petition, filed May 18, 2009, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

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

Shirene Willis Brantley
Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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FISH & RICHARDSON P.C. (TC)
PO BOX 1022
MINNEAPOLIS MN 55440-1022

MAILED
APR 16 2012
OFFICE OF PETITIONS

In re Application of	:	
Aiden Flanagan	:	
Patent Number: 8,089,029	:	DECISION ON
Issue Date: 01/03/2012	:	APPLICATION FOR
Application No. 11/344761	:	PATENT TERM ADJUSTMENT
Filing or 371(c) Date: 02/01/2006	:	
Attorney Docket Number:	:	
10527-1174001 / 05-01509	:	

This is a decision on the petition filed on March 5, 2012, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand three hundred ninety-three (1393) 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 ninety-three (1393) days is **DISMISSED**.

Patentees filed, inter alia, a Request for Continued Examination ("RCE"), on December 29, 2010. This Office mailed a Notice of Allowance and Issue Fee Due on September 30, 2011. Patentees request an additional ninety-six (96) days of patent term adjustment in the period beginning on the date that the Notice of Allowance and Issue Fee Due was mailed, and ending on the date the patent issued, January 12, 2012. Patentees aver that with the mailing of the Notice of Allowance on September 30, 2011, the Office closed examination on the present application on that date, and no continued examination took place in the 96-day period from the mailing date of the Notice of Allowance and Issue Fee Due, to the issuance of the patent. Accordingly, Patentees assert that 96 days of B Delay should have been included in the period of delay accorded the Director, and that the Patent Term Adjustment should be calculated as 1393 days, instead of 1297 days.

Counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond

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

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

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

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and

Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

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

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the

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

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[2] permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on February 2, 2009, and ends on December 28, 2010, the day before the RCE, filed December 29, 2010, was filed, and is 618 days. See, 35 U.S.C. 154(b)(1)(B)(i). As such, the patent term adjustment is 1297 days, not 1393 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

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

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

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

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

/DLW/

Derek L. Woods
Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : **2-2-11**

TO SPE OF : ART UNIT **2857**

SUBJECT : Request for Certificate of Correction for Appl. No.: **11344829** Patent No.: **7516046**

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Omega Lewis
Certificates of Correction Branch

703-756-1575

Thank You For Your Assistance

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

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

Comments: _____APPROVED._____

/Andrew Schechter/ 2857
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

DINSMORE & SHOHL LLP
One Dayton Centre
Suite 1300
One South Main Street
Dayton OH 45402-2023

MAILED
AUG 29 2011
OFFICE OF PETITIONS

In re Application of	:	
Elroy Edwin Bourgraf, et al.	:	
Application No. 11/344,878	:	DECISION GRANTING PETITION
Filed: February 1, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. FER 0282 PA/40271.486	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, August 26, 2011 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on August 2, 2011 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 3673 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

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

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THOMAS G. FERENCE
38 THASHA LANE
C-6
ESSEX JUNCTION, VT 05452

MAILED

DEC 14 2011

OFFICE OF PETITIONS

In re Patent No. 7,278,223 :
Issue Date: October 9, 2007 :
Application No. 11/344,985 : ON PETITION
Filed: February 1, 2006 :
Patentee(s): Kathleen M. Dever, et. al. :

This is a decision on the petition under 37 CFR 1.378(c), filed on November 17, 2011, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **dismissed**.

A petition to accept the unintentionally delayed payment of a maintenance fee under 35 U.S.C. § 41(c) and 37 CFR 1.378(c) must be accompanied by: (1) a statement that the delay was unintentional; (2) payment of the appropriate maintenance fee, unless previously submitted; (3) payment of the surcharge set forth in 37 CFR 1.20(i)(2). The petition lacks item (1) above.

With respect to item (1) above, the statement of unintentional delay is not considered to be submitted by a proper party as required by 37 CFR 1.378(d), which states that 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.

In this regard, the petition is signed by one of two inventors. An unsigned paper or one not properly signed by a person having authority to prosecute an application or patent is not entered. Therefore, a properly signed petition under 37 CFR 1.378(c), by all the inventors is required, unless there is an assignee of entire, right, title and interest that complied with the requirements of 37 CFR 3.73(b).

37 CFR 3.73(b) provides that: (1) when an assignee seeks to take action in a matter before the Office, the assignee must establish its ownership of the property to the satisfaction of the Commissioner; (2) ownership is established by submitting to the Office, in the Office file related to the matter in which action is sought to be taken, documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment submitted for recording) or by specifying (e.g., reel and frame number) where such evidence is recorded in the Office; (3) the submission establishing ownership must be signed by a party authorized to act on behalf of the assignee; and (4) documents submitted to establish ownership may be required to be recorded as a condition to permitting the assignee to take action in a matter pending before the Office. A blank Statement under 37 CFR 3.73(b) is enclosed for petitioner's convenience.

Further, it is noted that the file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of correspondence address should be filed. However, Petitioner should note that a change of correspondence address will not affect the fee address. Therefore, if petitioner desires to receive future correspondence regarding maintenance fees for the above patent, a "Fee Address Indication" and/or "Request for Customer Number" forms must be submitted. See attached USPTO forms PTO/SB/47 and PTO/SB/125.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within **TWO (2) MONTHS** from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Any petition for reconsideration of this decision must be accompanied by the petition fee of $400 as set forth in 37 CFR 1.17(f). The petition for reconsideration must include the lacking item(s) noted above, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner.

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

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

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

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

If petitioner does not wish to pursue reinstatement of this expired patent, petitioner may request a refund totaling $2,205, which includes the maintenance fee and surcharge. The request should be made in writing and addressed to: Mail Stop 16, Director of the U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany petitioner's request.

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

Andrea Smith
Petitions Examiner
Office of Petitions

Enclosures: Privacy Act Statement
Blank Statement under 37 CFR 3.73(b) (FORM PTO/SB/96)
Fee Address Indication Form (FORM PTO/SB/47)
Request for Customer Number Form (FORM PTO/SB/125)

cc: Kathleen Dever
P.O. Box 427
Stowe, VT 05672

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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THOMAS G. FERENCE
38 THASHA LANE
C-6
ESSEX JUNCTION, VT 05452

MAILED
JAN 18 2012
OFFICE OF PETITIONS

In re Patent No. 7,278,223 :
Issue Date: October 9, 2007 :
Application No. 11/344,985 : ON PETITION
Filed: February 1, 2006 :
Patentee(s): Kathleen M. Dever, et. al. :

This is a decision on the petition under 37 CFR 1.378(c), filed on December 14, 2011 and renewed on January 3, 2012, to accept the delayed payment of a maintenance fee for the above-identified patent.

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

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

This patented file is being forwarded to Files Repository.

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

/Andrea Smith/
Andrea Smith
Petitions Examiner
Office of Petitions

cc: Kathleen Dever
P.O. Box 427
Stowe, Vermont 05672

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.
11/345,188	01/31/2006	Rudyard Istvan	12853/6	9609

757 7590 12/23/2010
BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, IL 60610

EXAMINER
CHOI, PETER Y

ART UNIT	PAPER NUMBER
1786	

MAIL DATE	DELIVERY MODE
12/23/2010	PAPER

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

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

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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wk

DEC 2 3 2010

Mailed :
In re Application of : DECISION ON
Istvan : PETITION
Serial No. 11/345,188 :
Filed: January 31, 2006 :
For: NON-WOVEN FIBROUS MATERIALS AND ELECTRODES THEREFROM

This is a decision on the PETITION FILED UNDER 37 CFR 1.144 filed on October 20, 2010.

The Examiner initially required a restriction on December 14, 2007 between Group I, claims 1-16, drawn to a non-woven fibrous material, classified in class 422, subclass 327 and Group II, claims 17-20 drawn to an electrode classified in class 429, subclass 129. Applicant elected Group I, claims 1-16 without traverse. In response to the Office Action of March 6, 2008, Applicant responded on June 6, 2008 and added new claims 21-23 and 27-28.

The Examiner on October 16, 2009 determined that newly submitted claims 21-23, 27 and 28 to be directed to a species this is independent or distinct from the invention originally claimed. The original species was directed to a non-woven fibrous material wherein the average diameter of the carbon fiber fragment is about 5 microns. The Examiner determined that the newly submitted species were mutually exclusive from the original species examined. Additionally, the species were not obvious variants of each other based on the current record. The Examiner further determined that since Applicant had received an action on the merits for the originally presented species, this species has been constructively elected by original presentation for prosecution on the merits. On April 13, 2010, Applicant traversed the requirement and requested that the claims be considered because there would not be significant overlap for the search for the inventions of each group and there would be no hardship for each group to be searched and examined simultaneously. The Examiner issued a Final Office Action on July 2, 2010. The Examiner did not address the arguments set forth by Applicant's traversal.

In the petition, Applicant asserts that independent claim 1 does not include an average diameter of the carbon fragment and that claims 2-4 progressively shrink the claimed average diameter. There was no original species election made of fibers with the average diameters of 5 microns and that claims 2-3 have higher average diameters than the species asserted by the Examiner. The Applicant further asserts that new

claims 21-23 further shrink the average diameter of the fiber and the claims are proper dependent claims. The Applicant also points out that claim 11, like claim 1, did not include an average fiber diameter and that claims 27 and 28, like claims 21-23 further limit the diameter of the fiber.

DECISION

The petition is **GRANTED**.

The Restriction of claims 21-23 and 27-28 are withdrawn.

/W. GARY JONES/
Director, Technology Center 1700
Chemical and Materials Engineering

K. Shannon Mrksich, Ph.D.
BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO IL 60610

UNITED STATES PATENT AND TRADEMARK OFFICE

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DIW Mar-11

DANIEL REITENBACH
CHEMTURA CORPORATION
BENSON ROAD
MIDDLEBURY CT 06749

MAILED
MAR 02 2011
OFFICE OF PETITIONS

In re Application of	:	
Kosover et al.	:	
Application Number: 11/345,194	:	ON PETITION
Filing Date: 01/31/2006	:	
Attorney Docket Number: 0231-PA	:	
	:	

This is a decision in response to the petition under 37 CFR 1.137(b) filed on December 22, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on August 18, 2010, for failure to timely file a proper response to the non-final Office action mailed on May 17, 2010, which set a three (3) month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on December 15, 2010.

Receipt of the amendment filed on December 22, 2010, is acknowledged.

The application is forwarded to Technology Center Art Unit 1762 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

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

MAILED
MAR 01 2012
OFFICE OF PETITIONS

In re Application of:
Oh-Bong Kwon
Application No. 11/345,207
Filed: January 31, 2006
Attorney Docket No. 21543US01

: LETTER REGARDING
: PATENT TERM ADJUSTMENT

This is a decision on the petition filed February 8, 2012, under 37 C.F.R. § 1.705 requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted to 684 days.

The application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED**.

Patentee's argue that the issuance of the patent resulting from this application has been delayed due to review by the Board of Patent Appeals and Interferences under 35 U.S.C. 134 or by a Federal court under 35 U.S.C. 141 or 145, resulting in the reversal of an adverse determination of patentability. 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).

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.

In this instance a Notice of Appeal was filed September 9, 2010 and a non-Final Office Action was mailed February 2, 2011. Thus there is no patent term adjustment for the periods between the filing of the Notice of Appeal and the mailing of the subsequent Office Action.

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

SN-11345218

Paper No.:20120117

DATE :

TO SPE OF : ART UNIT

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

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

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

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

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

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

Note your decision on the appropriated box.

☒ **Approved** All changes apply.

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

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

Comments:

/CECILIA J TSANG/
Supervisory Patent Examiner.Art Unit 1654

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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

MAILED
NOV 26 2010
OFFICE OF PETITIONS

In re Application of :
Gyeong-Sik Ok et al :
Application No. 11/345,262 :
Filed: February 1, 2006 :
Attorney Docket No. YPL0226US

ON PETITION

This is a decision on the petition, filed November 23, 2010 under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on November 18, 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 2884 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

/Irvin Dingle/
Irvin Dingle
Petitions Examiner
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

November 19, 2010

Patrick J. Stanzione
Stanzione & Kim, LLP
919 18th St., NW
Suite 440
Washington, DC 20006

Patent No.	: 7,778,436 B2
Ser. No.	: 11/345,335
Inventor(s)	: Seuk-Hwan Chung, et al.
Issued	: August 17, 2010
Docket No.	: 309-1007
Title	: **VIBRATION-SOUND GENERATING DEVICE AND YOKE THEREOF**

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:

Copy

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20111219

DATE : December 19, 2011

TO SPE OF : ART UNIT 1652

SUBJECT : Request for Certificate of Correction on Patent No.: 7,977,082

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

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

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

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

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

Note your decision on the appropriated box.

☒ **Approved** All changes apply.

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

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

Comments:

/ROBERT MONDESI/
Supervisory Patent Examiner.Art Unit 1652

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY OF COMMERCE AND
COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, DC 20231

6/8/2011

Patent No. :7908201
Inventor(s) :Paul D. Addock et al.
Issued :3/15/2011
Title :CROSS AND POST ORDER
Atty.doc./File No.

Request for Certificates of Correction

Consideration has been given to your request for the issuance of a Certificate of Correction, for the above – identified patent under the provisions of CFR 1.322.

Inspection of the application for the patent reveals item [75] is printed in accordance with the record and there should be a corrected filing receipt or supplemental declaration of oath. Therefore being no fault on the Patent and Trademark Office, It has no authority to issue a certificate of correction under the provision of 1.322.

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

Future written correspondence concerning this matter should be filed and directed to Decisions & Certificates of Correction Branch.

Henry Randall
Decisions & Certificates
of Correction Branch
(703) 756-1571

CHRIS L. HOLM
1 CHASE MANHATTAN PLAZA
NEW YORK, NEW YORK 10005-1413

HR

UNITED STATES PATENT AND TRADEMARK OFFICE

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

VAN PELT, YI & JAMES LLP
10050 N. FOOTHILL BLVD #200
CUPERTINO CA 95014

MAILED

FEB 01 2011

OFFICE OF PETITIONS

In re Application of	:	
Yeung, et al.	:	
Application No. 11/345,621	:	DECISION ON PETITION
Filed: 1 February, 2006	:	
Attorney Docket No. LINKP006	:	

This is a decision on the petition filed on 29 September, 2010, requesting correction of the name of the inventor/applicant, and considered for relief pursuant to 37 C.F.R §1.182.

NOTE:

Petitioner ignored the information provided to her in the decision of 1 July, 2010.

Petitioner asserted that the inventor did not change names, but, rather, that it was incorrectly submitted. That distinction is not pertinent.

Petitioner acknowledged that the inventor and Petitioner submitted an oath/declaration with incorrect information. That the Office does not require a petition pursuant to 37 C.F.R §1.48—as Petitioner avers—is of no moment as to the correction of the inventor's name.

Petitioner is respectfully requested to comply with the Rules of Practice and submit the materials as discussed hereinbelow.

The petition under 37 C.F.R §1.182 is **DISMISSED**.

A request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.182."

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

It is noted that Petitioner did not include with the petition and fee the required declaration by the inventor/applicant, signed in both forms of the inventor/applicant's name—that averred to have been incorrect and that averred to be correct.

The guidance in the Commentary set forth at MPEP§605.04(c) suggests to Petitioner the proper procedure herein:

> **605.04(c)Inventor Changes Name [R-5]**
>
> In cases where an inventor's name has been changed after the application has been filed and the inventor desires to change his or her name on the application, he or she must submit a petition under 37 CFR 1.182. Applicants are also strongly encouraged to submit an application data sheet (37 CFR 1.76) showing the new name. The petition should be directed to the attention of the Office of Petitions. The petition must include an appropriate petition fee and **>a statement< signed by the inventor setting forth both names and the procedure whereby the change of name was effected, or a * copy of the court order.
>
> Since amendments are not permitted after the payment of the issue fee (37 CFR 1.312), a petition under 37 CFR 1.182 to change the name of the inventor cannot be granted if filed after the payment of the issue fee.
>
> If an application data sheet is not submitted, the petition may still be granted, but the patent may not reflect the correct spelling of the inventor's name.
>
> If the petition is granted, if the application is maintained in paper with a file jacket label (i.e., the application is an 08/ or earlier series application), the original declaration must be marked in red ink, in the left margin "See paper No. _ for correction of inventor name" and the application should be sent to the Office of Initial Patent Examination (OIPE) for change of name on the file wrapper and in the PALM database. If the petition is granted in an Image File Wrapper (IFW) application or if the application is an 09/ or later series application, the spelling of the inventor's name should be changed in the Office computer records and a new PALM bib-data sheet should be printed. If the application is assigned, applicant should submit a corrected assignment document along with a cover sheet and the recording fee as set forth in 37 CFR 1.21(h) to the Assignment Division for a change in the assignment record. (Emphasis supplied)

BACKGROUND

A search of the file indicates that:

The instant application was filed, Petitioner indicates, with an incorrect form as to an inventor's name—the name having been typed and signed in that form. (Petitioner states that it was "Alfred K. Yeung," however the original oath/declaration reflects the name was set forth, incorrectly or not, as "Kwok Alfred Yeung."

On 5 June, 2009, Petitioner indicated to the Office that the name of inventor/applicant should be corrected to overcome the incorrect form of the name of one of the inventors.

At that time Petitioner submitted an executed oath/declaration in that form but no updated application data sheet (ADS), the latter of which may not be required but should be included. Moreover, Petitioner did not include with the petition and fee the required declaration by the inventor/applicant, signed in both forms of the inventor/applicant's name—that averred to have been incorrect and that averred to be correct. Further, Petitioner apparently did not duplicate the name as it appeared on the original oath/declaration. The petition was dismissed on 1 July, 2010.

Notably, Petitioner then waited until 29 September, 2010, to re-advance her petition—and in so doing ignored the information provided to her in the 1 July, 2010, decision. Petitioner sought to suggest that the fact that the Office did not require a petition pursuant to 37 C.F.R §1.48 meant that she did not have to comply with the instructions set forth for her in the 1 July, 2010, decision. Petitioner asserted that the inventor did not in fact change his name—rather, that the inventor and Petitioner previously submitted an incorrect name. That indeed may have been the facts—nonetheless, the inventor, through Petitioner, thereafter sought to change the name under which he executed the oath/declaration in the instant application, and Petitioner and the inventor shall comply with the instructions previously set forth for them by the Office consistent with the guidance in the Manual of Patent Examining Procedure.

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

Out of an abundance of caution, Petitioners always are reminded that those registered to practice *and* all others who make representations before the Office must inquire into the underlying facts

of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[1]

CONCLUSION

Accordingly, the petition under 37 C.F.R. §1.182 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

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

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

[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 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

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

VAN PELT, YI & JAMES LLP
10050 N. FOOTHILL BLVD #200
CUPERTINO CA 95014

MAILED

JUN 16 2011

OFFICE OF PETITIONS

In re Application of	:	
Yeung, et al.	:	
Application No. 11/345,621	:	DECISION ON PETITION
Filed: 1 February, 2006	:	
Attorney Docket No. LINKP006	:	

This is a decision on the petition filed on 4 March, 2011, requesting correction of the name of the inventor/applicant, and considered for relief pursuant to 37 C.F.R §1.182.

NOTE:

Petitioner ignored the information provided to her in the prior decisions.

Petitioner is respectfully requested to comply with the Rules of Practice and submit the materials as discussed hereinbelow.

That procedure in the guidance in the Commentary set forth at MPEP§605.04(c) specifically states: "The petition must include an appropriate petition fee and a statement signed by the inventor setting forth both names ***."

It would be beneficial if Petitioner complied with that guidance.

The petition under 37 C.F.R §1.182 is **DISMISSED**.

A request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.182."

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

It is noted that Petitioner did not include with the petition and fee the required declaration by the inventor/applicant, signed in both forms of the inventor/applicant's name—that averred to have been incorrect and that averred to be correct.

The guidance in the Commentary set forth at MPEP§605.04(c) suggests to Petitioner the proper procedure herein:

> **605.04(c)Inventor Changes Name [R-5]**
>
> In cases where an inventor's name has been changed after the application has been filed and the inventor desires to change his or her name on the application, he or she must submit a petition under 37 CFR 1.182. Applicants are also strongly encouraged to submit an application data sheet (37 CFR 1.76) showing the new name. The petition should be directed to the attention of the Office of Petitions. The petition must include an appropriate petition fee and **>a statement< signed by the inventor setting forth both names and the procedure whereby the change of name was effected, or a * copy of the court order.
>
> Since amendments are not permitted after the payment of the issue fee (37 CFR 1.312), a petition under 37 CFR 1.182 to change the name of the inventor cannot be granted if filed after the payment of the issue fee.
>
> If an application data sheet is not submitted, the petition may still be granted, but the patent may not reflect the correct spelling of the inventor's name.
>
> If the petition is granted, if the application is maintained in paper with a file jacket label (i.e., the application is an 08/ or earlier series application), the original declaration must be marked in red ink, in the left margin "See paper No. _ for correction of inventor name" and the application should be sent to the Office of Initial Patent Examination (OIPE) for change of name on the file wrapper and in the PALM database. If the petition is granted in an Image File Wrapper (IFW) application or if the application is an 09/ or later series application, the spelling of the inventor's name should be changed in the Office computer records and a new PALM bib-data sheet should be printed. If the application is assigned, applicant should submit a corrected assignment document along with a cover sheet and the recording fee as set forth in 37 CFR 1.21(h) to the Assignment Division for a change in the assignment record. (Emphasis supplied)

BACKGROUND

A search of the file indicates that:

The instant application was filed, Petitioner indicates, with an incorrect form as to an inventor's name—the name having been typed and signed in that form. (Petitioner states that it was "Alfred K. Yeung," however the original oath/declaration reflects the name was set forth, incorrectly or not, as "Kwok Alfred Yeung."

On 5 June, 2009, Petitioner indicated to the Office that the name of inventor/applicant should be corrected to overcome the incorrect form of the name of one of the inventors.

At that time Petitioner submitted an executed oath/declaration in that form but no updated application data sheet (ADS), the latter of which may not be required but should be included. Moreover, Petitioner did not include with the petition and fee the required declaration by the inventor/applicant, signed in both forms of the inventor/applicant's name—that averred to have been incorrect and that averred to be correct. Further, Petitioner apparently did not duplicate the name as it appeared on the original oath/declaration. The petition was dismissed on 1 July, 2010.

Notably, Petitioner then waited until 29 September, 2010, to re-advance her petition—and in so doing ignored the information provided to her in the 1 July, 2010, decision. Petitioner sought to suggest that the fact that the Office did not require a petition pursuant to 37 C.F.R §1.48 meant that she did not have to comply with the instructions set forth for her in the 1 July, 2010, decision. Petitioner asserted that the inventor did not in fact change his name—rather, that the inventor and Petitioner previously submitted an incorrect name. That indeed may have been the facts—nonetheless, the inventor, through Petitioner, thereafter sought to change the name under which he executed the oath/declaration in the instant application. The petition was dismissed on 1 February 2011, for failure to comply with the guidance in the Commentary in the MPEP.

Petitioner resubmitted the petition on 4 March, 2011—notably the statement of the inventor was signed only in one name and not in both names. Thus, Petitioner again failed to comply with Office practice. If Petitioner wishes to have her petition granted, then Petitioner and the inventor **must** comply with the instructions previously set forth for them by the Office consistent with the guidance in the Manual of Patent Examining Procedure.

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

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

CONCLUSION

Accordingly, the petition under 37 C.F.R. §1.182 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

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

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

[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 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

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

VAN PELT, YI & JAMES LLP
10050 N. FOOTHILL BLVD #200
CUPERTINO CA 95014

MAILED

AUG 05 2011

OFFICE OF PETITIONS

In re Application of :
Yeung, et al. :
Application No. 11/345,621 : DECISION ON PETITION
Filed: 1 February, 2006 :
Attorney Docket No. LINKP006 :

This is a decision on the petition filed on 12 July, 2011, requesting correction of the name of the inventor/applicant, and considered for relief pursuant to 37 C.F.R §1.182.

NOTE:

Petitioner's Applicant has not stated that the error as to his name occurred without deceptive intent.

Nonetheless, in view of the fact that this is the fourth time that the instant petition has been considered by the Office since in slightly more than a year, the Office is construing the statement of Petitioner's Applicant to state that the error as to his name occurred without deceptive intent.

Petitioner is cautioned that—if she has not already done so—**must** now make inquiry (consistent with her duties of candor, disclosure and diligence) to ensure that facts support the construal set forth above.

Should Petitioner's inquiry reveal that the facts do not so support the construal set forth above, Petitioner **must** immediately so Notice the Office.

The petition under 37 C.F.R §1.182 is **GRANTED**.

The guidance in the Commentary set forth at MPEP§605.04(c) suggests to Petitioner the proper procedure herein:

605.04(c)Inventor Changes Name [R-5]

In cases where an inventor's name has been changed after the application has been filed and the inventor desires to change his or her name on the application, he or she must submit a petition under 37 CFR 1.182. Applicants are also strongly encouraged to submit an application data sheet (37 CFR 1.76) showing the new name. The petition should be directed to the attention of the Office of Petitions. The petition must include an appropriate petition fee and **>a statement< signed by the inventor setting forth both names and the procedure whereby the change of name was effected, or a * copy of the court order.

Since amendments are not permitted after the payment of the issue fee (37 CFR 1.312), a petition under 37 CFR 1.182 to change the name of the inventor cannot be granted if filed after the payment of the issue fee.

If an application data sheet is not submitted, the petition may still be granted, but the patent may not reflect the correct spelling of the inventor's name.

If the petition is granted, if the application is maintained in paper with a file jacket label (i.e., the application is an 08/ or earlier series application), the original declaration must be marked in red ink, in the left margin "See paper No. _ for correction of inventor name" and the application should be sent to the Office of Initial Patent Examination (OIPE) for change of name on the file wrapper and in the PALM database. If the petition is granted in an Image File Wrapper (IFW) application or if the application is an 09/ or later series application, the spelling of the inventor's name should be changed in the Office computer records and a new PALM bib-data sheet should be printed. If the application is assigned, applicant should submit a corrected assignment document along with a cover sheet and the recording fee as set forth in 37 CFR 1.21(h) to the Assignment Division for a change in the assignment record. (Emphasis supplied)

BACKGROUND

A search of the file indicates that:

A search of the file indicates that:

The instant application was filed, Petitioner indicates, with an incorrect form as to an inventor's name—the name having been typed and signed in that form. (Petitioner states that it was "Alfred K. Yeung," however the original oath/declaration reflects the name was set forth, incorrectly or not, as "Kwok Alfred Yeung."

On 5 June, 2009, Petitioner indicated to the Office that the name of inventor/applicant should be corrected to overcome the incorrect form of the name of one of the inventors. At that time Petitioner submitted an executed oath/declaration in that form but no updated application data sheet (ADS), the latter of which may not be required but should be included. Moreover, Petitioner did not include with the petition and fee the required declaration by the inventor/applicant, signed in both forms of the inventor/applicant's name—that averred to have been incorrect and that averred to be correct. Further, Petitioner apparently did not duplicate the name as it appeared on the original oath/declaration. The petition was considered upon its receipt into the Office of Petitions and dismissed on 1 July, 2010.

Petitioner then waited until 29 September, 2010, to re-advance her petition—and in so doing ignored the information provided to her in the 1 July, 2010, decision. Petitioner sought to suggest that the fact that the Office did not require a petition pursuant to 37 C.F.R §1.48 meant that she did not have to comply with the instructions set forth for her in the 1 July, 2010, decision. Petitioner asserted that the inventor did not in fact change his name—rather, that the inventor and Petitioner previously submitted an incorrect name. That indeed may have been the facts—nonetheless, the inventor, through Petitioner, thereafter sought to change the name under which he executed the oath/declaration in the instant application. The petition was dismissed on 1 February 2011, for failure to comply with the guidance in the Commentary in the MPEP.

Petitioner resubmitted the petition on 4 March, 2011—notably the statement of the inventor was signed only in one name and not in both names. Thus, Petitioner again failed to comply with Office practice. The petition was dismissed on 16 June, 2011.

Petitioner resubmitted the petition on 12 July, 2011—and this time Petitioner complied with Office requirements. (Petitioner was reminded above (in light of her duties of candor, disclosure and diligence) as to the lack of a statement of no deceptive intent.)

Petitioner appears to have filed a corrected oath/declaration and a corrected ADS.

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

Out of an abundance of caution, Petitioners always are reminded that those registered to practice *and* all others who make representations before the Office must inquire into the underlying facts

of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[1]

CONCLUSION

Accordingly, the petition under 37 C.F.R. §1.182 is **granted**.

The application is released to the Office of Patent Application Processing (OPAP) for processing as necessary to update Office records and mail a corrected filing receipt before being returned to the Technology Center for further processing 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

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

[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 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.
11/345,707	02/02/2006	Jon H. Bechtel	AUTO 200 503	8860

28167 7590 01/10/2011
BRIAN J. REES
GENTEX CORPORATION
600 NORTH CENTENNIAL STREET
ZEELAND, MI 49464

EXAMINER
SAWHNEY, HARGOBIND S

ART UNIT	PAPER NUMBER
2885	

MAIL DATE	DELIVERY MODE
01/10/2011	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Alexandria, VA 22313-1450
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Brian J. Rees
Gentex Corporation
600 North Centennial Street
Zeeland, MI 49464

In re Application of: BECHTEL, Jon Application Serial No.: 11/345,707 Filed: November 7, 2006 For: LIGHT EMITTING OPTICAL SYSTEMS AND ASSEMBLIESAND SYSTEMS INCORPORATING THE SAME	**DECISION GRANTING PETITION** *37 CFR 1.181*

This is a decision is in response to the petition filed May 20, 2010 in the above-identified application. The petition requests for withdrawal of the examiner's objection to the drawings and requirement for new drawings under 37 C.F.R. 1.83 (a).

The petition state that the objections to the drawings and specification with respect to the structural detail which is essential for a proper understanding of the invention should be withdrawn because the drawings and specification are not deficient to illustrate the invention.

Accordingly, the petition is **GRANTED.**

The application will be returned to the examiner to continue the examining process.

Jong-Suk (James) Lee
Supervisory Patent Examiner
Art Unit 2885

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MALDJIAN LAW GROUP LLC
36 BINGHAM AVENUE
RUMSON NJ 07760

MAILED
JUL 20 2011
OFFICE OF PETITIONS

ON PETITION

In re Application of	:	
Patrick FITZGERALD et al.	:	
Application No. 11/345,867	:	
Filed: February 2, 2006	:	
Attorney Docket No. REC001	:	

This is a decision on the petition under 37 CFR 1.59(b), filed June 4, 2011, to expunge information from the above identified application.

The petition is **DISMISSED**.

Petitioner requests that the documents filed January 27, 2011 be expunged because the documents were inadvertently filed. Specifically, the documents filed on January 27, 2011, namely, a Response to Office Action mailed August 27, 2010, were intended to be filed in connection with application number 11/854,387, Attorney Docket Number REC003, and not the present application. Due to a clerical error, the Attorney Docket Number REC003 was inadvertently associated with the serial number of the present application.

As set forth in MPEP 724.05(III):

> 37 CFR 1.59(b) also covers the situation where an unintended heading has been placed on papers so that they are present in an incorrect application file. In such a situation, a petition should request that the papers be expunged rather than transferred to the correct application file. For Image File Wrapper (IFW) processing, see IFW Manual. The grant of such a petition will be governed by the factors enumerated in paragraph II of this section in regard to the unintentional submission of information.

Specifically, as set forth in MPEP 724.05(II):

> A petition to expunge information unintentionally submitted in an application (other than information forming part of the original disclosure) may be filed under 37 CFR 1.59(b), provided that:
>
> (A) the Office can effect such return prior to the issuance of any patent on the application in issue;

(B) it is stated that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted;
(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;
(E) it is established to the satisfaction of the Director that the information to be returned is not material information under 37 CFR 1.56; and
(F) the petition fee as set forth in 37 CFR 1.17(g) is included.

While, it is established that the documents filed January 27, 2011 were inadvertently filed in an incorrect application, and are deemed not to be material information under 37 CFR 1.56, the petitioner has failed to satisfy or establish items (A)-(D) as set forth in MPEP 724.05 (II).

Telephone inquiries concerning this decision should be directed to Andre Boyce at (571) 272-6726, or in his absence, the undersigned at (571) 272-7099.

David A. Bucci
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: Calme 1-48 (JA)-US-NP	Patent Number: 7,668,183
Filing Date (or 371(b) or (f) Date): February 2, 2006	Issue Date: February 23, 2010
First Named Inventor: James A. Calme	
Title: Flexible SIP profile for mixed networks	

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

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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Carmen Patti Law Group, LLC
One N. LaSalle Street
44th Floor
Chicago, IL 60602

Mail Date: 08/19/2010

Applicant	: James A. Calme	: DECISION ON REQUEST FOR
Patent Number	: 7668183	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/345,908	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/02/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **716** 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.
11/345,924	02/02/2006	Richard Bassemir	AUS920050804US1	1411

87354 7590 12/09/2011
IBM Corp. (END/RCR)
c/o Rolnik Law Firm, P.C.
24 N. Main St.
Kingwood, TX 77339

EXAMINER
SMARTH, GERALD A

ART UNIT	PAPER NUMBER
2446	

NOTIFICATION DATE	DELIVERY MODE
12/09/2011	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):

notices@rolnikiplaw.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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IBM Corp. (END/RCR)
c/o Rolnik Law Firm, P.C.
24 N. Main St.
Kingwood TX 77339

MAILED

DEC 09 2011

DIRECTOR OFFICE
TECHNOLOGY CENTER 2400

In re Application of: Bassemir, Richard et al
Appl. No.: 11/345,924
Filed: February 2, 2006
For: METHOD FOR MANAGING DYNAMIC CHAT OBJECTS

DECISION ON PETITION
UNDER 37 CFR § 1.59

This is a decision on the petition filed June 2, 2010, under 37 CFR 1.59(b) to expunge Exhibit A pages 1-8 "Disclosure AUS8-2005-0942," submitted February 5, 2009.

The decision on the petition is **DENIED**.
Petitioner states that "Disclosure AUS8-2005-0942" contains trade secret material, proprietary material and/or material which have not been made public.

According to MPEP 724.03, any trade secret, proprietary, and/or protective order materials submitted in arguments or affidavits under 37 CFR 1.131 or 1.132 will be made of record in the file. The "Disclosure AUS8-2005-0942" was submitted as part of a 37 CFR 1.131 affidavit to obviate the prior art rejection; therefore, the "Disclosure AUS8-2005-0942" must remain in the file record and may not be expunged.
Furthermore, MPEP 724.02 requires the material to clearly be labeled as such and be filed in a sealed, clearly labeled, envelope or container. Each document must be clearly labeled as a "Trade Secret" document, a "Proprietary" document or "Subject to Protective Order" document. The "Disclosure AUS8-2005-0942" was not filed in accordance with MPEP 724.02.

For the above reasons, the petition must be DENIED. The "Disclosure AUS8-2005-0942" will remain in the file record. If the petitioner desires further review of this decision, he should file a Request for Reconsideration within two (2) months of the mailing date of this decision. Otherwise, the petitioner may wish to consider filing a petition to seek a review of TC Director's decision.
Any inquiry concerning this decision should be directed to Chau Nguyen whose telephone number is (571) 272-3126.

John Miller, Acting Director
Technology Center 2400

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Alexandria, VA 22313-1450
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MARSHALL, GERSTEIN & BORUN LLP (NEWELL)
233 SOUTH WACKER DRIVE
6300 WILLIS TOWER
CHICAGO, IL 60606

MAILED
FEB 22 2011
OFFICE OF PETITIONS

In re Application of	:	
Nicholas M. Nanos, et al.	:	
Application No.: 11/346,137	:	ON PETITION
Filed: February 2, 2006	:	
Attorney Docket No.: 29617/SH007A	:	

This is a decision on the petition, filed February 21, 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 **DISMISSED as moot**.

Unfortunately, the petition was not referred to the appropriate official for a decision until February 22, 2011, the date upon which the above-identified application issued as U.S. Patent No. 7,891,897.

Any inconvenience caused petitioner is regretted; however, petitioner's attention is directed to 37 CFR 1.313(d) which states that "A petition under this section [37 CFR 1.313(c)] will not be effective to withdraw the application from issue **unless it is actually received and granted by the appropriate officials before the date of issue**" (emphasis in bold). In this instance, the petition was filed on February 21, 2011, which was a Federal holiday. Consequently, the petition was not received by the appropriate official until February 22, 2011, the date of issuance of U.S. Patent No. 7,891,897. See also MPEP 1308, which states, in pertinent part:

> "**The Office cannot ensure that any petition under 37 CFR 1.313(c)** [filed after payment of the issue fee] **will be acted upon prior to the date of patent grant.** See *Filing of Continuing Applications, Amendments, or Petitions after Payment of Issue Fee*, Notice, 1221 Off. Gaz. Pat. Office 14 (April 6, 1999) . . . **applicants are strongly cautioned to file any desired RCE prior to payment of issue fee.** In addition, **applicants considering filing a RCE after payment of the issue fee are strongly cautioned to call the Office of Petitions to determine whether sufficient time remains**

before the patent issue date to consider (and grant) a petition under 37 CFR 1.313(c) and what steps are needed to ensure that a grantable petition under 37 CFR 1.313(c) is before an appropriate official in the Office of Petitions in sufficient time to grant the petition before the patent is issued" (emphasis in bold).

While petitions to withdraw from issue may be sent electronically, as was done in this case, applicants were cautioned to hand carry or fax petitions to withdraw from issue directly to the Office of Petitions to allow sufficient time to process the petition. *(See Revised Procedures for Papers Requiring Immediate Attention (Hand-Carried and Facsimile Transmissions), 1279 Off. Gaz. Pat. Office 149 (Feb. 24, 2004); Revised Procedures for Papers Requiring Immediate Attention, 1280 Off. Gaz. Pat. Office 917 (March 23, 2004).*

The request for continued examination (RCE) filed concurrently with the petition is improper in view of the issuance of the instant application into a patent on June 1, 2010. The RCE and the information disclosure statement (IDS) will be placed in the file of the above-identified application without further consideration. See 37 CFR 1.97(I). The $810 RCE filing fee paid on February 21, 2011 is being subject to refund.

Any request for refund must include a copy of this decision and be mailed to Mail Stop 16, Director of the U.S. Patent and Trademark Office, P. O. Box 1450, Alexandria, VA 22313-1450 or faxed to the Customer Service Help Desk at (571) 273-6500.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3204.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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SEP 14 2010
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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA VA 22314

In re Patent No. 7,709,526 :
Issue Date: May 4, 2010 :
Application No. 11/346,294 : ON PETITION
Filed: February 3, 2006 :
Attorney Docket No. 285884US0DIV :

This is a decision on the petition filed June 25, 2010, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

Telephone inquiries concerning this decision may be directed to Diane Goodwyn at (571) 272-6735. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

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

Thurman K. Page
Petitions Examiner
Office of Petitions

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 08/27/10

TO SPE OF : ART UNIT 1633

SUBJECT : Request for Certificate of Correction for Appl. No.: 11346490 Patent No.: 7662945

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Lamonte

Newsome

Certificates of Correction Branch
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.

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

Comments: All corrections have been approved. 08-30-2010 ML

/Joseph Woitach/ 1633

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

SPE	Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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

LyondellBasell Industries
Legal IP Department
1221 McKinney Street
One Houston Center
Houston TX 77010

MAILED
NOV 03 2011
OFFICE OF PETITIONS

In re Application of :
Augustine :
Application No. 11/346,500 : ON PETITION
Filed: February 2, 2006 :
Attorney Docket No. 46-1012A :
For: PREPARATION OF PALLADIUM-GOLD CATALYSTS

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

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." Petitioner is advised that this is not a final agency decision.

This application became abandoned for failure to timely reply to the Notice of Allowance and Fee(s) Due, mailed July 12, 2011, which set a three month period for reply. This application became abandoned on October 13, 2011. The filing of the present petition precedes the mailing of a Notice of Abandonment.

A grantable petition pursuant to 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. The Director 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(d).

The instant petition does not satisfy requirement (1) above.

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 U.S.C. 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 continuing application or a request for continued examination 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.

A component of the reply must be the current issue fee and publication fee.

Once the application is allowed again, petitioner may request that the issue fee and publication fee be reapplied.

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

By internet: EFS-Web
www.uspto.gov/ebc/efs_help.html
(for help using EFS-Web call the
Patent Electronic Business Center
at (866) 217-9197)

Telephone inquiries concerning 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
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LyondellBasell Industries
Legal IP Department
1221 McKinney Street
One Houston Center
Houston TX 77010

MAILED
DEC 20 2011
OFFICE OF PETITIONS

In re Application of :
Augustine :
Application No. 11/346,500 : ON PETITION
Filed: February 2, 2006 :
Attorney Docket No. 46-1012A :
For: PREPARATION OF PALLADIUM-GOLD CATALYSTS

This is a decision on the renewed petition under 37 CFR 1.137(b), filed December 2, 2011, to revive the above-identified application.

The petition is **granted**.

This application became abandoned for failure to timely reply to the Notice of Allowance and Fee(s) Due, mailed July 12, 2011, which set a three month period for reply. This application became abandoned on October 13, 2011. The filing of the present petition precedes the mailing of a Notice of Abandonment.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,740.00 and the publication fee of $300.00, A RCE accompanied by the required $930.00 fee and a supplemental information disclosure statement, (2) the petition fee of $1,860.00; and (3) a proper statement of unintentional delay.

If the application is allowed again at some point in the future, applicant may request that the issue and publication fees be reapplied.

After the mailing of this decision the application will be forwarded to Technology Center AU 1732 for consideration of the RCE and IDS filed on October 17, 2011.

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

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Brian K. Reaux
710 Rock Hill Drive
Red Oak TX 75154

MAILED
JUN 29 2011
OFFICE OF PETITIONS

In re Application of :
Brian K. Reaux :
Application No. 11/346,501 : DECISION ON PETITION
Filed: 02/02/2006 :
Title: MEDICAL SHEATH FOR SCALPEL :
HANDLE WITH RETRACTABLE BLADE :
GUARD :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 10, 2011, to revive the above-identified application. This is also a petition under 37 CFR 1.182, filed June 10, 2011, to expedite consideration of the petition under 37 CFR 1.137(b).

This application became abandoned for failure to file a timely and proper reply to the nonfinal Office action mailed November 10, 2010. No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is February 11, 2011. The Office mailed a Notice of Abandonment on June 8, 2011.

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

Accordingly, the petition under 37 CFR 1.137(b) 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.

As to the petition under 37 CFR 1.182 for expedited consideration of the petition under 37 CFR 1.137(b), the current fee for filing such a petition is $400.00. Unfortunately, petitioner paid only $200.00. As petitioner has paid an insufficient amount for the filing of the petition under 37 CFR 1.182, the petition for expedited consideration is **DISMISSED**. The $200.00 fee will be refunded by treasury check in due course.

This application is being referred to Technology Center AU 3731 to await the filing of an appeal brief or for such other appropriate reply as may be submitted to continue prosecution of the application.

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

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11/22/10

TO SPE OF : ART UNIT 1625

SUBJECT : Request for Certificate of Correction for Appl. No.: 11346546 Patent No.: 7709533

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.

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

Comments: _____

/Janet L. Andres/ **1625**
SPE **Art Unit**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110226

DATE : February 26, 2011

TO SPE OF : ART UNIT 1621

SUBJECT : Request for Certificate of Correction on Patent No.: 7855307

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

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

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

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

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

Note your decision on the appropriated box.

☒ **Approved** All changes apply.

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

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

Comments:

/DANIEL M SULLIVAN/
Supervisory Patent Examiner.Art Unit 1621

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MAILED
SEP 22 2011
OFFICE OF PETITIONS

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

In re Patent of Forstall et al.	:	DECISION ON REQUEST
Patent No. 7,954,064	:	FOR RECONSIDERATION OF
Issue Date: May 31, 2011	:	PATENT TERM ADJUSTMENT
Application No. 11/346,603	:	AND NOTICE OF INTENT TO
Filing Date: February 1, 2006	:	ISSUE CERTIFICATE OF
Atty. Docket No. 18962-016001/P3314US3	:	CORRECTION

This is a decision on the petition filed August 1, 2011, which is being treated as a petition under 37 C.F.R. § 1.705(d) requesting the patent term adjustment indicated on the patent be corrected to indicate the term of the patent is extended or adjusted by three hundred nineteen (319) days.

The petition to correct the patent term adjustment indicated on the patent to indicate the term of the patent is extended or adjusted by three hundred nineteen (319) days is **GRANTED to the extent indicated herein**.

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

No portion of this decision should be construed as a waiver of the requirement, set forth in 35 U.S.C. § 154(b)(4), that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. § 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

ISSUE 1

A reply to an Office action was filed March 26, 2009.

An information disclosure statement ("IDS") was filed April 9, 2009.

In candor, Patentees indicate the Office should have entered a 14-day reduction in patent term adjustment for delay under 37 C.F.R. § 1.704(c)(8) as a result of the submission of the IDS.

A review of the record fails to indicate the examiner expressly requested submission of the IDS and the IDS did not include a statement under 37 C.F.R. § 1.704(d). Therefore, the Office agrees entry of a 14-day reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(8) is warranted.

ISSUE 2

Patentees contend the Office miscalculated the period of delay under 37 C.F.R. § 1.702(b) ("B Delay"). Patentees assert the Office improperly subtracted from the period of B Delay time that was not "consumed by continued examination of the application. Patentees argue the issuance of the Notice of Allowance on January 24, 2011, closed examination of the application on that date. Patentees argue no continued examination took place during the 128-day period from January 24, 2011 (the issuance date of the Notice of Allowance) until May 31, 2011 (the date the patent was issued). As such, Patentees maintain the period of B delay should include the 128 days and be increased from 52 days to 180 days.

RELEVANT STATUTE AND REGULATIONS

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

> Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including —
>
> (i) any time consumed by continued examination of the application requested by the applicant under section 132(b);
> (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or
> (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

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

> Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:
>
> (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);
> (2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);

(3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;
(4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or
(5) Any delay in the processing of the application by the Office that was requested by the applicant.

DISCUSSION

Patentees' arguments have been considered, but not found persuasive. The Office calculated the period of B delay pursuant to 35 U.S.C. § 154(b)(1)(B)(i) and 37 C.F.R. § 1.702(b)(1) as 52 days based on the application having been filed under 35 U.S.C. § 111(a) on February 1, 2006, and the patent not having issued as of the day after the three year date, February 2, 2009, and a request for continued examination under 35 U.S.C. § 132(b) having been filed on March 26, 2009. In other words, the 128-day period beginning on the date of mailing of the notice of allowance to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. § 132(b) and was not included in the B delay.

The Office's calculation of B delay is correct. The B delay is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b).[1] So, with respect to calculating the "B delay" where an applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. § 111(a) or the national stage commenced under 35 U.S.C. § 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. § 132(b) was filed and ending on the date the patent was issued.

Further, counting the period of time excluded from the B delay for the filing of a request for continued examination under 35 U.S.C. § 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentees do not dispute that time consumed by continued examination of an application under 35 U.S.C. § 132(b) is

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[1] **Error! Main Document Only.**Pursuant to 35 U.S.C. § 132(b), 37 C.F.R. § 1.114 provides for continued examination of an application, as follows:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:
  (1) Payment of the issue fee, unless a petition under § 1.313 is granted;
  (2) Abandonment of the application; or
  (3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.
(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

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

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

1. 35 U.S.C. § 154(b)(1)(B) states the provisions of the section are "Subject to the limitations of paragraph (2)."

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

2. 35 U.S.C. § 154(b)(1)(B) includes the following language: "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States."

   The language quoted directly above means the condition must first occur that the issuance of an original patent (35 U.S.C. § 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a

patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

3. 35 U.S.C. § 154(b)(1)(B) includes the following language: "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C)."

The language quoted directly above means the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. § 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

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

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii).[2] Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context

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

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.

4. 35 U.S.C. § 154(b)(1)(B) includes the following language: "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued."

The language quoted directly above means the consequence of a failure to issue the patent within the 3-year period is that, after "the end of that 3-year period," an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. § 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. § 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 C.F.R. § 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. *See* 35 U.S.C. § 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. *See* 35 U.S.C. § 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable

rejection, objection, or other requirement, with the reasons therefor. *See* 35 U.S.C. § 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. § 132 it subsequently appears the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. § 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. § 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in *Blacklight Power*, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. § 151. *See BlackLight Power, Inc. v. Rogan*, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. *See In re Drawbaugh*, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 C.F.R. § 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). *See* 37 C.F.R. § 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 C.F.R. §§ 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 C.F.R. § 1.97(d). In addition, 37 C.F.R. § 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[3] permit the filing of a request for continued examination under 37 C.F.R. § 1.114 even after the issuance of a notice of allowance under 35 U.S.C. § 151. *See* 37 C.F.R. § 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the

[3] **Error! Main Document Only.**Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

> applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 C.F.R. § 1.53(b).
>
> All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. § 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. § 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 C.F.R. § 1.53(b).

In this case, a request for continued examination was filed March 26, 2009, and the patent issued by virtue of that request on May 31, 2011. Pursuant to 35 U.S.C. § 154(b)(1)(B)(i), the period beginning March 26, 2009, and ending May 31, 2011, is not included in calculating Office delay and the period of B Delay will not be increased by the requested 128 days.

ISSUE 3

A review of the record indicates the Office improperly entered a 1-day reduction in patent term adjustment under 37 C.F.R. § 1.704(b). The Office issue the Notice of Allowance on January 24, 2011. The date three months from the issue date of the Notice of Allowance was April 24, 2011, which was a Sunday. The issue fee was paid on Monday, April 25, 2011. As a result of 35 U.S.C. § 21(b), when the three-month deadline to reply to an Office action falls on a weekend or holiday, and a response is filed on the next business day, a reduction in patent term adjustment under 37 C.F.R. § 1.704(b) is inappropriate. Therefore, the entry of the one-day reduction was improper.

CONCLUSION

As previously discussed, the Office should have entered a 14-day reduction in patent term adjustment as a result of the IDS filed April 9, 2009, and should not have entered a 1-day reduction in patent term adjustment as a result of the submission of the issue fee on April 25, 2011. Therefore, the proper period of delay under 37 C.F.R. § 1.704 is 232 days, not 219 days as previously calculated by the Office.

The correct patent term adjustment is 192 days, which is the sum of 372 days of delay under 37 C.F.R. § 1.702(a) and 52 days of B Delay reduced by 232 days of delay under 37 C.F.R. § 1.704.

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

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the patent is extended or adjusted by **one hundred nine-two (192)** days.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO.	:	7,954,064 B2
APPLICATION NO.	:	11/346,603
DATED	:	May 31, 2011
INVENTOR(S)	:	Scott Forstall et al.

DRAFT

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

On the Title page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 205 days.

Delete the phrase "by 205 days" and insert -- by 192 days--

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K&L GATES LLP
1900 MAIN STREET, SUITE 600
IRVINE CA 92614-7319

MAILED

DEC 08 2010

OFFICE OF PETITIONS

In re Application of	:	
Sayre et al.	:	
Application No. 11/346,919	:	DECISION ON PETITION
Filed: February 2, 2006	:	
Attorney Docket No. 51314-00013	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 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, April 15, 2008, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were timely obtained. Accordingly, the application became abandoned on July 16, 2008. A Notice of Abandonment was mailed October 28, 2008.

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

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.

Additionally, 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 $555.00, three- month extension of time fee submitted with the petition on October 28, 2010 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be refunded to petitioner's deposit account in due course.

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

This application is being referred to Technology Center AU 1632 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
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/346,948	02/03/2006	Shih-Ken Chen	GP-307530-RD-KAM	3041

65798 7590 12/22/2011
MILLER IP GROUP, PLC
GENERAL MOTORS CORPORATION
42690 WOODWARD AVENUE
SUITE 200
BLOOMFIELD HILLS, MI 48304

EXAMINER
CHEN, SHELLEY

ART UNIT	PAPER NUMBER
3661	

MAIL DATE	DELIVERY MODE
12/22/2011	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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DEC 2 2 2011

MILLER IP GROUP, PLC
GENERAL MOTORS CORPORATION
42690 WOODWARD AVENUE
SUITE 200
BLOOMFIELD HILLS MI 48304

In re Application of	:
Shih-Ken CHEN et al.	: DECISION ON PETITION
Application No. 11/346,948	: TO REVIEW RESTRICTION
Filed: February 03, 2006	: REQUIREMENT
For: VEHICLE WHEEL LIFT DETECTION	: UNDER 37 CFR 1.144

This is in response to the petition filed on February 28, 2011, under 37 CFR § 1.144, requesting supervisory review of the third requirement for restriction made in the final Office action dated February 15, 2011.

The petition is **GRANTED**.

In response to the decision rendered on July 23, 2010 to withdraw the restriction requirement made on an October 28, 2009 Office action, the examiner issued a non-final Office action on October 13, 2010 rejecting all pending claims 1-20. Applicants filed an amendment on December 23, 2010 amending claims 1, 10, 11, 13 and 15, and cancelling claims 7 and 17. In a final Office action dated February 15, 2011 the examiner set forth a restriction requirement between species A encompassing claims 1-6, 8-9, 15-16 and 18-20 and species B encompassing claims 10-14. The examiner withdrew claims 10-14 from consideration based on constructive election by original presentation. Elected claims 1-6, 8-9, 15-16 and 18-20 were rejected on prior art. Subsequently applicant filed the petition on February 28, 2011 to withdraw the restriction requirement.

Applicants argued that since the original restriction requirement was withdrawn in the decision dated July 23, 2010 it is improper for the examiner to make the same restriction again. Applicants asserted that claims 10-14 are original claims that were merely amended in response to the non-final Office action of October 13, 2010 by including language that further defines the invention that was already claimed. Applicants further argued that the restriction requirement is improper because 1) the examiner did not give applicants an opportunity to elect or to request reconsideration; 2) the cited rationales for restriction as a "related effect" between the species are erroneous; and 3) the examiner failed to show the species are independent or distinct from each other and to establish serious burden if restriction is not required.

A review of the amendment filed on October 13, 2010 shows that claims 1-6, 8-9, 15-16 and 18-20 in species A reveals that independent claim 1 recites a system for detecting a wheel lift having a wheel speed sensor in each wheel to provide wheel speed signal, suspension sensors to provide suspension signals, and a controller determines a wheel lift using the wheel speed signals or the suspension signals. Claim 4, which depends on claim 1, recites a lateral acceleration sensor. Claim 5, which depends on claim 1, recites a yaw rate sensor and the track distance between opposing wheels of the vehicle. Claim 6, which depends on claim 1, sets forth the condition for wheel lift based on the suspension displacement of the suspension sensor and the predetermined threshold. Claim 8 depends on claim 1 and set forth a counter to indicate whether the controller detects a wheel lift or not. Independent claim 15 recites a method for detecting a wheel lift using a kinematic relationship based on the speed of each wheel and the position of the suspension at each wheel. Claim 16, which depends on claim 15, recites the feature of lateral acceleration of the vehicle. Claim 18, which depends on claim 15, further recites the yaw rate signal, and the track distance between the opposing wheels of the vehicle. Claim 19 depends on claim 15 and sets forth the condition for wheel lift based on the suspension displacement of the suspension sensor and the predetermined threshold and the position of the suspension at each wheel. Claim 20 depends on claim 1 and sets forth a counter to indicate whether the controller detects a wheel lift or not. A search for species A would include searching for wheel speed signals/sensors, suspension sensors/signals to determine the position of the suspension at each wheel and a predetermined threshold, a lateral acceleration sensor, yaw rate sensor/signal, a track distance between opposing wheels, and a counter.

A review of species B shows that independent claim 10, as amended, recites a system for detecting a wheel lift having a lateral acceleration sensor to provide a lateral acceleration signal, a yaw rate sensor to provide a yaw rate signal, a wheel speed sensor in each wheel to provide wheel speed signals, and a controller using the yaw rate signal, wheel speed signals, and a track distance between opposing right and left wheels to determine wheel lift. Claim 11, as amended, recites suspension sensors to provide suspension signals, and the controller determines a wheel lift using suspension displacement signal of the suspension sensor against the predetermined threshold. Claim 12 recites detection of wheel lift using a kinematic relationship based on the speed of each wheel, the yaw rate signal, and the track distance between the opposing wheels of the vehicle. Claim 13, which depends on claim 11, further sets forth the condition for wheel lift based on the suspension displacement of the suspension sensor and the predetermined threshold and the position of the suspension at each wheel. Claim 14 further recites a counter to indicate whether the controller detect a wheel lift or not. A search for species B would include searching for a lateral acceleration sensor, wheel speed sensors/signals, suspension sensors/signals, yaw rate signal, a track distance between opposing right and left wheels, and a counter.

MPEP § 806 states that "Where inventions are related as disclosed but are not distinct as claimed, restriction is never proper."

MPEP § 806.03 states that "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."

The claims of the instant application define the same essential characteristics of a single disclosed embodiment of an invention for detecting wheel lift: first by using a kinematic relationship between the wheel speed signals of each wheel, yaw rate signal, track distance between opposing wheels; then independently measure suspension displacement using suspension sensor in each wheel. It is clear that the claimed subject matter of species A in claims 1-6, 8-9, 15-16 and 18-20 is not distinct from the claimed subject matter of species B in claims 10-14. Both species A and species B can provide for detection of wheel lift at a specific/individual wheel by measuring the suspension position of a wheel using the equation $abs(\delta - \delta cr) < \Delta\delta threshold$ as recited in claims 1, 6, 15 and 19 of species A and claims 11 and 13 in species B. There is no examination burden for searching these species since the search would be the same for both species. Claims 1, 10 and 15 are not directed to distinct inventions; they define the same invention for detecting wheel lift but varying in scope. All of the claims are directed to a system or method of detecting a vehicle wheel lift, and recite various features of the system and method in different combinations and with varying specificity. Applicants' argument that the cited rationales for restriction as a "related effect" between the species are erroneous is persuasive. Since all of the pending claims are drawn to a single disclosed embodiment of the invention, the requirement for election of species set forth in the final Office action dated February 15, 2011 was improper as per MPEP§§ 806 and 806.03 cited above.

MPEP § 811 references 37 CFR 1.142(a) which indicates that a restriction *requirement "will normally be made before any action upon the merits; however, it may be made at any time before final action."* This means the examiner should make a proper requirement as early as possible in the prosecution, in the first action if possible, otherwise, as soon as the need for a proper requirement develops. Before making a restriction requirement after the first action on the merits, the examiner will consider whether there will be a serious burden if restriction is not required.

MPEP § 811.03 states that "Where a requirement to restrict is made and thereafter withdrawn as improper, if restriction becomes proper at a later stage in the prosecution, restriction may again be required."

As indicated in MPEP §§ 811 and 811.03, an examiner is permitted to make a restriction requirement after the first action on the merits, and after an earlier restriction requirement was withdrawn as improper provided that the claims have been amended such that the scope of the claims is changed to a new invention that is independent/distinct from the original claimed invention, which raises a serious burden if restriction is not required. However, restriction requirement is not proper for the present application because all of the amended claims are drawn to a single disclosed embodiment of the invention and there is no serious burden for examination of all pending claims.

In response to applicants' argument that the restriction requirement is improper in that the examiner did not give applicants an opportunity to elect or to request reconsideration, it is noted that failure to provide applicants an opportunity to make an election would not necessarily make the restriction requirement improper. Applicants are directed to the procedure set forth in MPEP § 821.03 and 37 CFR § 1.145 applicable to a situation where the claims were amended to another

invention that is independent/distinct invention from the originally filed invention after applicant has received an Office action on originally filed claims. In this scenario, a restriction would be proper since the claims were amended to another invention other than previously claimed, then applicants would not be given any opportunity to elect because the examiner is permitted to withdraw the claims, through constructive election by original presentation, that are directed to a new invention after applicants have received an action on the merits for the originally presented invention as specified in MPEP § 821.03 and 37 CFR § 1.145. For the present application, the restriction requirement is not proper because all of the amended claims are drawn to a single disclosed embodiment of the invention and there is no serious burden for examination of all pending claims.

For all the reasons stated above, the restriction requirement is improper and hereby withdrawn. The finality of the Office action dated February 15, 2011 is withdrawn. The application will be forwarded to the examiner for a prompt action on the merits of all pending claims.

Telephone inquiries should be directed to Quality Assurance Specialist Lanna Mai at (571) 272-6867.

Katherine Matecki

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

kt/lm:12/15/11

LM

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Gregory W. Osterloth
Holland & Hart, LLP
P.O. Box 8749
Denver CO 80201

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SEP 27 2010

OFFICE OF PETITIONS

In re Patent No. 7,180,316	:	
Issue Date: February 20, 2007	:	
Application No. 11/346,954	:	NOTICE
Filed: February 3, 2006	:	
Attorney Docket No. **42543-324765**	:	

This is a notice regarding your request filed August 18, 2010, for acceptance of a fee deficiency submission under 37 CFR 1.28.

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

Your fee deficiency submission under 37 CFR 1.28 is hereby **NOT ACCEPTED**.

It appears that the petition was not properly signed by a person having authority to prosecute in the above-identified patent. Therefore, the request can not be accepted at this time.

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

> (b) Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:
>
> (1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
> (2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;
> (3) An assignee as provided for under §3.71(b) of this chapter; or
> (4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

Accordingly, the request cannot be accepted until it is signed by all inventors, an attorney /agent who is registered to practice before the U.S. Patent and Trademark Office, or the assignee of the entire interest. If the request is signed by an assignee, the assignee the assignee must comply with the requirements of 37 CFR 3.73(b).

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

JoAnne Burke
Petitions Examiner
Office of Petitions

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Paper No.

K&L Gates LLP
3580 Carmel Mountain Road
Suite 200
San Diego CA 92130

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MAR 14 2011

OFFICE OF PETITIONS

In re Application of	:	
Li et al.	:	
Application No. 11/347,001	:	
Patent No.: 7,883,688	:	DECISION ON PETITION
Filed: February 3, 2006	:	PURSUANT TO
Issued: February 8, 2011	:	37 C.F.R. § 1.28(c)
Attorney Docket No.:	:	
3800021.00006 / 2513	:	
Title: POLYCATIONIC	:	
POLYROTAXANES CAPABLE OF	:	
FORMING COMPLEXES WITH NUCLEIC	:	
ACIDS	:	

This is a notice regarding your request for acceptance of a fee deficiency submission pursuant to 37 C.F.R. § 1.28, received on December 29, 2010. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 C.F.R. § 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

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

Petitioner has identified the particular type of fee that was erroneously paid as a small entity, when the small entity fee was actually paid, the small entity fee that was actually paid, the deficiency owed amount, and the total deficiency payment owed.

The deficiency payment in the amount of $585 has been received.

Your fee deficiency submission pursuant to 37 C.F.R. § 1.28(c) is hereby accepted. The petition is **GRANTED** accordingly.

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

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[1]

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

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

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AUG 02 2010
OFFICE OF PETITIONS

LARSON NEWMAN & ABEL, LLP
5914 WEST COURTYARD DRIVE, SUITE 200
AUSTIN, TX 78730

In re Application of	:	
Brett W. MURDOCK, et *al.*	:	
Application No. 11/347,103	:	DECISION GRANTING PETITION
Filed: February 3, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **SC14487TH**	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed July 30, 2010, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on July 13, 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 2195 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed amendment and information disclosure statement.

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

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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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SCHWEGMAN, LUNCBERG & WOESSNER, P.A.
P.O. BOX 2938
MINNEAPOLIS, MN 55402

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NOV 17 2011
OFFICE OF PETITIONS

In re Application of :
Zoltan NOCHTA :
Application No. 11/347,112 :
Filed: February 2, 2006 :
Attorney Docket No. 2058.034US1 :

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed November 2, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed March 16, 2011, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on June 17, 2011.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment; (2) the petition fee of $1860; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the non-final Office action of March 16, 2011 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Joanne Hama at (571) 272-2911 or in her absence, the undersigned at (571) 272-7099

The application file is being referred to Technology Center AU 2876 for appropriate action on the concurrently filed amendment.

David Bucci
Petitions Examiner
Office of Petitions

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

MAILED

AUG 16 2010

OFFICE OF PETITIONS

In re Application of	:	ON REQUEST FOR
Shailubhai et al.	:	RECONSIDERATION OF
Application No. 11/347115	:	PATENT TERM ADJUSTMENT
Filing or 371(c) Date: 02/02/2006	:	
Attorney Docket Number:	:	
40737-501C01US	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed March 15, 2010. Applicants petition for reconsideration of the patent term adjustment calculation to 184 days, not forty-one (41) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction based upon (1) an assertion that the Office erred in failing to calculate a delay of 12 days, and (2) on the basis that the Office will take in excess of three years to issue this patent.

The Application for Patent Term Adjustment Including Request for Reconsideration of Patent Term Adjustment ("PTA") under 37 CFR 1.705(b), as it relates to the assertion that the Office erred in failing to calculate a delays of 12 days is **GRANTED to the EXTENT INDICATED**.

The Application for Patent Term Adjustment Including Request for Reconsideration of Patent Term Adjustment ("PTA") under 37 CFR 1.705(b), as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Applicants provide that on December 15, 2009, Applicants received a Notice of Allowance and Issue Fee Due, which included a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is forty-one (41) days.

On March 15, 2010, Applicants timely submitted the instant application for patent term adjustment[1]. Applicants request that the Determination of Patent Term Adjustment be corrected from zero (0) days, as indicated on the Determination of PTA mailed December 15, 2009, to an adjustment of 184 days. Applicants believe that an additional 12 days of Applicant delay should be applied pursuant to 37 CFR 1.704(c)(8), in connection with the filing of a Supplemental

[1] PALM records show that the Issue Fee payment was received in the Office on March 15, 2010.

Information Disclosure Statement ("IDS") on July 20, 2009, after filing a Request for Continued Examination ("RCE") on July 8, 2009.

Office records reveal that Applicants filed the response to the final Office action on July 8, 2009, 2009. Thereafter, Applicants filed an IDS on July 20, 2009. The reduction commenced July 9, 2009, the day after the date that the response to the final Office action was filed, and ending on the date the IDS was filed, July 20, 2009. As such, pursuant to 37 CFR 1.704(c)(8), the application is assessed a reduction of 12 days.

Office records further reveal that Applicants filed a Supplemental IDS on September 17, 2009. A review of the Supplemental IDS reveals that the statement that accompanied the IDS stated that "[e]ach item of information contained in the this Supplemental Information Disclosure Statement was first cited in the Search Report dated August 25, 2009 for the counterpart European application, which was mailed to Applicants' U.S. attorneys on September 8, 2009. This communication was not received by any individual designated in 1.56(c) more than thirty days prior to the filing of this Supplemental Information Disclosure Statement. Supplemental Information Disclosure Statement at p.1. Applicants failed to include a statement that complies with 37 CFR 1.704(d)[2]. The reduction commenced July 21, 2009, the day after the date that the IDS was filed, and ending on the date the Supplemental IDS was filed, September 17, 2009. As such, pursuant to 37 CFR 1.704(c)(8), the application is assessed a reduction of 59 days.

In view thereof, as of the time of allowance, the application is entitled to an overall patent term adjustment of zero days (adjustments totaling 226 days less reductions totaling 256 days (94 days + 91 days + 12 days + 59 days).

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

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.

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[2] 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. 37 CFR 1.704(d) (Emphasis supplied).

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[3].

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

Any request for reconsideration of the patent term adjustment indicated on the patent, including any request as it relates to the Office's failure to issue the patent within 3 years of the filing date, must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and **must** include payment of the required fee under 37 CFR 1.18(e).

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

Telephone inquiries specific to this matter should be directed to Attorney Derek Woods at (571) 272-3232.

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of Adjustment PAIR Calculations

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

Day : Saturday
Date: 8/14/2010

PALM INTRANET

Time: 13:05:15

PTA Calculations for Application: 11/347115			
Application Filing Date:	02/02/2006	PTO Delay (PTO):	226
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	185
Post-Issue Petitions:	0	Total PTA (days):	0
PTO Delay Adjustment:	-71		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
82	08/14/2010	ADJUSTMENT OF PTA CALCULATION BY PTO		71	
70	12/15/2009	MAIL NOTICE OF ALLOWANCE			
69	12/10/2009	ISSUE REVISION COMPLETED			
68	12/09/2009	ALLOWED CASE RETURNED TO THE EXAMINER FOR CLERICAL PROCESSING			
67	12/09/2009	DOCUMENT VERIFICATION			
66	12/09/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
65	12/09/2009	CASE DOCKETED TO EXAMINER IN GAU			
64	12/07/2009	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
63	12/09/2009	EXAMINER'S AMENDMENT COMMUNICATION			
62	12/09/2009	NOTICE OF ALLOWABILITY			
61	12/07/2009	PARALEGAL TD ACCEPTED			
60	11/24/2009	TERMINAL DISCLAIMER FILED		0	58
59	12/02/2009	DATE FORWARDED TO EXAMINER			
58	11/24/2009	AMENDMENT AFTER FINAL REJECTION			
57	11/30/2009	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
56	09/30/2009	MAIL FINAL REJECTION (PTOL - 326)			
55	09/28/2009	FINAL REJECTION			
54	09/17/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
53	09/17/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
52	09/17/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
		INFORMATION DISCLOSURE STATEMENT (IDS)			

51	09/17/2009	FILED			
50	07/20/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
49	07/20/2009	REFERENCE CAPTURE ON IDS			
48	07/20/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
46	07/20/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
44	07/13/2009	DATE FORWARDED TO EXAMINER			
43	07/08/2009	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
42	07/13/2009	DATE FORWARDED TO EXAMINER			
41	07/08/2009	REQUEST FOR CONTINUED EXAMINATION (RCE)		91	37
40	07/13/2009	DISPOSAL FOR A RCE / CPA / R129			
39	07/08/2009	REQUEST FOR EXTENSION OF TIME - GRANTED			
38	07/08/2009	WORKFLOW - REQUEST FOR RCE - BEGIN			
37	01/08/2009	MAIL FINAL REJECTION (PTOL - 326)			
36	01/05/2009	FINAL REJECTION			
35	12/29/2008	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
34	12/18/2008	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
32	10/30/2008	DATE FORWARDED TO EXAMINER			
31	10/06/2008	RESPONSE AFTER NON-FINAL ACTION		94	29
30	10/06/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
29	04/04/2008	MAIL NON-FINAL REJECTION			
28	03/31/2008	NON-FINAL REJECTION			
24	06/12/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
23	02/12/2008	DATE FORWARDED TO EXAMINER			
22	01/11/2008	RESPONSE TO ELECTION / RESTRICTION FILED			
21	01/11/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
20	11/14/2007	MAIL RESTRICTION REQUIREMENT	226		-1
19	11/13/2007	REQUIREMENT FOR RESTRICTION / ELECTION			
17	06/12/2006	REFERENCE CAPTURE ON IDS			
16.7	06/12/2006	INFORMATION DISCLOSURE STATEMENT (IDS)			

		FILED			
16	06/12/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15	06/08/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
14	05/12/2006	CASE DOCKETED TO EXAMINER IN GAU			
13	04/06/2006	APPLICATION DISPATCHED FROM OIPE			
12	04/06/2006	APPLICATION IS NOW COMPLETE			
11	03/21/2006	ADDITIONAL APPLICATION FILING FEES			
10	03/21/2006	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
9	03/07/2006	CLEARED BY L&R (LARS)			
8	03/03/2006	REFERRED TO LEVEL 2 (LARS) BY OIPE CSR			
7	03/03/2006	CASE CLASSIFIED BY OIPE			
6	02/21/2006	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
4	02/15/2006	IFW SCAN & PACR AUTO SECURITY REVIEW			
3	02/14/2006	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
2	02/02/2006	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
1	02/02/2006	INITIAL EXAM TEAM NN			

Search Another: Application# [ ] Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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DORSEY & WHITNEY LLP - MINNEAPOLIS
ATTENTION: PATENT PROSECUTION DOCKETING DEPARTMENT
INTELLECTUAL PROPERTY PRACTICE GROUP - PT/23RD FL
50 SOUTH SIXTH STREET, SUITE 1500
MINNEAPOLIS MN 55402-1498

MAILED
DEC 20 2011
OFFICE OF PETITIONS

In re Application of	:	
Laurence Hamid, et al.	:	
Application No. 11/347,259	:	NOTICE
Filed: February 6, 2006	:	
Attorney Docket No. 223-08 US	:	

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

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

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

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

Inquiries related to this communication should be directed to the undersigned at (571) 272-2991.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

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Decision Date : May 12,2011

In re Application of :

Sachin Deshpande

Application No : 11347339

Filed : 03-Feb-2006

Attorney Docket No : SLA1787

DECISION ON PETITION

UNDER CFR 1.137(b)

This is an electronic decision on the petition under 37 CFR 1.137(b), filed May 12,2011 , 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 Patent Publication.

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	11347339
Filing Date	03-Feb-2006
First Named Inventor	Sachin Deshpande
Art Unit	2463
Examiner Name	OMAR GHOWRWAL
Attorney Docket Number	SLA1787
Title	DYNAMIC ADAPTATION OF MAC-LAYER RETRANSMISSION VALUE

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:
(1) Petition fee;
(2) Reply and/or issue fee;
(3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995; and for all design applications;
(4) Statement that the entire delay was unintentional.

Petition fee
The petition fee under 37CFR 1.17(m) is attached.

☐ Applicant claims SMALL ENTITY status. See 37 CFR 1.27.

☐ Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

☐ Applicant(s) status remains as SMALL ENTITY.

☒ Applicant(s) status remains as other than SMALL ENTITY.

Issue Fee and Publication Fee :

Issue Fee and Publication Fee must accompany ePetition.

☒ Issue Fee Transmittal is attached

Drawing corrections and/ or other deficiencies.

- (●) Drawing corrections and/ or other deficiencies are not required
- ( ) I certify, in accordance with 37 CFR 1.4.(D)(4), that drawing corrections and/ or other deficiencies have previously been filed on
- ( ) Drawing corrections and/ or other deficiencies are attached.
- [x] STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

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

- (●) An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application.
- ( ) An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity.
- ( ) A sole inventor
- ( ) A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors.
- ( ) A joint inventor; all of whom are signing this e-petition.
- ( ) The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71.

Signature	/michael blaine brooks/
Name	Michael B. Brooks
Registration Number	39921

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FLIESLER MEYER LLP
650 CALIFORNIA STREET
14TH FLOOR
SAN FRANCISCO CA 94108

MAILED
FEB 24 2012
OFFICE OF PETITIONS

In re Application of	:	
Cheryl Solis	:	
Application No. 11/347,393	:	DECISION ON PETITION
Filed: February 3, 2006	:	
Attorney Docket No. ORACL-02015US0	:	

This is a decision on the petition under 37 CFR 1.59(b), filed December 28, 2011, to expunge information from the above identified application.

The petition is **dismissed**.

Petitioner requests that the preliminary amendment, filed June 4, 2008, 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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MAR 20 2012
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FLIESLER MEYER LLP
650 CALIFORNIA STREET
14TH FLOOR
SAN FRANCISCO CA 94108

In re Application of	:	
Cheryl Solis	:	
Application No. 11/347,393	:	DECISION ON PETITION
Filed: February 3, 2006	:	
Attorney Docket No. ORACL-02015US0	:	

This is a decision on the renewed petition under 37 CFR 1.59(b), filed March 8, 2012, to expunge information from the above identified application.

The petition is **granted**.

Petitioner requests that a preliminary amendment filed June 4, 2008, be expunged from the record. Petitioner states that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted. The information has not otherwise been made public.

Applicant is required to retain the expunged material(s) for the life of any patent which issues on the above-identified application.

The petition fee submitted with this renewed petition is not required as the petition fee submitted with the first petition is all that is required. The second fee is refunded to petitioner's deposit account.

The expunged material has been removed from the official file.

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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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/347,438	02/03/2006	Arun Kumar	USF.206XC1	8529

7590 12/22/2010
SALIWANCHIK LLOYD & SALIWANCHIK
A PROFESSIONAL ASSOCIATION
PO Box 142950
GAINESVILLE, FL 32614

EXAMINER
FORMAN, BETTY J

ART UNIT	PAPER NUMBER
1634	

NOTIFICATION DATE	DELIVERY MODE
12/22/2010	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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December 20, 2010

SALIWANCHIK LLOYD & SALIWANCHIK
A PROFESSIONAL ASSOCIATION
PO Box 142950
GAINESVILLE FL 32614

In re Application of	:	
Kumar, Arun, et al	:	**DECISION ON PETITION**
Application No. 11/347,438	:	
Filed: 02/03/2006	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. USF.206XC1	:	***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) February 3, 2006.

The petition is **GRANTED**.

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

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

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

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

/Diane Terry/
Quality Control Specialist
Office of Data Management
Publications Branch

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BIOTECHNOLOGY LAW GROUIP
12707 HIGH BLUFF DRIVE
SUITE 200
SAN DIEGO CA 92130-2037

MAILED

MAR 11 2011

OFFICE OF PETITIONS

In re Application of :
John C. Clemons :
Application No. 11/347,475 : DECISION ON PETITION
Filed: February 3, 2006 :
Attorney Docket No. SWT-1001-UT :

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 petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an RCE and an amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final Office action mailed June 9, 2010, is accepted as having been unintentionally delayed.

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

This application is being referred to Technology Center AU 1781 for appropriate action by the Examiner in the normal course of business.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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MILES & STOCKBRIDGE PC
1751 PINNACLE DRIVE
SUITE 500
MCLEAN VA 22102-3833

MAILED

OCT 03 2011

OFFICE OF PETITIONS

In re Application of
Niteen A. Vaidya.
Application No. 11/347,532
Filed: February 3, 2006
Attorney Docket No. **C05460-15282US01**

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the renewed Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed September 21, 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 to 37 CFR 10.40.

The request was signed by David R. Schaffer on behalf of all attorneys of record who are associated with Customer Number 00181.

All attorneys/agents associated with Customer Number 00181 have been withdrawn.

Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the first named inventor Niteen A. Vaidya at the address list listed in the request.

There is an outstanding Office action mailed April 22, 2011, that requires a reply from the applicant.

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

JoAnne Burke
Petitions Examiner
Office of Petitions

cc: NITEEN A. VAIDYA
Chirosolve, Inc.,
2065 Martin Ave.
Suite 107
Santa Clara CA 95050

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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/347,532	02/03/2006	Niteen A. Vaidya	C05460-15282US01

CONFIRMATION NO. 4306

POWER OF ATTORNEY NOTICE

181
MILES & STOCKBRIDGE PC
1751 PINNACLE DRIVE
SUITE 500
MCLEAN, VA 22102-3833

OC000000050156245

Date Mailed: 10/03/2011

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/21/2011.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/jlburke/

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

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/347,562	02/03/2006	Catherine M. Rohloff	ALE 061.10	3485

74866 7590 05/17/2011
Intarcia Therapeutics, Inc.
ATTN: Barbara G. McClung
24650 Industrial Blvd
Hayward, CA 94545

EXAMINER
FUBARA, BLESSING M

ART UNIT	PAPER NUMBER
1613	

MAIL DATE	DELIVERY MODE
05/17/2011	PAPER

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

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

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MAY 1 7 2011

Intarcia Therapeutics, Inc.
ATTN: Barbara G. McClung
24650 Industrial Blvd
Hayward CA 94545

In re Application of:
Rolhoff et al.
Serial No.: 11/347,562
Filed: February 3, 2006
Attorney Docket No.: **ALE 061.10**

PETITION DECISION

This is in response to the petition under 37 CFR § 1.181, filed March 31, 2011, requesting that the amendment after final of March 7, 2011 be entered.

BACKGROUND

On February 4, 2010, the examiner mailed a non-final Office action setting a three month statutory limit for reply. At the time of this Office action, claims 8 and 26-44 were pending and claims 36 and 44 were withdrawn from consideration. Claims 8, 26-35 and 37-43 were rejected. Claims 8, 26-35 and 37-43 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 4, 5, 6-9, 13-16, 17, 18 and 24-28; 1-9; 1, 6, 8, 9-15; 1-16, 21, 24 and 25; 1, 3-6, 8-12, 14, 15, 19-24; 1-4, 7, 10, 14, 16.17-20, 27-31; 1-20 of copending Application Nos. 12/315,194; 12/020,372; 12/148,896; 12/008,553; 11/347,109; 11/347,601; 11/305,938. Claims 8, 26, 31, 32, 33, 35, 37-39, 41 and 43 were rejected under 35 U.S.C. 103 (a) as being unpatentable over Berry et al. (US 2003/0108609) in view of Ahlem et al. (US 2003/0060425). Claims 8, 34, 37 and 47 were rejected under 35 U.S.C. 103(a) as being unpatentable over Berry et al. (US 2003/0108609) in view of Ahlem et al. (US 2003/0060425) and further in view of Yoshi et al. (US 2002/0136848). Claims 8 and 27-30 were rejected under 35 U.S.C. 103(a) as being unpatentable over Berry et al. (US 2003/0108609) in view of Ahlem et al. (US 2003/0060425) and further in view of Eliaz et al (US2005/0112188).

On June 10, 2010, applicants filed amendments to the claims and arguments traversing the examiner's rejections instituted in the non-final Office action of February 4, 2010.

On September 7, 2010, the examiner mailed a final Office action setting a three month statutory limit for reply. At the time of this Office action, claims 8 and 26-44 were pending and claims 36

and 44 were withdrawn from consideration. Claims 8, 26-35 and 37-43 were rejected. Claims 8, 26-35 and 37-43 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application Nos. 11/305,938. Claims 8, 26, 31, 32, 33, 35, 37-39, 41 and 43 remained rejected under 35 U.S.C. 103 (a) as being unpatentable over Berry et al. (US 2003/0108609) in view of Ahlem et al. (US 2003/0060425). Claims 8, 34, 37 and 47 were rejected under 35 U.S.C. 103(a) as being unpatentable over Berry et al. (US 2003/0108609) in view of Ahlem et al. (US 2003/0060425) and further in view of Yoshi et al. (US 2002/0136848). Claims 8 and 27-30 were rejected under 35 U.S.C. 103(a) as being unpatentable over Berry et al. (US 2003/0108609) in view of Ahlem et al. (US 2003/0060425) and further in view of Eliaz et al (US2005/0112188). On February 2, 2011, applicants submitted an after final amendment including claim amendments.

On March 7, 2011, applicants submitted a Notice of Appeal.

On March 7, 2011, applicants also submitted an amendment after final including claim amendments from the claims.

On March 18, 2011, the examiner mailed to applicants an advisory action indicating that the after final amendment would not be entered for purposes of appeal.

On March 31, 2011, applicants submitted the petition under consideration herein.

DISCUSSION

The petition and the file history have been carefully considered.

In the petition, applicants "request entry of the Amendment after final because (A) each of the amendments to independent claims 8 and 37 only incorporates a limitation of a previously examined dependent claim (i.e., claims 34 and 42, respectively); (B) the amendments to independent claims 8 and 37 narrow the scope of the pending independent claims; (C) the Examiner has twice set forth the same rejection specific to the limitation present in the two dependent claims; (D) the amendments to the claims introduce no new issue and do not require any further search, examination, or newly formulated rejections by the Examiner to examine the amended claims; and (E) the amendments to the independent claims present the rejected claims in better form for consideration on Appeal because the amendments to the claims reduces the number of prior art rejections under 35 U.S.C.§ 103 that the Board will have to be considered upon Appeal from three to one."

Applicants' arguments have been accorded careful consideration and are persuasive because applicants' amendments to independent claims 8 and 37 by incorporating therein the limitations of claims 34 and 42, respectively, would not necessitate a new rejection. MPEP § 706.07 recites:

> Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the

claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

Furthermore, a second or any subsequent action on the merits in any application or patent undergoing reexamination proceedings will not be made final if it includes a rejection, on newly cited art, other than information submitted in an information disclosure statement filed under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p), of any claim not amended by applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art.

Applicants' arguments are well-taken and found persuasive that the after final amendment of March 7, 2011 was improperly denied consideration and entry.

DECISION

The petition is **GRANTED.** The advisory action mailed March 18, 2011, indicating that the after final amendment of March 7, 2011 would not be entered is hereby **VACATED**.

The application will be forwarded to the examiner for consideration of the amendment after final wherein the examiner will consider whether to allow the application or prepare a new advisory action indicating that the after final amendment of March 7, 2011 will be entered but the application still not allowed. Since a Notice of Appeal has been filed, applicants are still required to file a brief in compliance with 37 CFR 41.37 within two months of the date of the filing of the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal.

Should there be any questions about this decision please contact Quality Assurance Specialist Marianne C. Seidel, by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 571-273-8300.

Jacqueline Stone
Director, Technology Center 1600

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Docket Administrator - Room 3D-201E
Alcatel-Lucent USA Inc.
600-700 Mountain Avenue
Murray Hill, NJ 07974

Mail Date: 08/02/2010

Applicant	: Aiyou Chen	: DECISION ON REQUEST FOR
Patent Number	: 7653120	: RECALCULATION of PATENT
Issue Date	: 01/26/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/347,589	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/04/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1028** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 07/30/11

TO SPE OF : ART UNIT 2187

SUBJECT : Request for Certificate of Correction for Appl. No.: 11347692 Patent No.: 7395394

CofC mailroom date: 07/18/11

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580
You can fax the Director's/SPE response to 571-273-3421

Note: _____

Lamonte Newsome

Certificates of Correction Branch

571-272-3421

Thank You For Your Assistance

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

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

Comments: _____

UNITED STATES PATENT AND TRADEMARK OFFICE

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

THOMAS, KAYDEN,
HORSTEMEYER & RISLEY, LLP
600 GALLERIA PARKWAY, S.E.
STE 1500
ATLANTA GA 30339-5994

MAILED
MAY 3 1 2011
OFFICE OF PETITIONS

In re Patent No.: 7,603,084 :
Issue Date: 13 October, 2009 :
Application No. 11/347,817 : DECISION
Filed: 3 February, 2006 :
Attorney Docket No. 252326-1230

This is a decision on the petition filed on 1 December, 2010, 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.

It does not appear that Petitioner has provided the express schedule of fees/codes, payments made, payments due and differentials, with totals. (*See*: 37 C.F.R. §1.27, §1.28, MPEP §509.02, et seq.) The Office will not attempt to infer Petitioner's specific intents.

The address on the petition is other than that of the correspondence address of record. If Petitioner desires to receive future correspondence regarding this application, the appropriate Notice of Change of Address and/or Revocation/Power of Attorney documentation 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.

As of this writing, Petitioner's submission is **NOT ACCEPTED** in the absence of a specification of the fees/codes, payments made, payments due and differentials, with totals.

Petitioner's 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 §1.27, §1.28."

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

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]

CONCLUSION

The instant petition under 37 C.F.R. §1.27, §1.28 is **dismissed**.

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

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

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

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

[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).

Patent No.: 7,603,084
Application No. 11/347,817

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

CC:
THADEUS GABARA
PATENT AGENT
62 BURLINGTON ROAD
MURRAY HILL, NJ 07974

[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.

UNITED STATES PATENT AND TRADEMARK OFFICE

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THOMAS, KAYDEN,
HORSTEMEYER & RISLEY, LLP
600 GALLERIA PARKWAY, S.E.
STE 1500
ATLANTA GA 30339-5994

MAILED
AUG 05 2011
OFFICE OF PETITIONS

In re Patent No.: 7,603,084
Issue Date: 13 October, 2009
Application No. 11/347,817
Filed: 3 February, 2006
Attorney Docket No. 252326-1230

DECISION

This is a decision on the petition filed on 3 June, 2011, and resubmitted on 17 June, 2011, under 37 C.F.R. §1.27(g)(2) requesting that status as a Small Entity be removed.

NOTE:

The address on the petition is other than that of the correspondence address of record. If Petitioner desires to receive future correspondence regarding this application, the appropriate Notice of Change of Address and/or Revocation/Power of Attorney documentation 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.

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.**

Patent No.: 7,603,084
Application No. 11/347,817

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 the 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

CC:
THADEUS GABARA
PATENT AGENT
62 BURLINGTON ROAD
MURRAY HILL, NJ 07974

---

[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.

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

ATTN: STEPHEN B. PARKER (WPD)
WESTERNMAN, HATTORI, DANIELS &
ADRIAN, LLP
1250 CONNECTICUT AVE., SUITE 700
WASHINGTON DC 20036

MAILED

OCT 25 2010

OFFICE OF PETITIONS

In re Application of
Praveen GOPALAKRISHNAN, et al
Application No. 11/347,827
Filed: February 3, 2006
Attorney Docket No. 3119.109

DECISION ON PETITION

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

The petition is **GRANTED**.

The application became abandoned for failure to timely pay the issue and publication fees on or before September 20, 2010. As required by the Notice of Allowance and Fee(s) Due, mailed June 18, 2010, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on September 21, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the Issue Fee of $1510 and Publication Fee of $300; (2) the petition fee of $1620; and (3) and the required statement of unintentional delay.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

WITHROW & TERRANOVA, P.L.L.C.
100 REGENCY FOREST DRIVE
SUITE 160
CARY NC 27518

MAILED

OCT 08 2010

OFFICE OF PETITIONS

In re Application of	:	
Nadim Khlat, et al.	:	
Application No. 11/347,957	:	DECISION GRANTING PETITION
Filed: February 6, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 2867-383	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, October 7, 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 Terri Johnson at (571) 272-2991.

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

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

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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
www.uspto.gov

LAW OFFICES OF DAVID L. HOFFMAN
28494 WESTINGHOUSE PLACE
SUITE 204
VALENCIA, CA 91355

MAILED
NOV 04 2011
OFFICE OF PETITIONS

In re Application of	:	
John G. Carpenter, et al.	:	
Application No. 11/347,962	:	ON PETITION
Filed: February 6, 2006	:	
Attorney Docket No.: None	:	

This is a decision on the petition under 37 CFR 1.137(b), filed October 20, 2011, to revive the above-identified application.

The petition is not signed by a registered attorney or agent of record. However, in accordance with 37 CFR 1.34, the signature of Mr. David L. Hoffman 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.

The petition is **GRANTED**.

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed July 21, 2010. A Notice of Abandonment was mailed on March 3, 2011. On October 20, 2011, the present petition was filed.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) under 37 CFR 1.114 and fee of $465, (2) the petition fee of $930, and (3) an adequate statement of unintentional delay[1].

This application is being referred to Technology Center AU 1762 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

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

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

[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

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

WOODCOCK WASHBURN LLP
CIRA CENTRE, 12TH FLOOR
2929 ARCH STREET
PHILADELPHIA PA 19104-2891

MAILED
AUG 25 2010
OFFICE OF PETITIONS

In re Application of	:	
Marija Drndic et al.	:	
Application No. 11/348,039	:	DECISION ON PETITION
Filed: February 6, 2006	:	
Attorney Docket No. **UPNA-0077 / R3741**	:	

This is a decision on the petition under 37 CFR 1.182, filed, July 26, 2010, to change the name of inventor "Sandra R. Selmic" to – Sandra Zivanovic --.

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.

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

Any questions concerning this matter may be directed to JoAnne Burke at (571) 272-4584. Any questions concerning the examination procedures or status of the application should be directed to the Technology Center.

This application is being referred to the Office of Data Management for the normal course of business.

JoAnne Burke
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
11/348,039	02/06/2006	1796	1590	UPNA-0077 / R3741	57	4

CONFIRMATION NO. 5474

CORRECTED FILING RECEIPT

23377
WOODCOCK WASHBURN LLP
CIRA CENTRE, 12TH FLOOR
2929 ARCH STREET
PHILADELPHIA, PA 19104-2891

OC000000043206210

Date Mailed: 08/25/2010

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)

Marija Drndic, Philadelphia, PA;
Sandra Zivanovic, Ruston, LA;
Difei Qi, Phoenix, AZ;

Assignment For Published Patent Application

Louisiana Tech University Foundation, Inc., Ruston, LA
The Trustees of the University of Pennsylvania, Philadelphia, PA

Power of Attorney: The patent practitioners associated with Customer Number 23377

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/650,476 02/07/2005
and claims benefit of 60/667,935 04/04/2005

Foreign Applications

If Required, Foreign Filing License Granted: 08/24/2010

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/348,039**

Projected Publication Date: Not Applicable

Non-Publication Request: No

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

Title

POLYMER-NANOCRYSTAL QUANTUM DOT COMPOSITES AND OPTOELECTRONIC DEVICES

Preliminary Class

252

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

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

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

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

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

NOT GRANTED

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Decision Date : March 28, 2012

In re Application of :

DECISION ON PETITION

Robert Moel

Application No : 11348044

Filed : 06-Feb-2006

Attorney Docket No : 2816-050

This is an electronic decision on the petition under 37 CFR 1.137(b), filed March 28, 2012 , to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to an Office action. The date of abandonment is the day after the expiration date of the period set for reply in the Office action or action plus any extensions of time actually obtained.

The electronic petition satisfies the requirements of 37 CFR 1.137(b) in that the practitioner has supplied (1) the reply in the form of a continuing application, (2) the petition fee under 37 CFR 1.17(m), and (3) a proper statement of unintentional delay.

The above-identified application is being revived solely for 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. 12487144 filed on 06-18-2009

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/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	11348044
Filing Date	06-Feb-2006
First Named Inventor	Robert Moel
Art Unit	3628
Examiner Name	NATHAN ERB
Attorney Docket Number	2816-050
Title	System and method for managing quota groups in a metered service enterprise

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.

Reply Fee

☒ A reply in the form of a continuing application with serial number 12487144 has been previously filed on 06-18-2009

Terminal disclaimer with disclaimer fee

☒ Terminal disclaimer and fee are not required

☐ I certify, in accordance with 37 CFR 1.4(d)(4) that the terminal disclaimer and fee have already been filed in the above-identified application on

☐ Terminal disclaimer and fee 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	/Elliott D.Light/
Name	Elliott D. Light
Registration Number	51948

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Date : September 3, 2010

Patent No. :7732610
Ser. No. :11/348047
Inventor(s) :Maxime Lampilas, et al.
Issued :June 8, 2010
Title :EXPERT CALL ANALYZER AND NEXT GENERATION TELEPHONY NETWORK
:CONFIGURATION SYSTEM

Re: Request for Certificate of Correction

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

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

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

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

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

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

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

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

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

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

Charles A. Muserlian
317 Bliss Lane
Valley Cottage, NY 10989

/arg

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Charles Muserlain
317 Bliss Lane
Valley Cottage NY 10989

MAILED
FEB 14 2011
OFFICE OF PETITIONS

In re Patent No. 7,732,610 :
Issue Date: June 8, 2010 :
Application No. 11/348,047 :
Filed: February 8, 2010 :
Attorney Docket No. 446.023-DIV-2 :

ON PETITION

This is a decision on the petition filed November 22, 2010, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The petition is **Dismissed**.

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

Any request for issuance of an application in the name of the assignee submitted after the date of the payment of the issue fee, and any request that a patent be corrected to state the name of assignee must:

(A) state the assignment was submitted for recordation as set forth in 37 CFR §3.11 before issuance of the patent;

(B) provide a request for a certificate of correction §1.323;

(C) provide the fee set forth in 37 CFR §1.20 (a) and

(D) provide the processing fee set forth in 37 CFR §1.17(i)

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

Petitioner has failed to provide (c). The request under 37 CFR 3.81(b) was not accompanied by the $100.00 certificate of correction fee pursuant to 37 CFR §1.20(a). Further review of the record shows the Office is not in receipt of authorization to charge a deposit account.

As petitioner has failed to comply with the provisions of 37 CFR 3.81(b), the request cannot be granted at this time.

Further correspondence with respect to this matter may 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
By delivery service: FedEx, UPS, DHL, etc.)	U.S. Patent and Trademark Office Customer Service Window, Randolph Building 401 Dulany Street Alexandria, VA 22314

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

Charlema Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Forest Laboratories, Inc.
Attn: Charles S. Ryan
500 COMMACK ROAD
Commack NY 11725

MAILED
SEP 06 2011
OFFICE OF PETITIONS

In re Patent No. 7,732,610 :
Issue Date: June 8, 2010 :
Application No. 11/348,047 :
Filed: February 6, 2006 :
For. NEW HETEROCYCLIC COMPOUNDS, :
THEIR PREPARATION AND THEIR USE :
AS MEDICAMENTS, IN PARTICULAR AS :
ANTI-BACTERIAL AGENTS :

ON PETITION

This is a decision on the renewed petition filed March 7, 2011, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3215. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

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

Charlema Grant
Petitions Attorney
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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K&L GATES LLP
210 SIXTH AVENUE
PITTSBURGH, PA 15222-2613

MAILED
DEC 06 2010
OFFICE OF PETITIONS

In re Application of	:	
Nicholas Sotereanos et al	:	
Application No. 11/348,110	:	DECISION ON PETITION
Filed: February 6, 2006	:	TO WITHDRAW
Attorney Docket No.: 030438	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed November 3, 2010.

The request is **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 request is filed by Daniel R. Miller.

The Office no longer accepts an address change to the new practitioner identified in the request, absent the filing of a power of attorney to the new representative. The Office will, however, change the correspondence address of record to the most current address provided for (1) the intervening assignee of the entire interest or (2) the first named inventor.

The request to withdraw from record cannot be approved at this time, since a current correspondence address was not provided.

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 571-272-3210. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

Irvin Dingle
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/348,143	02/06/2006	John C. Moore	36705	5707

23589 7590 10/12/2011
Hovey Williams LLP
10801 Mastin Blvd., Suite 1000
Overland Park, KS 66210

EXAMINER
CLARK, GREGORY D

ART UNIT	PAPER NUMBER
1786	

MAIL DATE	DELIVERY MODE
10/12/2011	PAPER

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

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

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OCT 12 2011

Mailed :
In re Application of : DECISION ON
Moore : PETITION
Serial No. 11/348,143 :
Filed: February 6, 2006 :
For: **THERMAL- AND CHEMICAL-RESISTANT ACID PROTECTION COATING MATERIAL AND SPIN-ON THERMOPLASTIC ADHESIVE**

This is a decision on the PETITION FILED UNDER 37 CFR 1.181 filed on May 13, 2011.

The Examiner initially required a restriction between

Group I, claims 1- 13, drawn to a composition.

Group II, claims 14-34 drawn to a method.

Group III, claims 35-52, drawn to an article.

The Examiner did not list any classes or subclasses associated with the individual Groups. The Examiner determined that the inventions of Groups I / III and Group II are related as products and process of use. Applicants on 8/19/2008 elected without traverse to prosecute the invention Group III, claims 35-52.

Original claim 35 was filed as:

> The combination of a substrate having a surface; and a cured or dried layer adjacent said substrate, said layer being formed from a composition comprising a hydrocarbon resin and a rubber dispersed or dissolved in a solvent system, wherein said solvent system comprises at least about 95% by weight of a single solvent, said single solvent percentage by weight being based upon the total weight of the solvent system taken as 100% by weight.

A brief summary of the prosecution shows a non-final office action was mailed on 10/16/08; a final rejection on 4/2/09; a RCE was filed on 8/28/09; a non-final

mailed on 9/16/09; a non-final mailed on 4/27/10; a final rejection mailed on 9/15/10; a RCE request filed on 12/9/10 and a miscellaneous communication mailed on 3/18/11.

Upon filing of the RCE of 12/9/10, Applicants amended claim 35 to the following:

> The combination of a substrate having a surface, wherein said substrate is a microelectronic substrate selected from the group consisting of silicon, tungsten silicide, gallium arsenide, germanium, tantalum, tantalum nitrite, SiGe, low k dielectric layers, dielectric layers, and ion implant layers; and a layer of a composition adjacent said substrate, said composition comprising from about 65-95% by weight of a single solvent, said single solvent percentage by weight on a solids basis of a hydrocarbon resin and from about 4-20% by weight on a solid basis of a rubber dispersed or dissolved in a solvent system, wherein said rubber comprises recurring monomers of ethylene and propylene, and said solvent system comprises at least about 95% by weight of a single solvent, said single solvent percentage by weight being based upon the total weight of the solvent system taken as 100% by weight basis being based upon the total weight of the solvent system taken as 100% by weight.

The Examiner in the 3/18/11 communication withdrew claims 35, 38-47 and 50-55 as being directed to a non-elected invention. The Examiner determined that the claims as currently presented were drawn to a wet coated article which differs from Group III because a material could be applied to the substrate surface by a different process such as lamination. The claims as presented with solvent fall under Group I not Group III. The Examiner further characterized the initial restriction as to Group III being drawn to a Cured Coated Article

Applicants assert that switching from a dried/cured composition on a substrate to the composition in its wet form does not shift away from the elected invention, because the original Restriction Requirement only differentiated between the composition, method and article.

A review of the original restriction requirement shows that the Examiner took the position that Group III "can be used to form a different article such as solvent based hydrophobic paints". The issue of Group III being drawn to a cured coated article was not set forth in the initial restriction requirement. It appears that the original Restriction Requirement contemplated the presence of a solvent system.

DECISION

The petition is **Granted.**

11/348,143

Claim 35, 38-41, 44-47, and 50-55 as filed on December 9, 2010 are reinstated. The Claims as filed are directed to the elected invention.

Karen M Young

Karen M. Young
Director, TC 1700
Chemical and Materials Engineering

wk

Tracy L. Bornman
Hovey Williams LLP
10801 Mastin Blvd., Suite 1000
Overland Park KS 66210

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.

OIPE IAP24 AUG 19 2010 PATENT & TRADEMARK OFFICE

REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

Attorney Docket: M0025.0399/P399	Patent Number: 7,665,708
Filing Date (or 371(b) or (f) Date): February 6, 2006	Issue Date: February 23, 2010
First Named Inventor: Stothers	
Title: VIBRATION ISOLATION MOUNT AND METHOD	

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

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

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

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

Signature	Date August 19, 2010
Name (Print/Typed) Stephen A. Soffen	Registration Number 31,063

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

☑ *Total of 1 forms are submitted.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

DICKSTEIN SHAPIRO LLP
1825 EYE STREET NW
Washington, DC 20006-5403

Mail Date: 09/17/2010

Applicant	: Ian Stothers	: DECISION ON REQUEST FOR
Patent Number	: 7665708	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/348,508	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/06/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **831** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED

OCT 08 2010

OFFICE OF PETITIONS

In re Patent of Rambo et al.	:	DECISION ON REQUEST
Patent No. 7,650,527	:	FOR RECONSIDERATION OF
Issue Date: January 19, 2010	:	PATENT TERM ADJUSTMENT
Application No. 11/348,689	:	and
Filed: February 7, 2006	:	NOTICE OF INTENT TO ISSUE
Atty. Docket No. 17100US01	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on June 7, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by eight hundred three (803) days. The petition was timely filed within one month of the mailing of a Decision on Request for Recalculation of Patent Term Adjustment in View of Wyeth and Notice of Intent to Issue Certificate of Correction, mailed May 5, 2010.

The petition is **DISMISSED**.

No application for patent term adjustment under 37 CFR 1.705(b) was filed in this application. On January 19, 2010, the above-identified application matured into U.S. Patent No. 7,650,527 with a revised patent term adjustment of 456 days. No application for patent term adjustment under 37 CFR 1.705(d) was filed within two months of the date the patent issued.

A Request for Recalculation of Patent Term Adjustment in View of Wyeth was filed on April 29, 2010. The Office determined that 802 days was the proper patent term adjustment and afforded patentees a one month/30 day period to request reconsideration.

In the present petition, patentees argue recalculation should be performed again because the Office purportedly incorrectly calculated a 37 CFR 1.704(b) reduction.

As noted on the form itself, a Request for Recalculation of Patent Term Adjustment in View of Wyeth may be filed if the sole basis for requesting the recalculation is the Office's pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A).

37 CFR 1.705(d), provides that:

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

In short, a patentee is not permitted to raise an issue that could have been raised in an application for patent term adjustment under 37 CFR 1.705(b) in any post patent grant petition. If applicants did not agree with the length of the reduction under 37 CFR 1.704(b) in connection with the November 12, 2008 reply, the appropriate time to contest it would have been after the Notice of Allowance was mailed and prior to payment of the issue fee.

The request for reconsideration of the Office's recalculation of the patent term adjustment in view of *Wyeth* is dismissed.

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 under 37 CFR 1.18(e).

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

issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **eight hundred two (802)** days.

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

for

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 : 7,650,527 B2

DATED : **January 19, 2010** **DRAFT**

INVENTOR(S) : Rambo 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 456 days

Delete the phrase "by 456 days" and insert – by 802 days--

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Alexandria, VA 22313-1450
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JAMES C. EAVES JR.
GREENEBAUM DOLL & MCDONALD PLLC
3500 NATIONAL CITY TOWER
101 SOUTH FIFTH STREET
LOUISVILLE KY 40202

MAILED

JAN 25 2011

OFFICE OF PETITIONS

In re Application of

Jean Beaupre
Application No. 11/348,911
Filed: February 7, 2006
Attorney Docket No. 108657.5

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed December 13, 2010.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others.

The request was signed by James C. Eaves, Jr. on behalf of all attorneys of record who are associated with customer No. 23828. All attorneys/agents associated with the Customer Number 23828 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

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

There is an outstanding Office action mailed November 2, 2010 that requires a reply from the 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: MR. JEAN BEAUPRE
4480 LAKE FOREST DRIVE
SUITE 412
CINCINNATI, OH 45242

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/348,911	02/07/2006	Jean Beaupre	108657.5

CONFIRMATION NO. 8020

POWER OF ATTORNEY NOTICE

23828
JAMES C. EAVES JR.
GREENEBAUM DOLL & MCDONALD PLLC
3500 NATIONAL CITY TOWER
101 SOUTH FIFTH STREET
LOUISVILLE, KY 40202

OC000000045520080

Date Mailed: 01/18/2011

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 12/13/2010.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/amwise/

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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MATTINGLY & MALUR, P.C.
1800 DIAGONAL ROAD
SUITE 370
ALEXANDRIA VA 22314

MAILED

SEP 07 2010

OFFICE OF PETITIONS

In re Application of	:	
Betts-Lacroix et al.	:	
Application No. 11/348,996	:	ON PETITION
Filed: February 7, 2006	:	
Attorney Docket No. OQO-6044-02	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed August 2, 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 continuing application, (2) the petition fee of $810.00, and (3) a proper statement of unintentional delay.

The above-identified application is being revived solely for 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. 12/848,886.

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

Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MICROSOFT CORPORATION
ONE MICROSOFT WAY
REDMOND WA 98052-6399

MAILED

DEC 09 2011

OFFICE OF PETITIONS

In re Patent No. 7352,454 :
Issued: April 1, 2008 :
Application No. 11/349,017 : ON PETITION
Filed: February 6, 2006 :
Attorney Docket Number: 66 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed November 1, 2011 and November 3, 2011.

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

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

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

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

It is not apparent whether the person signing the request was ever given a power of attorney or authorization of agent regarding this patent. In accordance with 37 CFR 1.34(a), the signature appearing on the request shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts. While, a courtesy copy of this decision is being mailed to the address given on the petition, the Office will mail all future correspondence solely to the address of record.

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

/Joan Olszewski/
Joan Olszewski
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

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

PATRICK W. RASCHE (22697)
ARMSTRONG TEASDALE LLP
7700 FORSYTH BOULEVARD
SUITE 1800
ST. LOUIS, MO 63105

MAILED

OCT 21 2010

OFFICE OF PETITIONS

In re Application of
Scott J. Greco
Application No. 11/349,163
Filed: February 8, 2006
Attorney Docket No.: 197652-1 (22697-749)

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b) to revive the above-identified application, filed August 27, 2010.

The petition is **GRANTED**.

The application became abandoned for failure to timely pay the issue and publication fees on or before June 28, 2010, as required by the Notice of Allowance and Fee(s) Due mailed March 26, 2010. A Notice of Abandonment was mailed on July 13, 2010. On August 27, 2010, the present petition was filed.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the $1,510 issue fee and $300 publication fee; (2) the petition fee of $1.620; and (3) an adequate statement of unintentional delay.

The application is being referred to the Office of Data Management to be processed into a patent.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing as a patent should be directed to (571) 272-4200.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED
APR 28 2011
OFFICE OF PETITIONS

PATRICK W. RASCHE (22697)
ARMSTRONG TEASDALE LLP
7700 Forsyth Boulevard, Suite 1800
St. Louis MO 63105

In re Patent No. 7,840,021	:	
Issue Date: November 23, 2010	:	
Application No. 11/349,163	:	DECISION ON PETITION
Filed: February 8, 2006	:	
Attorney Docket No. 197652-1 (22697-749)	:	

This is a decision on the Request For Certificate Of Correction Of Patent Under 37 C.F.R. 1.323, filed December 17, 2010, which is being treated as Petition Under 37 CFR §3.81(b), to identify the correct assignee's name. A completed Certificate of Correction Form (PTO/SB/44) was submitted with Petition.

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

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

"UTC Fire & Security Corporation, Inc."

to:

--UTC Fire & Security Americas Corporation, Inc.--

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

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

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

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

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (703)756-1814.

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. 7,840,021.

Cheryl Gibson-Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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

MAILED
JUN 14 2011
OFFICE OF PETITIONS

In re Application of
Belcher et al.
Application No. 11/349,218
Filed: February 8, 2006
Attorney Docket No. 091242-0173

DECISION DISMISSING PETITIONS
UNDER 37 CFR §§1.78(a)(3) & 1.78(a)(6)

This is a decision on the petition, filed May 24, 2011, which will be treated as petitions under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) 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 supplemental ADS.

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 (1).

It is not possible for Application No. 11/349,218, filed February 8, 2006, to claim benefit of Application No. 11/839,923, filed August 16, 2007. Application No. 11/349,218 was filed *before* Application No. 11/839,923.

In addition, Examiner Wessendorf has indicated that the proposed amendment to claim priority raises new issues that would require further consideration and/or search. Since a final Office action was mailed on April 21, 2011, the Office requires the submission of a Request for Continued Examination (RCE) as a pre-condition for acceptance of the late claim for priority.

If reconsideration of this decision is desired, a renewed petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), an executed supplemental ADS listing an appropriate priority chain, and a RCE are required.

37 CFR § 1.78(a)(6) requires 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. 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)(6). If this is not a correct reading of the statement appearing in the petition, petitioner should promptly notify the Office.

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

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) 272-3230.

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

MAILED
SEP 27 2011
OFFICE OF PETITIONS

In re Application of	:
Belcher et al.	:
Application No. 11/349,218	: DECISION GRANTING PETITIONS
Filed: February 8, 2006	: UNDER 37 CFR §§1.78(a)(3) & 1.78(a)(6)
Attorney Docket No. 091242-0173	:

This is a decision on the renewed petitions, filed August 12, 2011, under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) 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 supplemental ADS.

The petition is **GRANTED**

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000 and after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

(1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional where there is a question whether the delay was unintentional.

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, a nonprovisional application in the continuity chain 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 the undersigned at (571) 272-3230. 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 1636 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.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

ATTACHMENT : Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/349,218	02/08/2006	1636	1380	091242-0173	36	4

CONFIRMATION NO. 8234

CORRECTED FILING RECEIPT

22428
FOLEY AND LARDNER LLP
SUITE 500
3000 K STREET NW
WASHINGTON, DC 20007

OC000000050042284

Date Mailed: 09/26/2011

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

Applicant(s)

Angela M. Belcher, Lexington, MA;
Richard E. Smalley, Houston, TX;
Esther Ryan, San Jose, CA;
Seung-Wuk Lee, Lexington, MA;

Assignment For Published Patent Application

BOARD OF REGENTS, THE UNIVERSITY OF TEXAS SYSTEM

Power of Attorney: The patent practitioners associated with Customer Number 22428

Domestic Priority data as claimed by applicant

This application is a CON of 10/254,446 09/25/2002 ABN
which claims benefit of 60/325,664 09/28/2001
This application 11/349,218
is a CIP of 10/158,596 05/30/2002 ABN
which claims benefit of 60/325,664 09/28/2001
and is a CIP of 10/155,883 05/24/2002 ABN
which claims benefit of 60/296,013 06/05/2001

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 09/26/2011

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/349,218**

Projected Publication Date: Not Applicable

Non-Publication Request: No

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

Biological control of nanoparticle nucleation, shape and crystal phase

Preliminary Class

506

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

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

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

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

NOT GRANTED

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
Alexandria, VA 22313-1450
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LAW OFFICES OF JAMES E WALTON PLLC
1169 N BURLESON BLVD
SUITE 107-328
BURLESON TX 76028

MAILED
DEC 17 2010
OFFICE OF PETITIONS

In re Application of	:	
Brandenberg, et al.	:	
Application No. 11/349,372	:	ON PETITION
Filed: February 6, 2006	:	
Attorney Docket No. 0746MH-40213C2		

This is a decision on the renewed petition to revive under 37 CFR 1.137(b), filed October 22, 2010.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The above-identified application became abandoned for failure to timely pay the issue fee in response to the Notice of Allowance mailed October 23, 2007. This Notice set a statutory period for reply of three months. No issue fee having been received, the application became abandoned on January 24, 2008. The Office mailed a Notice of Abandonment on February 15, 2008. Applicants filed a petition to revive under 37 CFR 1.137(b) on April 27, 2010. However, the petition was dismissed in a decision mailed on June 22, 2010. The decision pointed out that the application had been abandoned for an extended period, and requested applicants to account for the delay.

With the instant renewed petition, petitioner has accounted for the delay. The other requirements for a grantable petition were previously satisfied with the petition filed April 27, 2010.

The application is being forwarded to the Office of Data Management for processing into a patent.

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

6-2-2011

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

Patent No. : 7,590,169 B2
Serial No. : 11/349,388
Inventor(s) : Gall
Issued : September 15, 2009

Re: Request for Certificate of Correction

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

Respecting the alleged error in column 18, line 50 is not in this col. nor line.

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

A certificate of correction will issue to correct the remaining errors noted in your request.

Further correspondence concerning this matter should be filed and directed to Decisions and Certificates of Correction Branch. Any response must be filed within a four week period with the sum of $100.00

Eva James
For Mary Diggs
Decisions & Certificate
of Correction Branch
(571-272-3422 or 703-756-1580)

Eggers, Charles
Qualcomm Incorporated
5775 Morehouse Drive
San Diego, CA 92121

ej

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Mr. Christopher P. Bruenjes
Drinker Biddle & Reath (D.C.)
1500 K Street, N.W.
Suite 1100
Washington, D.C. 20005-1209

MAILED
JAN 24 2011
OFFICE OF PETITIONS

In re Application of	:	
Hans Evald MARTIN	:	DECISION GRANTING PETITION
Application No. 11/349,454	:	UNDER 37 CFR 1.137(b)
Filed: 18 April 2006	:	
Atty. Docket No. 204814-0003	:	

This is a decision on the petition under 37 CFR 1.137(b), filed 20 April 2010, to revive the above-identified application.

The petition is **GRANT.**

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 reply in a timely manner to final Office action mailed 6 July 2007 ("outstanding Office action"), which set a shortened statutory period of reply of three (3) months. 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 extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is 7 October 2007, with notification mailed 17 January 2008.

The petition satisfies the conditions for revival pursuant to 37 CFR 1.137(b) by including (1) a reply in the form of a Notice of Appeal, plus fee, (2) a petition fee of $810.00, and (3) a Statement of unintentional delay. The reply to the outstanding Office action is accepted as having been unintentionally delayed.

There is no indication that the person signing the instant Petition was given a power of attorney or authorization of agent to prosecute the Application. Further, it is not apparent whether the signer of the Petition was in a position to have firsthand knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of the delay. *See,* 37 CFR 10.18(b) and Changes to Patent Practice and

Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (10 October 1997), 1203 Off. Gaz. Pat. Office 63, 103 (21 October 1997). In the event that such an inquiry has not been made, Petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, Petitioner must notify the Office.

General inquiries relating to this decision should be directed to Robert DeWitty, Petitions Examiner, Office of Petitions (571-272-6051), or, if unavailable, the undersigned at 571-272-7099.

This application is being referred to Technology Center AU 2863 to await the filing of an appeal brief or for such other appropriate reply as may be submitted to continue prosecution of the application.

David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

RAUBVOGEL LAW OFFICE
820 LAKEVIEW WAY
REDWOOD CITY, CA 94062

MAILED

MAY 09 2011

OFFICE OF PETITIONS

In re Application of	:	
SCHWARZ, et al	:	
Application No. 11/349,523	:	DECISION ON PETITION
Filed: February 7, 2006	:	TO WITHDRAW
Attorney Docket No. 7065-00400	:	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 23, 2011.

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

A review of the file record indicates that the power of attorney to Amir H. Raubvogel and the attorneys associated with Customer No. 48384, has been revoked by the assignee of the patent application on April 7, 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 undersigned at (571) 272-6735.

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

cc: GORDON * HOWARD ASSOCIATES, INC.
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UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS, TX 75265

MAILED
JUL 06 2011
OFFICE OF PETITIONS

In re Application of
Philip R. Thrift, et al.
Application No. 11/349,567
Filed: February 7, 2006
Attorney Docket No. TI-20205.2

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 10, 2011, to revive the above-identified application.

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

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. In accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts. However, if petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. 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.

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 July 7, 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)(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 October 8, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Notice of Appeal; (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 2626 to await the filing of an appeal brief or for such other appropriate reply as may be submitted to continue prosecution of the application.

April M. Wise
Petitions Examiner
Office of Petitions

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QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO CA 92121

MAILED
SEP 01 2010
OFFICE OF PETITIONS

In re Application of	:	
Mese et al.	:	
Application No. 11/349611	:	
Filing or 371(c) Date: 02/07/2006	:	ON PETITION
Attorney Docket Number:	:	
050161	:	

This is a decision on the petition under 37 CFR 1.137(b), filed April 14, 2010, to revive the above-identified application.

This Petition is hereby **dismissed**.

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

Background

The 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 7, 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). Accordingly, the date of abandonment of this application is December 18, 2009[1].

The present petition

Applicant files the present petition, and an Amendment/Remarks in response to the Office action.

[1] Applicant filed a reply to the final Office action on December 17, 2009; however, the reply failed to place the application in condition for allowance. Applicant was so notified in an Advisory Action, mailed February 1, 2010.

Applicable law, Rules and MPEP

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

The present petition and amendment

As to item (1), the Examiner has reviewed the amendment and provides that the amended claims would require further search and reconsideration.

Further as to item (1), a review of the petition and amendment reveals that the amendment as filed and the petition are included as one document. 37 CFR 1.4(c) requires "each distinct subject, inquiry or order [to] be contained in a separate paper to avoid confusion and delay in answering papers dealing with different subjects."

As to item (3), 37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." The statement appearing in the petition varies from the language required by 37 CFR 1.137(b)(3). A proper statement of unintentional delay is required.

Conclusion

The petition is dismissed without prejudice. Before the petition may be granted, a separate renewed petition[2], including the proper statement of unintentional delay, a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), a separate amendment/remarks 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), are required.

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

By mail: Director for Patents
PO Box 1450
Alexandria, VA 22313-1450

[2] A renewed petition does not require a petition fee.

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

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Inquiries regarding the Amendment should be directed to the Examiner. Telephone inquiries concerning this petition Decision should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

Enclosure: PTO/SB/64

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United States Patent and Trademark Office
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SAN DIEGO CA 92121

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JAN 07 2011

OFFICE OF PETITIONS

In re Application of	:	
Mese et al.	:	
Application No. 11/349611	:	
Filing or 371(c) Date: 02/07/2006	:	ON PETITION
Attorney Docket Number:	:	
050161	:	

This is a decision on the renewed petition under 37 CFR 1.137(b), filed November 1, 2010, to revive the above-identified application.

The petition is **granted**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of August 7, 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). Accordingly, the date of abandonment of this application is December 18, 2009[1].

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee (and the submission required by 37 CFR 1.114); (2) the petition fee; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3232.

This application is being referred to Technology Center AU 2461 for processing of the RCE and for appropriate action on the amendment by the Examiner in the normal course of business.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

[1] Applicant filed a reply to the final Office action on December 17, 2009; however, the reply failed to place the application in condition for allowance. Applicant was so notified in an Advisory Action, mailed February 1, 2010.

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SLATER & MATSIL, L.L.P.
17950 PRESTON RD, SUITE 1000
DALLAS TX 75252-5793

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MAR 14 2012

OFFICE OF PETITIONS

In re Patent No. 7,417,875 :
Issue Date: February 8, 2008 :
Application No. 11/349,637 : NOTICE
Filed: February 8, 2006 :
Attorney Docket No. **CDW-001** :

This is a notice regarding your request filed February 24, 2012, for acceptance of a fee deficiency submission under 37 CFR 1.28.

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **NOT ACCEPTED**.

A request for acceptance of a fee deficiency submission under 37 CFR 1.28 petitioners is required to provide an itemization of the deficiency payment. Petitioner's attention is directed to 37 CFR 1.28(c)(2) (ii) which states:

> (2) *Payment of deficiency owed.* The deficiency owed, resulting from the previous erroneous payment of small entity fees, must be paid.
>
> (ii) *Itemization of the deficiency payment.* An itemization of the total deficiency payment is required. The itemization must include the following information:
>
> (A) Each particular type of fee that was erroneously paid as a small entity, (*e.g.*, basic statutory filing fee, two-month extension of time fee) along with the current fee amount for a non-small entity;
>
> (B) The small entity fee actually paid, and when. This will permit the Office to differentiate, for example, between two one-month extension of time fees erroneously paid as a small entity but on different dates;

(C) The deficiency owed amount (for each fee erroneously paid); and

(D) The total deficiency payment owed, which is the sum or total of the individual deficiency owed amounts set forth in paragraph (c)(2)(ii)(C) of this section.

Inquiries related to this communication should be directed to the undersigned at (571) 272-4584.

/JoAnne Burke/
JoAnne Burke
Petitions Examiner
Office of Petitions

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JAN 07 2011

OFFICE OF PETITIONS

NELSON MULLINS RILEY & SCARBOROUGH LLP
FLOOR 30, SUITE 3000
ONE POST OFFICE SQUARE
BOSTON, MA 02109

In re Patent of Nils Lonberg et al.	:	DECISION ON REQUEST
Patent No. 7,722,873	:	FOR RECONSIDERATION OF
Issue Date: May 25, 2010	:	PATENT TERM ADJUSTMENT
Application No. 11/349,724	:	AND NOTICE OF INTENT TO
Filing Date: February 8, 2006	:	ISSUE CERTIFICATE OF
Attorney Docket No. GMI-056CN	:	CORRECTION

This is a decision on the request filed July 23, 2010, which is being treated as a petition under 37 C.F.R. § 1.705(d) requesting the patent term adjustment indicated on the patent be corrected to indicate the term of the patent is extended or adjusted by four hundred thirty (430) days.

The petition to correct the patent term adjustment indicated on the patent to indicate the term of the patent is extended or adjusted by four hundred thirty (430) days is **GRANTED to the extent indicated herein**.

The Office will *sua sponte* issue a certificate of correction setting forth a patent term adjustment of 61 days. Pursuant to 37 C.F.R. § 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, Patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under 37 C.F.R. § 1.136.

No portion of this decision should be construed as a waiver of the requirement, set forth in 35 U.S.C. § 154(b)(4), that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. § 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office used the following information when calculating the patent term adjustment determination set forth on the patent:

1. The period of delay under 37 C.F.R. § 1.702(a) ("A Delay") is 42 days, which includes:
   A. 15 days of delay under 37 C.F.R. § 1.702(a)(2) based on Office delay in the issuance of the May 28, 2009 Office action, and

B. 27 days of delay under 37 C.F.R. § 1.702(a)(6) based on Office delay in the issuance of the patent;

2. The period of delay under 37 C.F.R. § 1.702(b) ("B Delay") is 471 days;
3. The periods of A Delay and B Delay overlap by 42 days; and
4. The period of delay under 37 C.F.R. § 1.704 ("Applicant Delay") is 245 days, which includes:
   A. 59 days of delay under 37 C.F.R. § 1.704(b) based on delay in the submission of the March 23, 2007 reply,
   B. 14 days of delay under 37 C.F.R. § 1.704(c)(8) based on the information disclosure statement filed April 6, 2007,
   C. 27 days of delay under 37 C.F.R. § 1.704(b) based on delay in the submission of the July 24, 2008 reply,
   D. 25 days of delay under 37 C.F.R. § 1.704(b) based on delay in the submission of the September 22, 2009 reply, and
   E. 120 days of delay under 37 C.F.R. § 1.704(c)(10) based on drawings filed December 28, 2009.

Patentees assert:

1. The correct period of A Delay is 283 days,
2. The correct period of B Delay is 471 days,
3. The periods of A Delay and B Delay overlap by 136 days, and
4. The correct period of Applicant Delay is 188 days.

Issue 1

The application was filed February 8, 2006.

The Office issued a restriction requirement on October 23, 2006.

A reply to the restriction requirement was filed March 23, 2007.

An information disclosure statement ("IDS") was filed April 6, 2007.

The Office issued a second restriction requirement on June 18, 2007, which stated,

> [U]pon reconsideration, the previous Requirement Restriction of October 23, 2006 is hereby VACATED.
>
> A new Restriction requirement and election of species is put forth below.

The June 18, 2007 restriction requirement is signed by Patent Examiner Zachary Skelding and Primary Examiner Phillip Gambel.

Patentees assert:

1. The Office should have entered a 71-day increase in patent term adjustment for delay under 37 C.F.R. § 1.702(a)(1);

2. The Office should not have entered a 59-day reduction in patent term adjustment under 37 C.F.R. § 1.704(b) based on delay in the submission of the March 23, 2007 reply; and
3. The Office should not have entered a 14-day reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(8) based on the IDS filed April 6, 2007.

Patentees' three assertions identified above are based on an argument the October 23, 2006 restriction requirement was vacated. Therefore, the Office must determine whether or not the October 23, 2006 requirement was vacated.

Group Directors in Technology Centers have the authority to vacate Office actions. Examiners, including Primary Examiners, do *not* have the authority to vacate Office actions. The record fails to indicate the October 23, 2006 restriction requirement was ever vacated by a Group Director and neither Patent Examiner Zachary Skelding nor Primary Examiner Phillip Gambel has the authority to vacate an Office action. Therefore, the October 23, 2006 restriction requirement was not vacated.

Since the October 23, 2006 restriction requirement was not vacated,

1. A restriction requirement was mailed within 14 months of the filing date and an An increase in patent term adjustment for delay under 37 C.F.R. § 1.702(a)(1) is not warranted;
2. The 59-day reduction in patent term adjustment under 37 C.F.R. § 1.704(b) was proper because a reply to the October 23, 2006 restriction was not filed until March 23, 2007, which was three months and 59 days after the Office issued the October 23, 2006 restriction requirement; and
3. The 14-day reduction in patent term adjustment based on the IDS filed April 6, 2007, was proper because:
   A. The IDS was filed 14 days after the March 23, 2007 reply,
   B. The IDS did not include a statement under 37 C.F.R. § 1.704(d), and
   C. The record fails to indicate the examiner expressly requested submission of the IDS.

Issue 2

The Office issued a non-final Office action on March 27, 2008.

Patentees filed a reply on July 24, 2008.

The Office issued an election of species requirement on November 13, 2008.

Patentees filed a reply to the November 13, 2008 requirement on January 13, 2008.

The Office mailed a final Office action on May 28, 2009.

The Office entered a 15-day increase in patent term adjustment under 37 C.F.R. § 1.702(a)(2) based on the fact the May 28, 2009 Office action was issued four months and 15 days after the date Patentees filed the January 13, 2008 reply.

Patentees state, with emphasis in the original,

> Although the Office did mail a "Miscellaneous Communication to Applicant" on November 13, 2008 requesting additional information from Applicants, this "Miscellaneous Communication" was not an Office Action on the merits, but rather an informal request for additional information. As such, it does not constitute a response under 37 CFR 1.702(a)(2).

Patentees state the proper increase in patent term adjustment under 37 C.F.R. § 1.703(a)(2) is 185 days because the May 28, 2009 Office action was issued four months and 185 days after the date Patentees filed the July 24, 2008 reply.

The Office has reviewed the record and determined a 185-day increase in patent term adjustment is not warranted under 37 C.F.R. § 1.702(a)(2) because the November 13, 2008 communication constitutes a notification under 35 U.S.C. § 132.

M.P.E.P. § 2731 states, with emphasis added,

> A written restriction requirement, **a written election of species requirement**, a requirement for information under 37 CFR 1.105, an action under Ex parte Quayle, 1935 Comm'r Dec. 11 (1935), and a notice of allowability (PTOL-37) are each an action issued as a result of the examination conducted pursuant to 35 U.S.C. 131. As such, each of these Office actions **is a notification under 35 U.S.C. 132**.

The November 13, 2008 communication included a written election of species requirement. Therefore, the communication was a notification under 35 U.S.C. § 132 and a 185-day increase in patent term adjustment under 37 C.F.R. § 1.702(a)(2) is not warranted.

Issue 3

The Office previously determined the periods of A Delay and B Delay overlap by 42 days.

Patentees argue the periods of A Delay and B Delay overlap by 136 days. However, Patentee's argument is based on the Office entering the requested 185-day increase in patent term adjustment under 37 C.F.R. § 1.702(a)(2). As previously discussed, an 185-day increase in patent term adjustment is not warranted under 37 C.F.R. § 1.702(a)(2). Therefore, the proper period of overlap remains 42 days.

Issue 4

The Office issued a restriction requirement on June 18, 2007.

A reply to the restriction requirement was filed July 17, 2007.

On October 30, 2007, the Office issued a notification pursuant to 37 C.F.R. § 1.135(c) informing Patentees the prior reply was not fully responsive.

A new reply was filed November 30, 2007.

Patentees assert the Office should have entered a 136-day reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(7).

Pursuant to 37 C.F.R. § 1.704(c)(7), circumstances that will result in a reduction in the period of adjustment include:

> Submission of a reply having an omission (§1.135(c)), in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed.

The number of days beginning on July 18, 2007, the day after the date the reply with an omission was filed, and ending on November 30, 2007, the date a paper correcting the omission was filed, is 136 days. Therefore, the Office agrees entry of a 136-day reduction in patent term adjustment is warranted under 37 C.F.R. § 1.704(c)(7).

Issue 5

The application was filed February 8, 2006. The application included 99 sheets of drawings.

The Office mailed a Notice to File Missing Parts of Nonprovisional Application on February 22, 2006. The notice stated,

> Replacement drawings in compliance with 37 CFR 1.84 and 37 CFR 1.121(d) are required. The drawings submitted are not acceptable because ... the drawings must be reasonably free from erasures and must be free from alterations, overwriting, interlineations, folds, and cop marks.

An amendment adding replacement drawings was filed April 24, 2006. Although Patentees relabeled Figure 84 as Figure 83 on sheet 93 of the drawings, Patentees did not inform the Office of this change to the drawings despite the requirement for a party to identify changes made to drawings set forth in 37 C.F.R. § 1.121(d). As a result of the change made by Patentees, both sheet 93 and sheet 95 included a figure labeled as Figure 83.

The Office issued a Notice of Allowance and a Notice of Allowability on September 29, 2009. The Notice of Allowability did not require the submission of new drawings.

The file includes an examiner initiated interview summary form dated November 4, 2009. The form indicates the examiner called Patentees' counsel on November 3, 2009, and informed

counsel that "due to an inadvertent error," the Office had failed to previously recognize the drawings filed April 24, 2006, included two figures labeled Figure 83. The form indicates the examiner encouraged counsel to file a replacement drawing sheet to correct the error in the drawings.

Patentees filed a replacement drawing sheet for sheet 93 on December 28, 2009.

The patent issued on May 25, 2010.

The Office entered a 120-day reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(10) based on the facts set forth above.

Patentees assert entry of the 120-day reduction in patent term adjustment was improper.

37 C.F.R. § 1.704(c)(10) states,

> [Upon] [s]ubmission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed ... the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:
> (i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper; or
> (ii) Four months.

The Office has explicitly recognized drawings filed after allowance will result in a reduction under 37 C.F.R. § 1.704(c)(10). *See* M.P.E.P. § 2732.

Patentees have failed to establish the drawing filed after allowance in this case should not result in a reduction in patent term adjustment even though the Office has explicitly recognized drawings filed after allowance will result in a reduction under 37 C.F.R. § 1.704(c)(10).

Patentees argue the drawing was requested by the examiner. However, such an argument is unpersuasive because 37 C.F.R. § 1.704(c)(10) does not include an exception for papers requested by an examiner.

Patentees appear to be arguing the drawing should not result in a reduction because the need to file the drawing after allowance was the result of an error by the Office. However, Patentees have failed to recognize the following conduct by Patentees' contributed to the need for the submission of a replacement drawing after allowance:

1. Patentees made an incorrect change to a drawing sheet when preparing replacement drawings to be filed in response to the February 22, 2006 Notice,
2. Patentees filed a drawing sheet with included an error on April 24, 2006,
3. Patentees failed to inform the Office Patentees had changed the label for one of the drawing figures despite the requirement under 37 C.F.R. § 1.121(d) for parties to identify changes made to drawings, and

4. Patentees failed to recognize the drawings contained an error during the entire time period from April 24, 2006, until November 3, 2009.

In view of the prior discussion, the Office's entry of a 120-day reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(10) based on Patentees filing a drawing after allowance was proper.

Issue 6

The application papers filed February 8, 2006, included a paper copy of a "Sequence Listing." The papers also included a request for the Office to use "the last-filed computer readable form filed in [Application No. 08/728,463]." The request stated, "Applicants submit that the computer readable form in the present application and the paper copy submitted herewith are identical pursuant to 37 CFR 1.821."

During the process of preparing the application for issuance as a patent, the Office appears to have recognized the computer readable form of the sequence listing last-filed in Application No. 08/728,463 was not identical to the paper copy submitted in the instant application on February 8, 2006.

The file includes an examiner initiated interview summary form dated March 23, 2010, which summarizes a March 17, 2010 telephonic interview. The form indicates the examiner requested Patentees' representative file an electronic copy of the sequence listing, which matches the paper copy.

Patentees' filed a replacement computer readable sequence listing on March 24, 2010.

A review of the record indicates the Office should have entered a reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(10) as a result of the submission of the March 24, 2010 computer readable sequence listing.

The number of days beginning on March 24, 2010, the date the replacement computer readable sequence listing was filed, and ending on May 25, 2005, the date the patent issued, is 63 days. A review of the record indicates 34 of the 63 days overlap with the period of delay resulting from the drawing filed December 28, 2009. Therefore, the Office should have entered a 29-day reduction under 37 C.F.R. § 1.704(c)(10) based on the replacement computer readable sequence listing filed March 24, 2010.

Conclusion

The proper period of A Delay is 42 days.

The proper period of B Delay is 471 days.

The periods of A Delay and B Delay overlap by 42 days.

The proper period of Applicant Delay is 410 days, which includes:

A. 59 days of delay under 37 C.F.R. § 1.704(b) based on delay in the submission of the March 23, 2007 reply,
B. 14 days of delay under 37 C.F.R. § 1.704(c)(8) based on the IDS filed April 6, 2007,
C. 27 days of delay under 37 C.F.R. § 1.704(b) based on delay in the submission of the July 24, 2008 reply,
D. 25 days of delay under 37 C.F.R. § 1.704(b) based on delay in the submission of the September 22, 2009 reply,
E. 120 days of delay under 37 C.F.R. § 1.704(c)(10) based on drawings filed December 28, 2009, **and**
F. 136 days of delay under 37 C.F.R. § 1.704(c)(7), and
G. 29 days of delay under 37 C.F.R. § 1.704(c)(10) based on the replacement computer readable sequence listing filed March 24, 2010.

The proper patent term adjustment is 61 days, which is the sum of 42 days of A Delay and 471 days of B Delay reduced by 42 days of overlap and 410 days of Applicant Delay.

The Office acknowledges submission of the $200.00 fee set forth in 37 C.F.R. § 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the patent is extended or adjusted by sixty-one (61) days.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO.	:	7,722,873 B2
APPLICATION NO.	:	11/349,724
DATED	:	May 25, 2010
INVENTOR(S)	:	Nils Lonberg et al.

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the Title page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 226 days.

Delete the phrase "by 226 days" and insert -- by 61 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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BOSTON, MA 02109

MAILED
APR 27 2011
OFFICE OF PETITIONS

In re Patent of Nils Lonberg et al.	:	
Patent No. 7,722,873	:	
Issue Date: May 25, 2010	:	DECISION ON PETITION
Application No. 11/349,724	:	
Filing Date: February 8, 2006	:	
Attorney Docket No. GMI-056CN	:	

This is a decision on the "Petition and Request for Reconsideration of Patent Term Adjustment," request filed February 7, 2011.

The petition is **dismissed**.

Background

A petition under 37 C.F.R. § 1.705(d) was filed July 23, 2010. The Office issued a decision on the petition on January 7, 2011. The decision stated,

> The application was filed February 8, 2006.
>
> The Office issued a restriction requirement on October 23, 2006.
>
> A reply to the restriction requirement was filed March 23, 2007.
>
> An information disclosure statement ("IDS") was filed April 6, 2007.
>
> The Office issued a second restriction requirement on June 18, 2007, which stated,
>
> > [U]pon reconsideration, the previous Requirement Restriction of October 23, 2006 is hereby VACATED.
> >
> > A new Restriction requirement and election of species is put forth below.

The June 18, 2007 restriction requirement is signed by Patent Examiner Zachary Skelding and Primary Examiner Phillip Gambel.

Patentees assert:

1. The Office should have entered a 71-day increase in patent term adjustment for delay under 37 C.F.R. § 1.702(a)(1);
2. The Office should not have entered a 59-day reduction in patent term adjustment under 37 C.F.R. § 1.704(b) based on delay in the submission of the March 23, 2007 reply; and
3. The Office should not have entered a 14-day reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(8) based on the IDS filed April 6, 2007.

Patentees' three assertions identified above are based on an argument the October 23, 2006 restriction requirement was vacated. Therefore, the Office must determine whether or not the October 23, 2006 requirement was vacated.

Group Directors in Technology Centers have the authority to vacate Office actions. Examiners, including Primary Examiners, do *not* have the authority to vacate Office actions. The record fails to indicate the October 23, 2006 restriction requirement was ever vacated by a Group Director and neither Patent Examiner Zachary Skelding nor Primary Examiner Phillip Gambel has the authority to vacate an Office action. Therefore, the October 23, 2006 restriction requirement was not vacated.

Since the October 23, 2006 restriction requirement was not vacated,

1. A restriction requirement was mailed within 14 months of the filing date and an increase in patent term adjustment for delay under 37 C.F.R. § 1.702(a)(1) is not warranted;
2. The 59-day reduction in patent term adjustment under 37 C.F.R. § 1.704(b) was proper because a reply to the October 23, 2006 restriction was not filed until March 23, 2007, which was three months and 59 days after the Office issued the October 23, 2006 restriction requirement; and
3. The 14-day reduction in patent term adjustment based on the IDS filed April 6, 2007, was proper because:
   A. The IDS was filed 14 days after the March 23, 2007 reply,
   B. The IDS did not include a statement under 37 C.F.R. § 1.704(d), and
   C. The record fails to indicate the examiner expressly requested submission of the IDS.

Attorney Jill Sloper subsequently contacted the undersigned by telephone to discuss the January 7, 2001 decision. During the telephone conversation, the undersigned stated he was unaware of any specific section of the M.P.E.P. which addresses the identity of employees who can, or cannot, vacate Office actions. The undersigned also stated he was unaware of any M.P.E.P. section defining the terms "vacate" or "vacated." The undersigned informed Attorney Sloper the context of the use of the term "vacated" should be considered when defining the term. The undersigned stated an assumption examiners intend for "vacated" to have the same meaning she attributes to the term when the examiners use the term in an Office action is unwarranted. The undersigned informed Attorney Sloper many examiners intend for the term "vacated" to have the same meaning as the term "withdrawn."

The instant petition states,

> As defined in Merriam Webster's online dictionary, the term "vacate" means "to make legally void : annul" (see http:www.merriam-webster.com/dictionary/vacate). Accordingly, a Restriction Requirement that is deemed "vacated" (*i.e.*, due to an error on the part of the Office) is legally void and cannot constitute a first action for purposes of calculating the "14 Month Rule."

The instant petition argues:

1. The Office should have entered a 71-day increase in patent term adjustment for delay under 37 C.F.R. § 1.702(a)(1);
2. The Office should not have entered a 59-day reduction in patent term adjustment under 37 C.F.R. § 1.704(b) based on delay in the submission of the March 23, 2007 reply; and
3. The Office should not have entered a 14-day reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(8) based on the IDS filed April 6, 2007.

Discussion

In essence, Patentees seek to have the Office ignore the existence of the October 26, 2006 Restriction Requirement when calculating the patent term adjustment for the patent.

The arguments in the petition have been considered but are not persuasive.

The vacatur of an Office action sets aside or withdraws any rejection, objection or requirement in an Office action, as well as the requirement that the applicant timely reply to the Office action to avoid abandonment under 35 U.S.C. § 133. The vacatur of an Office action also signifies the Office action has been set aside, voided, or withdrawn as of the date of the vacating Office action or notice. The vacatur of an Office action, however, does **not** signify that the vacated Office action is void *ab initio* and is to be treated as if the USPTO had never issued the Office action. The patent examination process provided for in 35 U.S.C. §§ 131 and 132 contemplates that Office actions containing rejections, objections or requirements will be issued, and that the applicant will respond to these Office action, "with or without amendment." (35 U.S.C. § 132(a)). The mere fact that an examiner or other USPTO employee upon further reflection determines an Office action, or that a rejection, objection or requirement in an Office action, is

not correct and must be removed does not warrant treating the Office action as void *ab initio* and as if the Office had never issued the Office action.

The Office appreciates that there are situations in which it is appropriate to treat an Office action or notice issued in an application as void *ab initio* and as if the Office had never issued the Office action. However, these are extremely rare situations, such as the issuance of an Office action or notice by an employee who does not have the authority to issue that type of Office action or notice, the issuance an Office action or notice in the wrong application, or the issuance of an Office action or notice containing language not appropriate for inclusion in an official document. In essence, the situations in which it is appropriate to treat an Office action or notice issued in an application as void *ab initio* and as if the Office had never issued the Office action are the situations in which it is appropriate to expunge an Office action or notice from the Office's record of the application. That is simply **not** the case in this situation.

The 8-page Office action mailed October 23, 2006, set forth a restriction requirement and the reasons for the requirement. Patentee's reply requested "reconsideration of the restriction requirement to the extent that Groups I and V be rejoined and that anti-CD4 antibodies 10C5, 6G5, and 4D1 be rejoined and grouped as species." After consideration of the arguments in the reply, the Office determined it was appropriate to have the examiner issue a new Office action with a revised restriction requirement. However, the Office never determined the October 23, 2006 Office action should be expunged.

Pursuant to 35 U.S.C. § 154(b)(1)(A)(i), Patentees are entitled to day-to-day adjustment if the USPTO delays the issuance of a patent by failing to issue a Notice of Allowance or an Office action under 35 U.S.C. § 132 within 14 months oft the date on which an application was filed under 35 U.S.C. § 111(a) or the date on which an international application fulfilled the requirements of 35 U.S.C. § 371. The record of the above-identified patent indisputably indicates that the USPTO mailed an Office action under 35 U.S.C. § 132 on October 23, 2006, within 14 months of the date the application was filed under 37 C.F.R. § 111(a). The fact that the Office later set aside the non-final Office action of August 24, 2009 does not negate the fact that the Office filed an Office action under 35 U.S.C. § 132 within the meaning of 35 U.S.C. § 154(b)(1)(A)(i) and 37 C.F.R. § 1.702(a)(1) on October 26, 2006. Unless expunged from the record (which is not warranted in this situation), for purposes of calculating patent term adjustment, the Office action mailed by the examiner on October 26, 2006, was properly used to determine whether the USPTO delayed the issuance of the above-identified patent by failing to respond to the reply of May 6, 2009 within four months from the filing of the reply under of 35 U.S.C. § 154(b)(1)(A)(i) and 37 CFR 1.702(a)(1). See *Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term*, 65 *Fed. Reg.* 54366 (Sept. 18, 2000) (final rule).

Patentees did not file a reply to October 23, 2006 Office action until 3 months and 59 days after the Office issued the Office action. Therefore, the 59-day reduction in patent term adjustment under 37 C.F.R. § 1.704(b) is proper.

Patentees filed an IDS on April 6, 2007, 14 days after filing a reply to a 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 submission of the IDS. Therefore, the 14-day reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(8) is proper.

Conclusion

The decision mailed January 7, 2011, stated the correct patent term adjustment for the patent is 61 days. The instant petition fails to establish the 61-day determination is incorrect. Therefore, the petition is dismissed and a certificate of correction setting forth a patent term adjustment determination of 61 days will be issued.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the patent is extended or adjusted by sixty-one (61) days.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO.	:	7,722,873 B2
APPLICATION NO.	:	11/349,724
DATED	:	May 25, 2010
INVENTOR(S)	:	Nils Lonberg et al.

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the Title page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 226 days.

Delete the phrase "by 226 days" and insert -- by 61 days--

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MAILED

AUG 29 2011

OFFICE OF PETITIONS

In re Application of :
BOBBY PURKAIT :
Application No. 11/349,750 : DECISION ON PETITION
Filed: February 8, 2006 :
Attorney Docket No. 8202P001 :

This is a decision on the petition, filed February 1, 2011, to expunge information from an application and to correct the file contents above identified application. The petition will be considered under 37 CFR 1.59(b).

The petition is **GRANTED**.

Petitioner, in substance, requests that the instant application contents be corrected to show that the communication to the Office November 18, 2010, was designated to be scanned into an unrelated application pending in the Office.

A review of the file indicates that sufficient status identifiers were submitted with the communication filed November 18, 2010, to demonstrate a response designated for another application. The copy of the submitted response filed with the petition has been scanning into the correct application file. Accordingly, the petition is granted.

In a paper file, the unintentionally submitted exhibits could, but not necessarily would, have been physically removed from the file wrapper and returned to applicant. In the IFW realm the corresponding action(s) is to close the document and also remove such from the listing of "Publicly available Documents." It is agreed that it would be appropriate in this instance to close the information in application serial no. 11/349,750 that was erroneously filed in the above identified application, and also remove such from the listing of publicly available documents for this Image File Wrapper (IFW).

Applicant is required to retain the expunged material(s) for the life of any patent which issues on the above-identified application.

Telephone inquiries concerning this communication should be directed to the undersigned at 571-272-0602.

Thurman K. Page
Petitions Examiner
Office of Petitions

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Paper No.

SHERRILL LAW OFFICES
4756 BANNING AVE
SUITE 212
WHITE BEAR LAKE MN 55110-3205

MAILED

SEP 08 2011

OFFICE OF PETITIONS

In re Application of	:	
Mayer et al.	:	DECISION ON PETITION
Application No. 11/349,824	:	
Filed: February 8, 2006	:	
Atty Docket No. MCN235USPT01	:	

This is in response to the PETITION Under 37 C.F.R. §1.182 filed August 19, 2011.

The request is **DISMISSED AS UNTIMELY FILED**.

Any request for reconsideration must be filed within **TWO MONTHS** from the mail date of this decision. This period is governed by 37 CFR 1.181(f) and is not extendable.

Applicant requests a refund in the amount of $525, on the basis that no extension of time fee was due at the time the Notice of Appeal was filed on January 10, 2008. This fee was paid on January 10, 2008.

37 CFR § 1.26 provides, in pertinent part, that:

> (b) Any request for refund must be filed within two years from the date the fee was paid, except as otherwise provided in this paragraph or in § 1.28(a). If the Office charges a deposit account by an amount other than an amount specifically indicated in an authorization (§ 1.25(b)), any request for refund based upon such charge must be filed within two years from the date of the deposit account statement indicating such charge, and include a copy of that deposit account statement. The time periods set forth in this paragraph are not extendable.

This request for refund is not directed to a change in entity status or based on the Office charging an amount other than an amount authorized as shown on a deposit account statement. Pursuant to 37 CFR 1.26(b), the 2-year period for filing this request for refund expired on (Monday) January 11, 2010. Thus, it is appropriate to dismiss this petition as untimely filed without consideration on the merits.

Nonetheless, it is appropriate to advise petitioner that their reading of the applicable policy is not correct. The period for reply *for purposes of determining the amount of any extension fee* will be the date on which the Office mails the advisory action advising applicant of the status of the application only where the advisory action is mailed within the six month period and only for purposes of the calculation of the extension of time fee. Petitioner needs to read this policy in conjunction with the requirement that in no event can the period extend beyond 6 months from the date of the final rejection. The 6 month period is statutory. As such, the period of extension of time cannot be extended beyond six months from the mailing of the final rejection regardless of the date of the mailing of the advisory action. Certainly, an advisory action mailed after the expiration of the 6-month statutory period cannot afford applicant an additional extension of time for reply. At the end of the 6-month statutory period, absent the filing of a proper reply, made timely by the proper payment of an extension of time (calculated based either on the end date of the shortened statutory period or the date of mailing of the advisory action), the application will by operation of law become abandoned. In this instance, the extension of time for response within the third month was necessary to avoid abandonment of the application and as such, is not subject to refund.

This petition is filed in a patented case. No further action is necessary.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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NIXON PEABODY, LLP
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WASHINGTON DC 20004-2128

MAILED
JUN 10 2011
OFFICE OF PETITIONS

In re Patent No. 7,868,556 :
Issued: January 11, 2011 :
Application No. 11/350,022 : ON PETITION
Filed: February 8, 2006 :
Attorney Docket No: 048638-004000 :

This is a decision regarding your request under 37 CFR 1.28. for acceptance of a fee deficiency submission filed May 10, 2011.

On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc.. 154 F.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 $820, 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

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MAY 05 2011

OFFICE OF PETITIONS

In re Application of	:	
Eronen et al.	:	
Application No. 11/350087	:	ON REQUEST FOR
Filing or 371(c) Date: 02/09/2006	:	RECONSIDERATION OF
Atty Docket No.:	:	PATENT TERM ADJUSTMENT
088245-1057	:	

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b), filed March 31, 2011. Applicant submits that the proper patent term adjustment to be indicated on the patent is 1019 days, not 736 days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicant requests this correction solely on the basis that the Office will take in excess of three years to issue this patent. The application for patent term adjustment is properly treated under 37 C.F.R. § 1.705(b).

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and ***must*** include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

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[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

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AUG 09 2010

OFFICE OF PETITIONS

CHAN LAW GROUP LLP
1055 W. 7TH ST,
SUITE 1880
LOS ANGELES CA 90017

In re Application of

CHU, David
Application No. 11/350,223
Filed: February 08, 2006
Attorney Docket No. **1258.701**

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed June 15, 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 Lisa Karczewski on behalf of all attorneys of record who are associated with customer No. 26129. All attorneys/agents associated with the Customer Number 26129 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the inventor David Chu at the address indicated below. There is an outstanding Office action mailed March 02, 2010 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at 571-272-2783.

/Tredelle D. Jackson/
Paralegal Specialist
Office of Petitions

cc: **DAVID CHU**
416 W. TUNAS DRIVE, #203
SAN GABRIEL CA 91776

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11/22/10

TO SPE OF : ART UNIT 2626

SUBJECT : Request for Certificate of Correction for Appl. No.: 11350234 Patent No.: 7720682

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: The changes are denied because the certificate of correction designates an incorrect patent number (the certificate indicates number 7,720,692, but should designate 7,720,682). The changes would be approved with a designation of the appropriate patent number.

/James S. Wozniak/ 2626

SPE **Art Unit**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

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Sunstein Kann Murphy & Timbers LLP
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BOSTON MA 02110-1618

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NOV 19 2010

OFFICE OF PETITIONS

In re Application of:	: ON RESPONSE TO
Li et al.	: DECISION
Pat. No.: 7,713,969	: ON REQUEST FOR
Issue Date: 05/11/2010	: RECONSIDERATION OF
Application No. 11/350335	: PATENT TERM ADJUSTMENT
Filing or 371(c) Date: 02/09/2006	:
Atty. Docket No.: AQ0111US:3206/116	:

This is a decision in response to the "RESPONSE TO DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT," filed August 6, 2010. Patentees request reconsideration of the determination of patent term adjustment reduction of one (1) day attributed to Patentees in connection with the filing of a reply to a non-final Office action on November 12, 2009, three months and one (1) day after the Office action was mailed. The "RESPONSE TO DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT," is properly treated as a renewed petition under 37 C.F.R. § 1.705(d).

The request for reconsideration of patent term adjustment is **DISMISSED.**

On May 11, 2010, the above-identified application matured into U.S. Patent No. 7,713,969. The patent issued with a PTA of 1127 days.

Patentee re-asserts that the period of delay of one (1) day attributed to Patentees in connection with the filing of a reply to a non-final Office action on November 12, 2009, three months and one (1) day after the Office action was mailed, is not a failure to engage in reasonable efforts to conclude processing or examination of the application because the Office was closed on November 11, 2009, and Patentees therefore did not take any time away from the prosecution of the application. Patentee avers that this deduction is contrary to the text of 35 U.S.C. § 154(b)(2)(C)(i-ii) and the intent of Congress. Petition at p.3.

Patentees' arguments have again been carefully considered. Patentees attention is directed to 35 U.S.C. § 154(b)(2)(C)(ii), which establishes the standard of reply by applicants to within three months of the date a notice is given or mailed to applicants. This section states:

> (ii) 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. (Emphasis supplied).

Patentee is reminded that the use of "shall" appears in 35 USC § 154(b)(2)(C)(ii), pertaining to what is deemed as the failure of an applicant to engage in reasonable efforts to conclude prosecution of an application. It is well settled that the use of "shall" in a statute is the language of command, and where the directions of a statute are mandatory, strict compliance with the statutory terms is essential. Farrel Corp. v. U.S. Int'l Trade Comm'n, 942 F.2d 1147, 20 USPQ2d 1912 (Fed. Cir. 1991). That is, it is mandatory that the Director deem any period of time in excess of three (3) months taken to respond to the Office action a failure to engage in reasonable efforts to conclude prosecution of the application. The language of the statute does not permit the Director any discretion with respect to whether "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," is a failure to engage in reasonable efforts to conclude prosecution of the application.

Consistent with the statute, the applicable Rule, 37 CFR 1.703(f), informs applicants 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[1]. In accordance with 37 CFR 1.703(f), the Office properly used November 12, 2009, the filing date of the reply to the non-final Office action, in calculating the patent term adjustment.

Patentee attempts to conflate the failure to engage in reasonable efforts to conclude prosecution of the application, with whether an applicant "take[s] any excess period of time away from the prosecution...." Petition at p.3. However, the failure to engage in reasonable efforts to conclude prosecution of an application is defined by statute as any period of time in excess of three (3) months taken to respond to a notice from this Office, and not whether any period of time was taken away from prosecution.

In view thereof, it is concluded that the patent correctly issued with a revised Patent Term Adjustment of one thousand one hundred twenty-seven (1127) days. Given that there is no change in the Patent Term Adjustment, it is determined that no further action is required by the Office at this time.

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[1] It is also noted that the reply was filed using the Electronic Filing System ("EFS"). Petitioner's attention is directed to 37 CFR 1.6(d).

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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OFFICE OF PETITIONS

Sunstein Kann Murphy & Timbers LLP
125 Summer Street
Boston, MA 02110-1618

In re Patent No. 7,713,969	:
Li et al.	:DECISION AFTER OPINION
Issue Date: May 11, 2010	:GRANTING PATENT TERM
Application No. 11/350,335	:ADJUSTMENT
Filed: February 9, 2006	:AND NOTICE OF INTENT
Attorney Docket No.	:TO ISSUE CERTIFICATE OF
AQ0111US:3206/116	:CORRECTION
Title: Compositions and Methods	:
for Treatment of Cancer	

This decision is in response to a Memorandum Opinion issued by the District Court for the District of Columbia on June 22, 2011 (civil action number 10-1904(ESH))granting plaintiffs request for a patent term adjustment determination of 1128 days.

The patent term adjustment indicated on the above-identified patent has been recalculated as directed by the Court. The term of the above-identified patent is extended or adjusted by one thousand one hundred and twenty-eight (1128) days.

The application is being forwarded to the Certificates Branch for issuance of a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one thousand one hundred and twenty-eight (1128) 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

Enclosure: Copy of DRAFT Certificate of Correction
Copy of adjusted PTA calculation

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,713,969 B2

DATED : **May 11, 2010** **DRAFT**

INVENTOR(S) : Li et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 1127 days

Delete the phrase "by 1127 days" and insert – by 1128 days--

Patent Term Adjustments

PTA/PTE Information | Patent Term Adjustment | Patent Term Extension

Application Number*: 11350335 Search | Explanation of PTA Calculation | Explanation of PTE Calculation

PTA Calculations for Application: 11350335

Application Filing Date	02/09/2006	OverLapping Days Between (A and B) or (A and C)	3
Issue Date of Patent	05/11/2010	Non-Overlapping USPTO Delays:	1128
A Delays	675	PTO Manual Adjustment	1
B Delays	456	Applicant Delay (APPL)	1
C Delays	0	Total PTA (days)	1128

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
73	07/19/2011		P028	Adjustment of PTA Calculation by PTO	1		0
65	07/08/2010		P026	Record a Petition Decision of Granted for Patent Term Adjustment after Issue			0
62.5	05/11/2010	02/09/2009	PTA36M	PTA 36 Months	456		0
62	05/11/2010		PTAC	Patent Issue Date Used in PTA Calculation			0
61	04/12/2010		EFDC	Export to Final Data Capture			0
60	04/09/2010		D1935	Dispatch to FDC			0
58	03/23/2010		PILS	Application Is Considered Ready for Issue			0
59	03/15/2010		PET.	Petition Entered			0
57	03/15/2010		N084	Issue Fee Payment Verified			0
55	03/15/2010		IFEE	Issue Fee Payment Received			0
54	03/05/2010		FIDC	Finished Initial Data Capture			0
53	12/22/2009		EIDC	Export to Initial Data Capture			0
51	12/15/2009		MN/=.	Mail Notice of Allowance			0
50	12/11/2009		IREV	Issue Revision Completed			0
49	12/11/2009		DVER	Document Verification			0
48	12/11/2009		N/=.	Notice of Allowance Data Verification Completed			0
47	12/11/2009		DOCK	Case Docketed to Examiner in GAU			0
46	12/11/2009		EX.A	Examiner's Amendment Communication			0
45	12/11/2009		CNTA	Allowability Notice			0
40	11/23/2009		FWDX	Date Forwarded to Examiner			0
44	11/12/2009		IDSC	Information Disclosure Statement considered			0
43	11/12/2009		IDSC	Information Disclosure Statement considered			0
42	11/12/2009		RCAP	Reference capture on IDS			0
41	11/12/2009	11/12/2009	M844	Information Disclosure Statement (IDS) Filed			39
39	11/12/2009	11/11/2009	A...	Response after Non-Final Action		1	36
38	11/12/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
37	11/12/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
36	08/11/2009	08/09/2009	MCTNF	Mail Non-Final Rejection	2		30
35	08/10/2009		CTNF	Non-Final Rejection			0
31	06/02/2009		FWDX	Date Forwarded to Examiner			0
30	04/09/2009		ELC.	Response to Election / Restriction Filed			0
29	04/09/2009		XT/G	Request for Extension of Time - Granted			0
28	02/10/2009	04/09/2007	MCTRS	Mail Restriction Requirement	673		-1
27	02/05/2009		CTRS	Restriction/Election Requirement			0
21	07/02/2008		PA..	Change in Power of Attorney (May Include Associate POA)			0
20	07/01/2008		C.AD	Correspondence Address Change			0
19	06/27/2008		C.AD	Correspondence Address Change			0
32	11/08/2007		IDSC	Information Disclosure Statement considered			0
22	11/08/2007		WIDS	Information Disclosure Statement (IDS) Filed			0
18	11/08/2007		RCAP	Reference capture on IDS			0
17	11/08/2007		M844	Information Disclosure Statement (IDS) Filed			0
33	06/25/2007		IDSC	Information Disclosure Statement considered			0
15	06/25/2007		WIDS	Information Disclosure Statement (IDS) Filed			0
34	02/20/2007		IDSC	Information Disclosure Statement considered			0
14	02/20/2007		RCAP	Reference capture on IDS			0
13.7	02/20/2007		M844	Information Disclosure Statement (IDS) Filed			0
13	02/20/2007		WIDS	Information Disclosure Statement (IDS) Filed			0
12	07/03/2006		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
11	07/03/2006		DOCK	Case Docketed to Examiner in GAU			0
10	06/28/2006		OIPE	Application Dispatched from OIPE			0
9	06/28/2006		COMP	Application Is Now Complete			0
8	06/16/2006		ADDFLFEE	Additional Application Filing Fees			0
7	06/16/2006		OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic			0
6	03/17/2006		INCD	Notice Mailed--Application Incomplete--Filing Date Assigned			0

5	03/14/2006	L128	Cleared by L&R (LARS)	0
4	03/03/2006	L198	Referred to Level 2 (LARS) by OIPE CSR	0
3	03/03/2006	CLSS	CASE CLASSIFIED BY OIPE	0
2	02/17/2006	SCAN	IFW Scan & PACR Auto Security Review	0
1	02/09/2006	IEXX	Initial Exam Team nn	0

Export to: Excel

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MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

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SEP 20 2010

OFFICE OF PETITIONS

In re Application of :
Su et al. :
Application No. 11/350,419 :
Filed: February 9, 2006 :
Attorney Docket No. 16417US01 :
Title: METHOD AND SYSTEM FOR :
MINIMUM MEAN SQUARED ERROR SOFT :
INTERFERENCE CANCELLATION :
(MMSE-SIC) BASED SUBOPTIMAL :
MAXIMUM LIKELIHOOD (ML) :
DETECTION FOR MULTIPLE INPUT :
MULTIPLE OUTPUT (MIMO) WIRELESS :
SYSTEM :

ON APPLICATION FOR
PATENT TERM ADJUSTMENT

This is in response to the "APPLICATION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT DETERMINATION UNDER 35 U.S.C. 154(b) ACCOMPANYING THE NOTICE OF ALLOWANCE (37 CFR § 1.705)" filed July 21, 2010. Applicants submit that the correct patent term adjustment to be indicated on the patent is one thousand one hundred forty-six (1,146) days, not five hundred twenty-five (525) 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.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office cannot make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

---

[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the

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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OFFICE OF PETITIONS

MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

In re Patent No. 7,817,740	
Su et al.	DECISION ON REQUEST FOR
Issue Date: October 19, 2010	RECONSIDERATION OF
Application No. 11/350,419	PATENT TERM ADJUSTMENT
Filed: February 9, 2006	
Attorney Docket No. 16417US01	
Title: METHOD AND SYSTEM FOR MINIMUM MEAN SQUARED ERROR SOFT INTERFERENCE CANCELLATION (MMSE-SIC) BASED SUBOPTIMAL MAXIMUM LIKELIHOOD (ML) DETECTION FOR MULTIPLE INPUT MULTIPLE OUTPUT (MIMO) WIRELESS SYSTEM	

This is a decision on the petition filed under 37 CFR 1.705(d) on December 7, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand one hundred twenty-five (1125) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **DISMISSED.**

Patentee's dispute the period of time excluded from B delay for appellate review. Patentee's argument has been considered, but not found persuasive. The period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). An appeal to the Board of Patent Appeals and Interferences commences with the filing of a notice of appeal. See 35 U.S.C. 134(a). Generally, an appeal to the Board of Patent Appeals and Interferences ends with either 1) a Board decision, 2) the examiner reopening prosecution and issuing another Office action, or 3) the

applicant filing a request to withdraw the appeal and reopen prosecution (e.g. the filing of a request for continued examination). In this instance the period consumed by appellate review is 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, B delay is 592 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 § 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

Charlema Grant
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Patent No. : **7619309**
Ser. No. :**11/350518**
Inventor(s) : **DREXL, STEFAN**
Issued : **11/17/2009**
Title : **INTEGRATED CONNECTION ARRANGEMENTS**
Docket No. : **10808-298**

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322 and/or 1.323.

In regards to the alleged error(s) on the Cover Page, Item 75, the 6th named inventor's name is printed in accordance with the Oath of Declaration filed on 5-9-06 by the attorney/applicant. A Petition under 1.182 is required to correct the applicant's error in the spelling of an inventor.

In view of the foregoing, your request, in this matter, is hereby denied.

The Petition should be submitted by one of the following options:

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

Omega Lewis
For Mary Diggs
Decisions & Certificates
Of Correction Branch

(703)756-1575 or (703) 756-1814

John A. Lingl
BRINKS HOFER GILSON & LIONE
PO Box 10395
Chicago, Illinois 60610

OL

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : March 14, 2012

TO SPE OF : ART UNIT 2159

SUBJECT : Request for Certificate of Correction for Appl. No.: 11350646 Patent No.: 7580930

CofC mailroom date: December 29, 2010

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Certificates of Correction Branch
703-756-1814

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☐ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☒ **Denied** — State the reasons for denial below.

Comments: The request for the C of C is based on Applicant's mistake: not meeting the timing requirements set forth by 37 CFR 1.97, and filing RCE and IDS without the Petition required under 1.313 to withdraw from issue. The The C of C request does not meet the two statutory requirements for Certificate of Correction of Applicant's mistake set forth in MPEP 1481. The RCE filed after the issue fee is not proper without a Petition to withdraw from issue. So, RCE was just placed in file, along with the

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

submissions. IDS after payment of issue fee has been placed in file, not considered.

2159

JAMES K. TRUJILLO
SUPERVISORY PATENT EXAMINER

SPE Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : March 14, 2012

TO SPE OF : ART UNIT 2159

SUBJECT : Request for Certificate of Correction for Appl. No.: 11350646 Patent No.: 7580930

CofC mailroom date: December 29, 2010

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Certificates of Correction Branch
703-756-1814

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☐ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☒ **Denied** — State the reasons for denial below.

Comments: The request for the C of C is based on Applicant's mistake; not meeting the timing requirements set forth by 37 CFR 1.97, and filing RCE and IDS without the Petition required under 1.313 to withdraw from issue. The The C of C request does not meet the two statutory requirements for Certificate of Correction of Applicant's mistake set forth in MPEP 1481. The RCE filed after the issue fee is not proper without a Petition to withdraw from issue. So, RCE was just placed in file, along with the

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

submissions. IDS after payment of issue fee has been placed in file, not considered.

2159

JAMES K. TRUJILLO
SUPERVISORY PATENT EXAMINER

SPE Art Unit

UNITED STATES DEPARTMENT OF COMMERCE
COMMISSIONER FOR PATENTS
P. O. BOX 1450
ALEXANDRIA, VA 22313-1450

Date	: 3/14/2012
Patent No.	: 7,580,930
Serial No.	: 11/350,646
Inventor(s)	: Brave et al.
Issue Date	: August 25, 2009
Title	: **METHOD AND APPARATUS FOR PREDICTING DESTINATIONS IN A NAVIGATION CONTEXT BASED UPON OBSERVED USAGE PATTERNS**
File No.	: **BAYN-01100**

Re: Consideration for Certificate of Correction

Consideration has been given your request for a certificate of correction, for the above-identified patent under the provisions of Rule 1.322.

Respecting the alleged error in your request, after further examination, your request has been denied. See attached examiner's report for complete explanation of findings. No correction is in order here.

Further consideration will be given concerning this matter upon receipt of a request for **Reconsideration** (reconsideration should be accompanied by supporting document(s) such as, amendment, postcard receipt, 1449/892, etc.) and should be filed and directed to Decisions & Certificates of Correction Branch.

Ernest C. White, *LIE* (571) 572-3385
Mary F. Diggs, *Supervisor* (703) 756-1580
Decisions & Certificates of Correction Branch
ernest.white@uspto.gov

Stevens Law Group
1754 Technology Drive
Suite #226
San Jose CA 95110

ECW

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450

QUALCOMM INCORPORATED
5775 MOREHOUSE DRIVE
SAN DIEGO, CALIFORNIA 92121

MAILED

JAN 24 2011

OFFICE OF PETITIONS

In re Application of	:	
Chia-Yuan TENG et al.	:	DECISION GRANTING PETITION
Application No. 11/350,666	:	UNDER 37 CFR 1.181
Filed: 8 February 2006	:	
Atty Docket No. 060039	:	

This is a decision on the renewed petition, filed 31 August 2010, which is being treated as a petition under 37 CFR 1.181 requesting withdrawal of the abandonment in the above-identified application.

The Petition is **GRANTED**.

The above-identified application was held abandoned for failure to reply in a timely manner to the Notice to File Missing Parts ("Notice") mailed 8 March 2006, which set a statutory period for reply of two (2) months. A Notice of Abandonment was mailed 16 November 2006.

In the petition filed 13 December 2006, Petitioner asserts that the Notice was not received. In the renewed petition, Petitioner has provided further evidence and assertion of the Notice not being received.

In the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not, in fact, received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner;

2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received ; and

3. a copy of the docket record where the non-received Office action would have been entered had it been received must be attached to and referenced in the practioner's statement. *See*, MPEP §711.03(c) under subheading 'Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action' and 'Withdrawing the Holding

of Abandonment When Office Actions are Not Received,' 1156 Official Gazette 53 (16 November 1993).

As the instant petition satisfies the indicated requirements, the holding of abandonment is withdrawn and the application is restored to pending status.

General inquiries relating to this decision should be directed to Robert DeWitty, Petitions Examiner, Office of Petitions (571-272-6051), or, if unavailable, the undersigned at 571-272-7099.

The application file will be referred to the Office of Patent Application Processing for further processing.

David Bucci
Petitions Examiner
Office of Petitions

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United States Patent and Trademark Office
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APR 11 2011

PCT LEGAL ADMINISTRATION

MORRISON & FOERSTER LLP
755 PAGE MILL RD
PALO ALTO CA 94304-1018

In re Application of BRIDON et al.	:	
US Patent No.: 7,741,286	:	
Application No.: 11/350,703	:	DECISION ON PETITION
Filing Date: 08 February 2006	:	
Attorney Docket No.: 655772001501	:	UNDER 37 CFR 1.78(a)(3)
For: LONG LASTING ANTI-ANGIOGENIC PEPTIDES	:	

This is a decision on the "Petition to Accept an Unintentionally Delayed Claim for the For Priority Under 37 CFR 1.78(a)(3)", filed 12 August 2010, to "accept an unintentionally delayed claim for benefit of a prior-filed nonprovisional application." Petitioner seeks to correct the incorrect recitation of the filing date of international application PCT/IB00/00763. Petitioner also submitted a Certificate of Correction.

37 CFR 1.78(a)(2)(i) states, in pertinent part:

> *(2)(i)Except for a continued prosecution application filed under § 1.53(d), any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending nonprovisional applications or international applications designating the United States of America must contain or be amended to contain a reference to each such prior-filed application,* ***identifying it by application number (consisting of the series code and serial number) or international application number and international filing date*** *and indicating the relationship of the applications.* (Emphasis added)

In the present case, a preliminary amendment and application data sheet (ADS) were filed on 08 February 2006, which identified application 11/350,703 as "a continuation of U.S. Application 09/623,543 filed on September 5, 2000, which is a National Stage of PCT/IB00/00763 filed on May 15, 2000...." While the international filing date was incorrectly identified (the correct international filing date is May **17**, 2000) the benefit claim nevertheless complied with the reference requirement of 37 CFR 1.78(a)(2)(i), as the parent national stage application is identified by "application number", and the relationship of the applications provided.

Accordingly, the petition is **DISMISSED AS MOOT**. The petition fee of $1410 (fee code 1454) will be refunded in due course.

Any questions concerning this matter may be directed to Cynthia Kratz at (571) 272-3286.

This matter is being referred to the Certificate of Corrections Branch for appropriate action on the Request for Certificate of Correction filed 12 August 2010.

/Boris Milef/

Boris Milef
PCT Legal Examiner
Office of PCT Legal Administration

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110707

DATE : September 14, 2010

TO SPE OF : ART UNIT 1642

SUBJECT : Request for Certificate of Correction on Patent No.: 7,741,286

A response is requested with respect to the accompanying request for a certificate of correction.

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - ST (South Tower) 9A22
Palm location **7590** - Tel. No. (703) 305-8309

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Thank You For Your Assistance **Certificates of Correction Branch**

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriated box.

☒ **Approved** All changes apply.

☐ **Approved in Part** Specify below which changes **do not** apply.

☐ **Denied** State the reasons for denial below.

Comments:

/MISOOK YU/
Supervisory Patent Examiner.Art Unit 1642

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/350,899	02/10/2006	Masaki Shima	SAN.002.0001.NP	2670

58789 7590 12/17/2010
NDQ&M WATCHSTONE LLP
300 NEW JERSEY AVENUE, NW
FIFTH FLOOR
WASHINGTON, DC 20001

EXAMINER
BERDICHEVSKY, MIRIAM

ART UNIT	PAPER NUMBER
1723	

MAIL DATE	DELIVERY MODE
12/17/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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wk

Mailed: DEC 17 2010

In re application of	:	
Shima	:	DECISION ON
Serial No. 11/350,899	:	PETITION
Filed: February 10, 2006	:	
For: Photovoltaic Device		

This is a decision on the PETITION FILED UNDER 37 CFR 1.181 on October 7, 2010 to withdraw the Finality of the Office Action mailed July 20, 2010. Applicant filed a request for withdrawal of finality on September 20, 2010. The Examiner in an Advisory Action on September 20, 2010 refused to withdraw the Finality of the Office Action.

Claims 1-22 were originally pending in the application with claims 1-11 withdrawn from consideration. Claims12-22 was rejected. In the first Office Action claims 12-19 were rejected under 35 USC 102(b) or alternatively 35 USC 103 over Tawada. Claims 20-21 were rejected under 35 USC 103(a) over Tawada in view of Rath. Claims 20-21 were also rejected under 35 USC 103(a) over Tawada in view of Hanada and Noguchi. Claim 22 was rejected under 35 USC 103(a) over Tawada in view of Suglyama.

In response to the Office Action, Applicant amended claim12 to include the limitations of claims 20 and 21 (now cancelled). Applicant also amended claim 19 to provide proper antecedent basis. Claims 20 and 21 depended from claim19 which depended from claim 12. In view of Applicant's amendment, the Examiner withdrew all the rejections from the previous office action and stated new rejections.

Claims 12-16 and 19 were rejected under 35 USC 102(b) over Inanasu. Claims 12-19 were rejected under 35 USC 102(b) or 35 USC 103(a) over Tawada, Isomura and Rath. Claim 22 was rejected under 35 USC 103(a) over Tawada.

Applicant asserts that the finality of the Office Action is premature because new grounds of rejections have been made which were not necessitated by any amendment to the claims. Amended claim 12 corresponds in scope to prior claim 21. Previously claim 21 was rejected over Tawada in view of Rath and an additional rejection of Tawada in view of Hamada and Noguchi. Applicant asserts that the amendment to claim12 could not have necessitated the new grounds of rejection as being anticipated by Inamasu, and as being obvious over Tawada, Isomura and Rath.

The Amendment to claim12 (to include the limitations of claims 20 and 21) after the first office action did change the scope of claim 12. Claim 12 as presented in the amendment corresponded in scope to prior claim 21.Claims 13-18 and 22 which previously depended from claim 12 now had additional limitations that were not previously presented (i.e. having an orientation plane of (111) and an orientation plane of (220)). The new Inanasu reference is used in art rejections that include claims 13-18 and addresses the additional limitations that were not previously presented.

Under present practice, second or any subsequent actions on the merits shall be final, except where the Examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims, nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

DECISION

The petition is **DENIED**.

The finality of the office action is maintained and the period for response will continue run from the mail date of July 20, 2010.

/W. GARY JONES/
Director, Technology Center 1700
Chemical and Materials Engineering

Vincent M. DeLuca
NDQ&M WATCHSTONE LLP
300 NEW JERSEY AVENUE, NW
FIFTH FLOOR
WASHINGTON DC 20001

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BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH VA 22040-0747

MAILED
DEC 20 2011
OFFICE OF PETITIONS

In re Patent No. 8,001,723	:	
Issue Date: August 23, 2011	:	
Application No. 11/350,928	:	DECISION ON PETITION
Filed: February 10, 2006	:	
Attorney Docket No. **2611-0253PUS1**	:	

This is a decision on the petition, filed, November 8, 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) by way of a certificate of correction in the patent to be issued from the above-identified application.

The request is **GRANTED**.

Petitioner states that the correct assignee's name is "Mitsubishi Heavy Industries, Ltd., Tokyo (JP)" and that the incorrect assignee's name was included on the Fee(s) Transmittal form PTOL-85(b) at the time of payment of the issue fee. Accordingly, petitioner requests that a certificate of correction be issued to reflect the correct assignee on the front page of the Letters Patent in the patent to be issued from the application.

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter

[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

The request was accompanied by a certificate of correction (and fee) as required by 3.81(b). Further, Office assignment records reflect that "Mitsubishi Heavy Industries, Ltd., Tokyo (JP)" is the assignee of record. Accordingly, as the request complies with the provisions of 37 CFR 3.81(b), it would be appropriate for a certificate of correction to be processed after issuance of this application into a patent.

Inquiries concerning this decision should be directed to the Terri Johnson at (571) 272-2991. Any questions concerning the issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

This matter is being referred to the Certificates of Correction Branch for processing of a certificate of correction after issuance of this application into a patent.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

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Alexandria, VA 22313-1450
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MEADWESTVACO CORPORATION
ATTN: IP LEGAL DEPARTMENT
1021 MAIN CAMPUS DRIVE
RALEIGH NC 27606

MAILED
FEB 08 2011
OFFICE OF PETITIONS

In re Application of	:	
HOLLEY JR.	:	
Application No. 11/351,000	:	DECISION ON PETITION
Filed: February 9, 2006	:	
Attorney Docket No. D-3155-1	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 29, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely pay the issue and publication fees on or before September 20, 2007, as required by the Notice of Allowance and Fee(s) Due, mailed June 20, 2007, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on September 21, 2007. A Notice of Abandonment was mailed on October 17, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form the issue fee of $1440 and the publication fee of $300; (2) the petition fee of $1540; and (3) an adequate statement of unintentional delay.

37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Since the statement appearing in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the required statement. Petitioner must notify the Office if this is **not** a correct reading of the statement appearing in the petition.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

All other inquiries should be directed to the Office of Data Management at (571) 272-4200.

The application is being referred to the Office of Data Management for processing into a patent.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/351,142	02/09/2006	Robert Paul Morris	1375/US	1680

52354 7590 01/31/2011
SCENERA RESEARCH, LLC
JENKINS, WILSON, TAYLOR & HUNT, P.A.
5400 Trinity Road
Suite 303
Raleigh, NC 27607

EXAMINER
BADAWI, SHERIEF

ART UNIT	PAPER NUMBER
2167	

MAIL DATE	DELIVERY MODE
01/31/2011	PAPER

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The time period for reply, if any, is set in the attached communication.

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Theodiosios Thomas
SCENERA RESEARCH, LLC
5400 Trinity Road
Suite 303
Raleigh, North Carolina 27607

In re Application of: Robert P. MORRIS Appl. No.: 11/351,142 Filed: February 09, 2006 For: METHODS, SYSTEMS, AND COMPUTER PROGRAM PRODUCTS FOR ASSOCIATING A PERSISTENT INFORMATION ELEMENT WITH A RESOURCE-EXECUTABLE PAIR	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.
11/351,142	02/09/2006	Robert Paul Morris	1375/US	1680

52354 7590 05/02/2011
SCENERA RESEARCH, LLC
JENKINS, WILSON, TAYLOR & HUNT, P.A.
5400 Trinity Road
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EXAMINER
BADAWI, SHERIEF

ART UNIT	PAPER NUMBER
2167	

MAIL DATE	DELIVERY MODE
05/02/2011	PAPER

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The time period for reply, if any, is set in the attached communication.

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Raleigh, North Carolina 27607

In re Application of: Robert P. MORRIS Appl. No.: 11/351,142 Filed: February 09, 2006 For: METHODS, SYSTEMS, AND COMPUTER PROGRAM PRODUCTS FOR ASSOCIATING A PERSISTENT INFORMATION ELEMENT WITH A RESOURCE-EXECUTABLE PAIR	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 29 April 2011.

The petition is **GRANTED**.

Pursuant to applicant's requests filed on 29 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/
Vincent N. Trans, SPRE/QAS
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Computer Architecture and Software

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/351,142	02/09/2006	Robert Paul Morris	1375/US	1680

52354 7590 08/11/2011
SCENERA RESEARCH, LLC
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EXAMINER
BADAWI, SHERIEF

ART UNIT	PAPER NUMBER
2167	

MAIL DATE	DELIVERY MODE
08/11/2011	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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John A Demos
SCENERA RESEARCH, LLC
5400 Trinity Road
Suite 303
Raleigh, North Carolina 27607

In re Application of:
Robert P. MORRIS
Appl. No.: 11/351,142
Filed: February 09, 2006
For: METHODS, SYSTEMS, AND COMPUTER PROGRAM PRODUCTS FOR ASSOCIATING A PERSISTENT INFORMATION ELEMENT WITH A RESOURCE-EXECUTABLE PAIR

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 09 August 2011.

The petition is **GRANTED**.

Pursuant to applicant's requests filed on 09 August 2011, action by the Office is suspended on this application under 37 CFR § 1.103(a) for a period of ***three (3) months from the mailing date of this letter***. At the end of this period, applicant is required to notify the examiner and request continuance of prosecution or a further suspension. See MPEP § 709.

Suspension of action under 37 CFR § 1.103(a)-(d) at the applicant's request will cause a reduction in patent term adjustment accumulated (if any) under 37 CFR § 1.703. The reduction is equal to the number of days beginning on the date a request for suspension of action was filed and ending on the date of the termination of the suspension. See 37 CFR § 1.704(c)(1).

Any inquiry concerning this decision should be directed to the undersigned whose telephone number is (571) 272-3613.

/Vincent N. Trans/
Vincent N. Trans, SPRE/QAS
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Computer Architecture and Software

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/351,142	02/09/2006	Robert Paul Morris	1375/US	1680

52354 7590 11/21/2011
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EXAMINER
BADAWI, SHERIEF

ART UNIT	PAPER NUMBER
2167	

MAIL DATE	DELIVERY MODE
11/21/2011	PAPER

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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.: 11/351,142 Filed: February 09, 2006 For: METHODS, SYSTEMS, AND COMPUTER PROGRAM PRODUCTS FOR ASSOCIATING A PERSISTENT INFORMATION ELEMENT WITH A RESOURCE-EXECUTABLE PAIR	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/
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/351,142	02/09/2006	Robert Paul Morris	1375/US	1680

52354 7590 02/23/2012
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EXAMINER
BADAWI, SHERIEF

ART UNIT	PAPER NUMBER
2167	

MAIL DATE	DELIVERY MODE
02/23/2012	PAPER

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Raleigh, North Carolina 27607

In re Application of:
Robert P. MORRIS
Appl. No.: 11/351,142
Filed: February 09, 2006
For: METHODS, SYSTEMS, AND COMPUTER PROGRAM PRODUCTS FOR ASSOCIATING A PERSISTENT INFORMATION ELEMENT WITH A RESOURCE-EXECUTABLE PAIR

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
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MORRISON & FOERSTER LLP
12531 HIGH BLUFF DRIVE
SUITE 100
SAN DIEGO CA 92130-2040

MAILED
APR 25 2011
OFFICE OF PETITIONS

In re Application of	:	
STOCK, Daniel et al.	:	
Application No. 11/351,181	:	DECISION ON PETITION
Filed: February 08, 2006	:	TO WITHDRAW
Attorney Docket No. **677922000100 (ABS-0006US)**	:	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 April 14, 2011.

The request is **NOT APPROVED**.

The Office has revised its change in procedure for request to withdraw from representation applies to requests filed on or after May 12, 2008.

The Office will no longer accept address changes to a new practitioner or law firm filed with a Request, absent the filing of a power of attorney to the new representative. The Office will either change the correspondence address of record to the most current address information provided for the assignee of the entire interest who properly became of record under 37 CFR 3.71 or, if no assignee of the entire interest has properly been made of record under 37 CFR 3.71, the most current address information provided for the first named inventor.

Accordingly, the request to withdraw from record cannot be approved because the 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 a Statement under 37 CFR 3.73(b) or a copy of the actual assignment must be submitted with a renewed request.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at 571-272- 2783.

/Tredelle D. Jackson/
Paralegal Specialist
Office of Petitions

cc: **BECKMAN COULTER, INC.**
250 S. KRAEMER BLVD.
BREA CA 92821

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425 BROADHOLLOW ROAD, SUITE 302
MELVILLE NY 11747

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JUL 05 2011

OFFICE OF PETITIONS

In re Application of	:	
HARNEY, et al	:	
Application No. 11/351,182	:	DECISION ON PETITION
Filed: February 9, 2006	:	TO WITHDRAW
Attorney Docket No. 347-4	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent under 37 C.F.R. § 1.36(b) filed June 7, 2011.

The request is **NOT APPROVED**.

A review of the file record indicates that John G. Tutunjian does not have power of attorney in this patent application. See 37 C.F.R. § 10.40. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is not applicable.

The Office will no longer approve requests from practitioners to withdraw from applications where the requesting practitioner is acting, or has acted, in a representative capacity pursuant to 37 CFR 1.34. In these situations, the practitioner is responsible for the correspondence the practitioner files in the application while acting in a representative capacity. As such, there is no need for the practitioner to obtain the Office's permission to withdraw from representation. However, practitioners acting in a representative capacity, like practitioners who have a power of attorney in the application, remain responsible for noncompliance with 37 CFR 1.56, as well as 37 CFR 10.18, with respect to documents they file.

All future communications from the Office will continue to be directed to the above-identified address until otherwise properly notified by the applicant.

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: JOHN HARNEY & JANET DWYER
9 ENFIELD LANE
KINGS PARK NY 11754

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.
11/351,217	02/09/2006	Erich George Schultz	PA5371REI	2252

22830 7590 12/14/2010
CARR & FERRELL LLP
120 CONSTITUTION DRIVE
MENLO PARK, CA 94025

EXAMINER
JOHNSON, AMY COHEN

ART UNIT	PAPER NUMBER
2841	

MAIL DATE	DELIVERY MODE
12/14/2010	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
Alexandria, VA 22313-1450
www.uspto.gov

Paper No.

CARR & FERRELL
120 CONSTITUTION DRIVE
MENLO PARK CA 94025

In re Application of: Schultz Serial No.: 11/351,217 Filed: February 09, 2006 Attorney Docket No.: PA5371REI	: : : : :	NOTICE OF WITHDRAWAL FROM ISSUE UNDER 37 CFR § 1.313

The purpose of this communication is to inform you that the above-identified application is being withdrawn from issue pursuant to 37 CFR § 1.313.

The above-identified application is hereby withdrawn from issue. The Notice of Allowance and Issue Fee Due and the Notice of Allowability mailed June 15, 2010 is hereby vacated.

The application is being withdrawn to permit reopening of prosecution. The reasons therefor will be communicated to you by the examiner.

Upon receipt of a new Notice of Allowance and Issue Fee Due, applicant may request that any previously submitted issue fee be applied toward payment of the issue fee in the amount identified on the new Notice of Allowance and Issue Fee Due. If the application is abandoned, applicant may request either a refund, or a credit to a Deposit Account.

Telephone inquires should be directed to Diego Gutierrez at (571) 272-2800 ext 31.

The above-identified application is being forwarded to the examiner for prompt appropriate action.

John Cabeca, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MEMORANDUM

DATE: October 28, 2010

TO: Director, Office of Patent Publication

FROM: Director, Technology Center 2800

SUBJECT: Withdrawal from Issue

Applicant:	**Erich George Schultz**
Serial Number:	**11/351217**
Filed:	**February 09, 2006**
Title:	**Picture Leveling/Positioning Template**

The above-identified application has been assigned Patent No. **RE41923** and an issue date of **November 16, 2010.**

The above-identified application has been withdrawn from issue.

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 **November 15, 2010:**

> "All reference to Patent No. **RE41923** to **Erich George Schultz** of New York NY for PICTURE LEVELING/POSITIONING TEMPLATE, appearing in the Official Gazette of **November 16, 2010** should be deleted since no patent was granted."

John Cabeca, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

cc: Paul Harrison
Mary Louise McAskill
Niomi Farmer
Mary E. Johnson (Cookie)
Duane Davis (CDS)
BethAnne Dayon
Kimberly Terrell
Deneise Boyd (DMB)
Bradley Harris
Deborah Stephens

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.
11/351,245	02/09/2006	James N. England	1486/4	2530

7590 05/05/2011
JENKINS, WILSON, TAYLOR & HUNT, P. A.
3100 Tower Blvd.
Suite 1200
DURHAM, NC 27707

EXAMINER
WOLDEMARIAM, AKILILU K

ART UNIT	PAPER NUMBER
2624	

MAIL DATE	DELIVERY MODE
05/05/2011	PAPER

ACKNOWLEDGEMENT OF REQUEST

Notice of Allowance/Allowability Mailed

The request to print a color drawing reference as the first paragraph in the portion of the specification containing a brief description of the drawings as required by 37 CFR 1.84 and MPEP § 608.02 has been received by the United States Patent and Trademark Office and will be entered into the specification.

571-272-4200 or 1-888-786-0101
Application Assistance Unit
Office of Data Management

FORM PTOM327-5 (Rev. 02/08)

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

May 5, 2011

JENKINS, WILSON, TAYLOR & HUNT, P. A.
3100 Tower Blvd.
Suite 1200
DURHAM NC 27707

In re Application of	:	
England, James N., et al	:	**DECISION ON PETITION**
Application No. 11/351,245	:	
Filed: 02/09/2006	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. 1486/4	:	***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) February 09, 2006.

The petition is **GRANTED**.

A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

1. The fee set forth under 37 C.F.R. 1.17(h),
2. Three (3) sets of the color drawings in question, or (1) set if filed via EFS, and
3. The specification contains appropriate language referring to the color drawings as the first paragraph in that portion of the specification relating to the brief description of the drawings.

The petition was accompanied by all of the required fees and drawings. The specification contains the appropriate language. Therefore, the petition is GRANTED.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

/Diane Terry/
Quality Control Specialist
Office of Data Management
Publications Branch

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 10/14/10

Paper No.: _____

TO SPE OF : ART UNIT 1656

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/351,311

Patent No.: 7,754,850

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

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.

SPE [signature] ART UNIT 1656

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : March 22, 2011

TO SPE OF : ART UNIT 2622 SPE

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/351,352 Patent No.: 7,893,992 B2

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square Building
2800 South Randolph Street
Arlington, VA 22206

Should the changes to the patent be approved as requested by applicant?
See COCIN dated 02-28-2011 Also REM dated 5-18-2006

Antonio Johnson

Certificates of Correction Branch
(571)272-0483 Fax – (571)270-9846

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- [X] **Approved** — **All** changes apply.
- [ ] **Approved in Part** — Specify below which changes **do not** apply.
- [ ] **Denied** — State the reasons for denial below.

Comments: All changes as requested in the Request for Certificate of Correction, filed 02/28/2011, have been approved.

SPE /Jason Chan/ **Art Unit** 2622

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

FAY SHARPE LLP
1228 EUCLID AVENUE, 5TH FLOOR
THE HALLE BUILDING
CLEVELAND OH 44115

MAILED

FEB 07 2011

OFFICE OF PETITIONS

In re Application:	:	
Cech et al.	:	
Application No. 11/351,368	:	ON PETITION
Filed: February 10, 2006	:	
Attorney Docket No. VOPT 200004US01	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed December 17, 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
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

PAPER NO.:

DATE : 9/23/10

TO SPE OF : ART UNIT: 1626 Attn: MCKANE JOSEPH K (SPE)

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/351411 Patent No.: 7642352

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.
Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square Building (RSQ)
2800 South Randolph Street, Suite 9XXXX
Arlington, VA 22206
PALM Location 7580

Tasneem Siddiqui
Certificates of Correction Branch
703-756-1593

Thank You for Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

☒ **Approved**	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: _____

/Joseph K. McKane/
SPE

1626
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MAILED
JUL 06 2011
OFFICE OF PETITIONS

BASF CATALYSTS LLC
100 CAMPUS DRIVE
FLORHAM PARK, NJ 07932

In re Application of	:	
FULLER, et al	:	
Application No. 11/351,417	:	DECISION ON PETITION
Filed: February 10, 2006	:	
Attorney Docket No. 4767C	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 6, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely pay the issue and publication fees on or before May 16, 2011, as required by the Notice of Allowance and Fee(s) Due (Notice), mailed February 14, 2011, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on May 17, 2011. A Notice of Abandonment was mailed June 2, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1510 and the publication fee of $300; (2) the petition fee of $1620; and (3) a statement of unintentional delay.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

The application is being referred to the Office of Data Management for processing into a patent.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

cc: STUART D. FRENKEL
FRENKEL & ASSOCIATES, PC
3975 UNIVERSITY DRIVE, STE. 330
FAIRFAX, VA 22030

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

In re Application of
Thomas J. Fogarty

Application No. 11351423

Filed: February 10,2006

Attorney Docket No. FGRTNZ00501

:DECISION ON PETITION TO MAKE SPECIAL
:UNDER 37 CFR 1.102(c)(1)

This is a decision on the electronic petition under 37 CFR 1.102 (c)(1), filed 07-DEC-2010 to make the above-identified application special based on applicant's age as set forth in MPEP § 708.02, Section IV.

The petition is **GRANTED**.

A grantable petition to make an application special under 37 CFR 1.102(c)(1), MPEP § 708.02, Section IV: Applicant's Age must include a statement by applicant or a registered practitioner having evidence that applicant is at least 65 years of age. No fee is required.

Accordingly, the above-identified application has been accorded "special" status and will be taken up for action by the examiner upon the completion of all pre-examination processing.

Telephone inquiries concerning this electronic decision should be directed to the Electronic Business Center at 866-217-9197.

All other inquiries concerning either the examination or status of the application should be directed to the Technology Center.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 6/23/11

TO SPE OF : ART UNIT: 1796

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/351,546 Patent No. 7,708,837

CofC mailroom date 6/17/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Ernest C. White, LIE

Certificates of Correction Branch

703-756-1814 _____

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ❑ **Approved** — **All** changes apply.
- ❑ **Approved in Part** — Specify below which changes **do not** apply.
- ❑ **Denied** — State the reasons for denial below.

Comments: _____

_____

_____

_____

_____ **SPE** _____ **Art Unit**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 6/23/11

TO SPE OF : ART UNIT: 1716

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/351,546 Patent No. 7,708,835

CofC mailroom date 6/17/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Ernest C. White, LIE

Certificates of Correction Branch

703-756-1814 _____

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

X Approved	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: The change should be Column 18, line 45, "inner rim" should be -- outer rim --. Approved as shown below (please note that the correction is to line 45 not 46) :

Column 18, line 45, "inner rim" should be ---outer rim---.

/Parviz Hassanzadeh/ 1716

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

WEISS & MOY PC
4204 NORTH BROWN AVENUE
SCOTTSDALE AZ 85251

MAILED

SEP 23 2011

OFFICE OF PETITIONS

In re Application of :
Frederick Alan Hirth :
Application No. 11/351,730 :
Filed: February 10, 2006 :
Attorney Docket No. **2571P3609** :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed August 19, 2011, which, for the reasons stated below, is being treated as a request for a four (4) month extension of time.

The request for a four (4) month extension of time is **GRANTED**.

The record shows that a Notice of Appeal filed on February 23, 2011, which set a two (2) month period for filing an appeal brief under 37 CFR 41.37 (accompanied by the fee required by 37 CFR 41.20(b)(2)). Accordingly, a reply was due on or before April 23, 2011, or on or before September 23, 2011, with the submission of an extension of time fee pursuant to the provisions of 37 CFR 1.136(a). Since petitioner may obtain an extension of time up to and including five (5) months, this case is not in fact abandoned. Accordingly, the filing of a petition to revive is inappropriate until the maximum extendable period for reply has expired.

In view of the above, the $810 petition fee submitted will be applied towards the purchase of a four (4) month extension of time of $865. The balance of $55 has been charged to deposit account 23-0830, as authorized.

Inquiries concerning this decision may be directed to JoAnne Burke at (571) 272-4584.

This application is being referred to Technology Center AU 3611 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

/Ramesh Krishnamurthy/
Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO. : **7,745,381 B2** **PAGE 1 of 1**

DATED : **JUNE 29, 2010**

INVENTOR(S) : **VALENCIA SIL ET AL.**

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

Front page, (57) Abstract: delete incorrect Abstract and replace with the following:

--The passage of a container along a conveyor is lubricated by applying to the container or conveyor a lubricant composition comprising a water-miscible silicone material having a silicone emulsion wherein the silicone emulsion contains less than 500 ppm of a triethanolamine salts of alkyl benzene sulfonic acid compounds.--

Page 2, Other Publications: insert --Henkel Ecolab, "*Conveyor Lubrication*", 27 Food Ireland, 1 page—and "*Maintaining hygiene on filler line conveyor track*", Packing Hygiene, 2 pages-- in appropriate order

Col. 20, line 58, claim 11: "between 115 and 111 000." should read --between 1/5 and 1/1000.--

Col. 21, line 18 to Col. 22, line 18, claim 18: delete incorrect claim and replace with the following:

--18. A method for lubricating the passage of a conveyor comprising applying an undiluted lubricant composition through non-energized nozzles to at least a portion of the conveyor, the lubricant composition comprising a silicone emulsion and a water-miscible lubricant, the lubricant composition having a viscosity of less than 40 centipoise when measured using a Brookfield viscometer with an RV2 spindle at a spindle speed of 20 RPM and the lubricant composition being substantially free of a triethanolamine salt of dodecyl benzene sulfonic acid.

MAILING ADDRESS OF SENDER:
Merchant & Gould P.C.
Attn: Anneliese S. Mayer
P.O. Box 2903
Minneapolis, MN 55402-0903

PATENT NO. 7,745,381 B2

Docket No. 00163.1929USI1

No. of add'l copies 0

92160
PATENT TRADEMARK OFFICE

Please enter certificate of correction: TO 08/08/2011

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 5/31/2011

TO SPE OF : ART UNIT 1771 Caldarola Glenn (Spe)

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/357863 Patent No.: 7745381

CofC mailroom date: 5/26/2011

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Note: _____

_____

Certificates of Correction Branch

571-272-8680 _____

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

_____

_____

_____

_____

SPE 1771 **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

Nellcor Puritan Bennett, LLC
Attn: IP Legal
6135 Gunbarrel Avenue
Boulder, CO 80301

MAILED
SEP 20 2011
OFFICE OF PETITIONS

In re Application of :
Lawrence A. Lynn, et. al. :
Application No. 11/351,961 :
Filed: February 10, 2006 :
Attorney Docket No. TYHL:0024/H-NE-00178-08 :

ON PETITION

This is a decision on the Petition under 37 CFR 1.181 (no fee), filed April 26, 2011, requesting to withdraw the holding of abandonment in the above-identified application.

The present petition is not signed by an attorney/agent of record. However, in accordance with 37 CFR 1.34(a), the signature of Tadd F. Wilson appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts. A courtesy copy of this decision is being mailed to the address given in the present petition. Thereafter, all future correspondence regarding this application file will be mailed solely to the address of record until otherwise instructed.

A review of the record shows that a final Office action was mailed April 24, 2009, which set a three month response period for reply. On July 24, 2009, a Notice of Appeal and $540 fee was filed. On September 24, 2009, an Appeal Brief and $540 fee was filed. In response to the appeal brief filed on September 24, 2009, an Examiner's Answer was mailed on January 4, 2010. In response, a Request for Continued Examination (RCE), $810 fee and an Information Disclosure Statement (IDS) were filed on March 4, 2010. On April 14, 2010, an Order Returning Undocketed Appeal to Examiner was mailed, informing Appellant that the application was not ready for docketing as an appeal and that it was "ORDERED" that the application be returned to the Examiner to process the RCE. On June 1, 2010, a Notice of Abandonment was mailed. On March 3, 2011, a Notice of Change of Address was filed. On April 26, 2011, the present petition was filed; in which petitioner argues that a proper response to the Office action was timely filed and that the above application should not be abandoned.

Petitioner should note MPEP 706.07(h), which states in part:

II. SUBMISSION REQUIREMENT

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. See 37 CFR 1.114(c). If a reply to an Office action under 35 U.S.C. 132 is outstanding, the submission must meet the reply requirements of 37 CFR 1.111. See 37 CFR 1.114(c). Thus, an applicant may file a submission under 37 CFR 1.114 containing only an information disclosure statement (37 CFR 1.97 and 1.98) in an application subject to a notice of allowance under 35 U.S.C. 151, but not in an application where the last Office action is a final rejection or an Office action under Ex parte Quayle, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935), or in an application that is under appeal.

Since petitioner failed to file a proper response to the final Office action mailed April 4, 2009, this application was properly held abandoned. Therefore, the petition is dismissed.

ALTERNATIVE VENUE

Petitioner is encouraged to consider filing a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application.

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed.

(2) The petition fee as set forth in 37 CFR 1.17(m), $810 for small entity or $1,620 for large entity;

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

A form for filing a petition to revive an unintentionally abandoned application can be found on the United States Patent and Trademark Office (USPTO) website at www.uspto.gov. See form PTO/SB/64.

Any request for reconsideration of this decision should be submitted within **TWO (2) MONTHS** from the mail date 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 FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By internet: EFS-Web
www.uspto.gov/ebc/efs_help.html
(for help using EFS-Web call the
Patent Electronic Business Center
at (866) 217-9197)

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

cc: Tadd F. Wilson
1560 Broadway, Suite 1200
Denver, CO 80202-5141

UNITED STATES 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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FEB 23 2012
OFFICE OF PETITIONS

Nellcor Puritan Bennett, LLC
Attn: IP Legal
6135 Gunbarrel Avenue
Boulder, CO 80301

In re Application of
Lawrence A. Lynn, et. al.
Application No. 11/351,961
Filed: February 10, 2006
Attorney Docket No. TYHL:0024/H-NE-00178-08

ON PETITION

This is a decision on the Petition under 37 CFR 1.137(b), filed December 21, 2011, requesting to revive the above-identified application.

The present petition is not signed by an attorney/agent of record. However, in accordance with 37 CFR 1.34(a), the signature of Tadd F. Wilson appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Notice of Appeal with the $620 fee; (2) the petition fee of $1,860; and (3) a proper statement of unintentional delay. Therefore, the petition is **granted**.

The two-month period for filing an appeal brief under 37 CFR 41.37 (accompanied by the $620 fee required by 37 CFR 41.20(b)(2)), runs from the date of this decision.

This application is being referred to Technology Center Art Unit 3768 to await the filing of an appeal brief or for such other appropriate reply as may be submitted to continue prosecution of the above application.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

/Andrea Smith/
Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Trellis Intellectual Property Law Group, PC
1900 EMBARCADERO ROAD
SUITE 109
PALO ALTO CA 94303

MAILED
APR 11 2011
OFFICE OF PETITIONS

In re Application of	:	
Aloke Guha et al.	:	
Patent No. 7,210,005	:	NOTICE
Application No. 11/351,979	:	
Filed: February 09, 2006	:	
Attorney Docket No. **100112-001030US**		

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 March 03, 2011.

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

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.

Inquiries related to this communication should be directed to the undersigned at (571) 272-2783.

/Tredelle D. Jackson/
Paralegal Specialist
Office of Petitions

cc: **SILCON GRAPHICS INTERNATIONAL CORP.**
ATTN. LEGAL DEPT.
46600 LANDING PARKWAY
FREMONT CA 94538

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Goodwin Procter, LLP
Attn: Patent Administrator
135 Commonwealth Drive
Menlo Park, CA 94025-1105

MAILED
NOV 10 2011
OFFICE OF PETITIONS
ON PETITION

In re Patent No. 7,702,000 :
Issue Date: April 20, 2010 :
Application No. 11/352,187 :
Filed: February 10, 2006 :
Patentees: James June-Ming Wang, et. al. :

This is a decision on the petition under 37 CFR 1.378(c), filed on October 25, 2011, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **dismissed as moot**.

A review of the record shows that the patent issued on April 20, 2010. On October 25, 2011, petitioner submitted an authorization to charge the listed deposit $2,205 for the 3 ½ year small entity maintenance fee of $565 and the unintentional late payment surcharge of $1,640. However, the window for paying the 3 ½ year maintenance fee does not open until April 20, 2013. Therefore, since the above–identified patent is not expired, the fee in the amount of $2,205 will be credited back to the deposit account listed in the present petition.

This patented file is being forwarded to Files Repository.

Telephone inquiries should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

GREENBLUM & BERNSTEIN, P.L.C.
1950 ROLAND CLARKE PLACE
RESTON, VA 20191

MAILED
AUG 30 2010
OFFICE OF PETITIONS

In re Application of :
Kohei Iketani et al :
Application No. 11/352,228 : ON PETITION
Filed: February 13, 2006 :
Attorney Docket No. P28932

This is a decision on the petition, filed August 27, 2010 under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on July 23, 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 3768 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

/Irvin Dingle/
Irvin Dingle
Petitions Examiner
Office of Petitions

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[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above. Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

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.
11/352,289	02/13/2006	Long Yang	2726.0150000	2398

26111 7590 11/17/2010
STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

EXAMINER
OWENS, DANELL L

ART UNIT	PAPER NUMBER
2878	

MAIL DATE	DELIVERY MODE
11/17/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

November 17, 2010

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C
1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005

In re Application of	:	
YANG, LONG	:	**DECISION ON PETITION**
Application No. 11/352,289	:	
Filed: 02/13/2006	:	
Attorney Docket No. 2726.0150000	:	

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) May 4, 2006.

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.

/Diane Terry/
Quality Control Specialist
Office of Data Management
Publications Branch

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/352,289	02/13/2006	Long Yang	2726.0150000	2398

7590 01/11/2011
STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

EXAMINER
OWENS, DANELL L

ART UNIT	PAPER NUMBER
2878	

MAIL DATE	DELIVERY MODE
01/11/2011	PAPER

ACKNOWLEDGEMENT OF REQUEST

Notice of Allowance/Allowability Mailed

The request to print a color drawing reference as the first paragraph in the portion of the specification containing a brief description of the drawings as required by 37 CFR 1.84 and MPEP § 608.02 has been received by the United States Patent and Trademark Office and will be entered into the specification.

571-272-4200 or 1-888-786-0101
Application Assistance Unit
Office of Data Management

FORM PTOM327-5 (Rev. 02/08)

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

January 11, 2011

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

In re Application of	:	
Yang, Lang	:	**DECISION ON PETITION**
Application No. 11/352,289	:	
Filed: 02/13/2006	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. 2726.0150000	:	***DRAWINGS***

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) December 13, 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.

/Diane Terry/
Quality Control Specialist
Office of Data Management
Publications Branch

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

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SEP 23 2010

OFFICE OF PETITIONS

GOODWIN PROCTER LLP
ATTN: PATENT ADMINISTRATOR
135 COMMONWEALTH DRIVE
MENLO PARK, CA 94025-1105

In re Application of	:
Deshmukh et al.	:
Application No. 11/352,385	: DECISION ON PETITION
Filed: February 10, 2006	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 38187-2813.US	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed July 16, 2010, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to prior-filed nonprovisional Application No. 10/127,395, filed April 19, 2002, as set forth in the amendment filed July 16, 2010.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application(s), unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant petition does not comply with item (1) above.

A reference to add the above-noted, prior-filed application on page one following the first sentence of the specification has been included in a concurrently filed amendment. However, the amendment is not acceptable as drafted since it improperly incorporates by reference the prior-filed application. Petitioner's attention is directed to Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980), where the court drew a distinction between a permissible 35 U.S.C. § 120 statement and the impermissible introduction of new matter by way of incorporation by reference in a 35 U.S.C. § 120 statement. The court specifically stated:

> Section 120 merely provides a mechanism whereby an application becomes entitled to benefit of the filing date of an earlier application disclosing the same subject matter. Common subject matter must be disclosed, in both applications, either specifically or by an express incorporation-by-reference of prior disclosed subject matter. Nothing in section 120 itself operates to carry forward any disclosure from an earlier application. In re deSeversky, supra at 674, 177 USPQ at 146-147. Section 120 contains no magical disclosure-augmenting powers able to pierce new matter barriers. It cannot, therefore, "limit" the absolute and express prohibition against new matter contained in section 251.

In order for the incorporation by reference statement to be effective as a proper safeguard against the omission of a portion of a prior application, the incorporation by reference statement must be included in the specification-as-filed, or in an amendment specifically referred to in an oath or declaration executing the application. *See* In re deSeversky, *supra*. *Note also* MPEP 201.06(c).

Accordingly, before the petition under 37 CFR 1.78(a)(3) can be granted, a substitute amendment[1] deleting the incorporation by reference statement, along with a renewed petition under 37 CFR 1.78(a)(3), is required.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Window located at:
U.S. Patent and Trademark Office
Customer Service Window Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

Any questions concerning this matter may be directed to Alicia Kelley at (571) 272-6059.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

[1] *Note* 37 CFR 1.121

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
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135 COMMONWEALTH DRIVE
MENLO PARK, CA 94025-1105

MAILED

NOV 22 2010

OFFICE OF PETITIONS

In re Application of	:	
Deshmukh et al.	:	
Application No. 11/352,385	:	DECISION GRANTING PETITION
Filed: February 10, 2006	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 38187-2813.US	:	

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed October 20, 2010, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to prior-filed nonprovisional Application No. 10/127,395, filed April 19, 2002, as set forth in the amendment filed concurrently with this instant petition.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional application is submitted after expiration of the period specified by 37 CFR 1.78(a)(2)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3).

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) a reference to the above-noted, prior-filed nonprovisional application has been included in an amendment to the first sentence of the specification following the title, as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the above-noted, prior-filed nonprovisional application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional application, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Alicia Kelley at (571) 272-6059.

This matter is being referred to Technology Center Art Unit 3736 for appropriate action on the amendment filed October 20, 2010, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional application.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/352,385	02/10/2006	3736	1540	38187-2813.US	59	3

CONFIRMATION NO. 1876

CORRECTED FILING RECEIPT

77845
Goodwin Procter LLP
Attn: Patent Administrator
135 Commonwealth Drive
Menlo Park, CA 94025-1105

OC000000044572001

Date Mailed: 11/19/2010

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)

Ajay Deshmukh, San Francisco, CA;
Ganapati Mauze, Sunnyvale, CA;
Dirk Boecker, Palo Alto, CA;

Power of Attorney: The patent practitioners associated with Customer Number 77845

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/652,316 02/10/2005
and is a CIP of 10/127,395 04/19/2002 PAT 7,025,774

Foreign Applications

If Required, Foreign Filing License Granted: 03/09/2006

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/352,385**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No
**** SMALL ENTITY ****

Title

Method and apparatus for storing an analyte sampling and measurement device

Preliminary Class

604

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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QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO CA 92121

MAILED
APR 05 2011
OFFICE OF PETITIONS

In re Application of :
Kim, et al. : DECISION ON PETITION
Application No. 11/352,438 :
Filed: February 10, 2006 :
Atty. Dkt. No.: 060852C1 :

This decision is in response to the petition under 37 CFR 1.137(b), filed February 24, 2011.

The petition is **GRANTED**.

The application became abandoned August 25, 2009 for failure to timely submit a proper reply to the Office communication mailed July 24, 2009. The Office communication set a one month shortened statutory period of time for reply. No petition for extension of time under 37 CFR 1.136(a) was timely filed. Notice of Abandonment was mailed December 8, 2009.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 C.F.R. § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee set forth in 37 C.F.R. § 1.20(d)) required pursuant to 37 C.F.R. § 1.137(c).

The instant petition has been carefully reviewed and found in compliance with the requirements set forth above.

This application is being forwarded to Group Art Unit 2617 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO, CA 92121

Mail Date: 08/05/2010

Applicant	: Rotem Cooper	: DECISION ON REQUEST FOR
Patent Number	: 7657261	: RECALCULATION of PATENT
Issue Date	: 02/02/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/352,510	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/10/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **659** 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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ALBRECHT TOUSI & FARNUM PLLC
8200 GREENSBORO DRIVE
SUITE 900
MCLEAN, VA 22102

MAILED

SEP 0 1 2011

OFFICE OF PETITIONS

In re Application of
Joel Gerado Dia Sanchez
Application No. 11/352,540
Filed: February 13, 2006
Attorney Docket No.: 0027-00003 US NA

DECISION ON PETITION

This is a decision on the petition, filed August 9, 2011, to revive the above-identified application under the unavoidable provisions of 37 CFR 1.137(a).

The petition under 37 CFR 1.137(a) is **GRANTED**.

The application became abandoned for a failure to reply in a timely manner to the non-final Office action mailed, March 19, 2009, which set a shortened statutory period for reply of three (3) months. A Notice of Abandonment was mailed on October 15, 2009. On August 9, 2011, the petition to revive under 37 CFR 1.137(a) was filed. Applicant has also submitted a petition under the provisions of 37 CFR 1.137(b).

The petition satisfies the requirements of 37 CFR 1.137(a) in that petitioner has supplied (1) the required reply in the form of an amendment; (2) the petition fee of $270; and (3) a showing to the satisfaction of the Director that the entire delay was unavoidable.

In view of the above, a decision on the petition under 37 CFR 1.137(b) is unnecessary, and the petition is **DISMISSED** without consideration. Under the circumstances, the $810 petition fee is being credited to counsel's credit card.

The application is being referred to Technology Center AU 2857 for appropriate action by the Examiner in the normal course of business on the response filed August 9, 2011.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204. Inquiries relating to further prosecution should be directed to the Technology Center.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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.
11/352,563	02/13/2006	Robert John Hoghaug	4386.03US02	5203

24113 7590 02/07/2011
PATTERSON THUENTE CHRISTENSEN PEDERSEN, P.A.
4800 IDS CENTER
80 SOUTH 8TH STREET
MINNEAPOLIS, MN 55402-2100

EXAMINER
RECEK, JASON D

ART UNIT	PAPER NUMBER
2442	

MAIL DATE	DELIVERY MODE
02/07/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
Alexandria, VA 22313-1450
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Eric B. Andersland
PATTERSON THUENTE CHRISTENSEN PEDERSEN, P.A.
4800 IDS CENTER
80 SOUTH 8TH STREET
MINNEAPOLIS MN 55402-2100

MAILED

FEB 07 2011

DIRECTOR OFFICE
TECHNOLOGY CENTER 2400

In re Application of: HOGHAUNG, R.J. et. al.
Application No. **11/352,563**
Attorney Docket No. 4386.03US02
Filed: February 13, 2006
For: SOFTWARE MESSAGING FACILITY SYSTEM

DECISION ON PETITION TO RESET PERIOD FOR REPLY FILED UNDER MPEP §710.06

This is a decision on the petition filed 01/11/2011 under MPEP §710.06, in response to Non-Compliant Amendment communication mailed 07/19/10. Petitioner request restarting response to said communication, due to the lost of a substantial portion of the period for response, as the actual receipt date is 01/06/11, according to Petitioner.

This petition is hereby **DISMISSED**.

Rules, Regulation and Practices

MPEP §710.06 II (C) the petition includes (1) evidence showing the date of receipt of the Office action at the correspondence address (e.g., a copy of the Office action having the date of receipt of the Office action [communication] at the correspondence address stamped thereon, *a copy of the envelope (which contained the Office action) having the date of receipt of the Office action at the correspondence address stamped thereon, etc.)*, and (2) a statement setting forth the date of receipt of the Office action at the correspondence address and explaining how the evidence being presented establishes the date of receipt of the Office action at the correspondence address.

MPEP §711.03(c) Showing of 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.

Decision/Opinion

Petitioner's furnished evidence showing non-receipt of the Notice of Non-Compliant amendment at the corresponding address of record and statement setting for the date of receipt has been fully considered, however, found insufficient to readily establish an error by the Office.

Evidence such as copy of the envelope (which contained the Office communication) having the date of receipt of the Office communication at the correspondence address stamped thereon, etc.). and/or a copy of the practitioner's record(s) required to show non-receipt of the Office communication should include the master docket for the firm, or equivalent documentation discussed above, are recommended.

Regarding petition's request for refund, petitioner is advised that all questions pertaining to the return of fees are referred to the Refunds Section of the Receipts Division of the Office of Finance. The Refund Branch functions as the receiving office for most refund requests. This Branch is responsible for coordinating, processing and providing status of refund requests, and answering customer inquiries about refunds. For additional information, please visit our web site: http://www.uspto.gov/about/offices/cfo/finance/receipts_division.jsp#heading-3

Petitioners request to restart the short statutory period to reply associated with mailed Non-Compliant Amendment mailed 07/19/10 as of the date of receipt and petitioners request for a refund associated with extension fees paid to ensure consideration of amendment filed 07/08/10, is hereby **dismissed**.

Any inquiry regarding this decision should be directed the undersigned whose telephone number is (571) 272-3902. If attempts to reach the undersigned by telephone are unsuccessful, Kim Huynh, Quality Assurance Specialist, can be reached at (571) 272-4147.

/Beatriz Prieto/

Beatriz Prieto, Quality Assurance Specialist
Technology Center 2400
Network, Multiplexing, Cable and Security

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LEON D. ROSEN
FREILICH, HORNBAKER & ROSEN
SUITE 1220
10960 WILSHIRE BLVD.
LOS ANGELES, CA 90024

MAILED

SEP 10 2010

OFFICE OF PETITIONS

In re Application of :
Jack Pllack, et al. :
Application No. 11/352,595 :
Filed: February 13, 2006 :
Attorney Docket No.: 05/127 :

ON PETITION

This is a decision on the petition, filed February 22, 2010, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely respond to the Office action of May 12, 2009, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on December 29, 2009. In response on February 22, 2010, the present petition was filed.

Petitioner states that a timely reply was mailed via certificate of mailing on August 11, 2009, which included a Notice of Appeal and Appeal Brief (including various enclosures). Petitioner has submitted a copy of the previously mailed correspondence, bearing a certificate of mailing dated August 11, 2009, which would have rendered the reply timely if received.

The file record does not include the originally submitted correspondence. Failure to receive correspondence which includes a certificate of mailing or certificate of facsimile transmission is addressed in 37 CFR 1.8(b), reproduced below:

> In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed,

terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely file a reply to the Office action of May 12, 2009 is hereby withdrawn and the application restored to pending status.

The copy of the reply received with the petition will be accepted in place of the reply shown to have been mailed on August 11, 2009.

This application is being referred to Technology Center AU 3671 for appropriate action in the normal course of business on the reply received with petition.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3204. All other inquiries regarding this application should be directed to the Technology Center.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Paper No.

VOLPE AND KOENIG, P.C.
UNITED PLAZA
30 SOUTH 17TH STREET
PHILADELPHIA PA 19103

MAILED

AUG 29 2011

OFFICE OF PETITIONS

In re Application of	:	
Dobbins et al.	:	
Application No. 11/352,639	:	LETTER REGARDING
Filed: February 13, 2006	:	FEE DEFICIENCY PAYMENT
Atty Docket No. NPS-PT053.1	:	

This is in response to the COMMUNICATION CORRECTING ENTITY STATUS UNDER 37 CFR § 1.28(c) filed August 8, 2011, which is properly treated as a notification 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.

The statement is signed by an attorney of record. The statement includes an itemization and payment of $755 for the deficiency in payment of fees.

Your notification of a loss of entitlement to small entity status and fee deficiency submission under 37 CFR 1.28 is now **ACCEPTED**.

Payment of the deficiency has been treated under § 1.27(g)(2) as a notification of a loss of entitlement to small entity status.

Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3219.

Nancy Johnson

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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DORSEY & WHITNEY LLP - MINNEAPOLIS
ATTENTION: PATENT PROSECUTION DOCKETING DEPARTMENT
INTELLECTUAL PROPERTY PRACTICE GROUP - PT/23RD FL
50 SOUTH SIXTH STREET, SUITE 1500
MINNEAPOLIS MN 55402-1498

MAILED
NOV 30 2011
OFFICE OF PETITIONS

In re Application of	:	
Steven Michael Jensen	:	
Application No. 11/352,722	:	DECISION ON PETITION
Filed: 02/13/2006	:	
Attorney Docket No. P224364.US.01	:	

This is a decision on the petition under 37 CFR 1.137(a), filed September 23, 2011, to revive the above-identified application.

The petition under 37 CFR 1.137(a) is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)." Extensions of time under 37 CFR 1.136(a) are permitted. No additional fee is required for filing a "Renewed Petition under 37 CFR 1.137(a)."

The application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed August 31, 2010, which set a shortened statutory period for reply of three (3) months. Petitioner did not submit a timely request to extend the period for response pursuant to 37 CFR 1.136(a). In the absence of a timely filed reply, the application became abandoned on December 1, 2010. On March 28, 2011, the Office mailed a Notice of Abandonment.

In the present petition, petitioner explained:

> This application was unavoidably abandoned due to the fact that Applicant, Steven M. Jensen, was serving the U.S. military duty in Afghanistan from August 2008 to November 2010 which caused the abandonment of the application due to failure of filing a response to the non-final Office Action dated August 31, 2010. Upon Steven's return from the military

> duty, the Applicant contacted his former patent attorney of record, Glenn L. Webb, and found that his Application was abandoned.

Petition, p. 1.

A grantable petition to revive an abandoned application 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 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 was unavoidable; and

(4) Any terminal disclaimer (and fee set forth in § 1.20(d)) required pursuant 37 CFR 1.137(d).

This petition lacks item (3) above.

The Director may revive an abandoned application if the delay in responding to the relevant outstanding Office requirement is shown to the satisfaction of the Director to be "unavoidable." 35 U.S.C. 133. As stated in MPEP 711.03(c)(II)(C)(2):

> 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 inadequate to establish unavoidable delay within the meaning of 35 U.S.C. 133 and 37 CFR 1.137(a). Specifically, an application is "unavoidably" abandoned where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure of mail, facsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).

Pursuant to 37 CFR 1.135:

> (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...

Petitioner does not argue that he did not receive the non-final Office action mailed on August 31, 2010, upon his return from military duty. Rather, applicant argues that the delay in filing a timely and properly reply to the non-final Office action was due to his U.S. military duty in Afghanistan from August 2008 to November 2010.

The non-final Office mailed August 31, 2010, set a three-month shortened statutory period from the mail date of the Office action to reply. Additionally, the non-final Office action stated that extensions of the period for reply were available under 37 CFR 1.136(a) up to six months from the mailing date of the Office action. Lastly, the non-final Office Action notified petitioner that a failure to reply within the set or extendable period for reply would cause the application to become abandoned by virtue of statute (35 U.S.C. 133). Therefore, to avoid abandonment of the application, petitioner could have submitted a reply to the non-final Office action, accompanied by a request for an extension of time for response within the third month and fee, on or before February 28, 2011, upon the completion of his military duty in November 2010.

In this instance, petitioner did not file a reply with a request for an extension of time for response within the third month on or before February 28, 2011. As petitioner stated, his military duty ended in November 2010, three months before the expiration of the six-month maximum statutory period for reply. Thus, the showing of record is that the application became abandoned for petitioner's failure to submit a reply and a request for an extension of time during the maximum statutory period and not due to his military duty. The Office reminds petitioner that it was his responsibility to submit a timely and proper response to the non-final Office action to save the application from abandonment. Furthermore, a delay resulting from the lack of knowledge or improper application of the patent statute, rules of practice or the MPEP does not constitute an "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). Lastly, petitioner did not provide any explanation as to why he was unavoidably delayed from filing the reply and a request for an extension of time within the third month on or before

February 28, 2011. The Office reminds petitioner that he must show that entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unavoidable.

In view of the above, petitioner has not provided a sufficient showing that the delay was unavoidable. Accordingly, the petition under 37 CFR 1.137(a) is **dismissed**.

The Office finance records indicate that petitioner submitted a $555.00 extension of time fee with the present petition. The Office notes that 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). The $555.00 extension of time fee was paid after the maximum extendable period for reply. Accordingly, this fee is unnecessary and will be refunded in due course.

Alternative Venue:

Petitioner may wish to file a petition pursuant to 37 CFR 1.137(b) on the basis of unintentional delay, instead of filing a renewed petition under 37 CFR 1.137(a). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed;

(2) The petition fee as set forth in 37 CFR 1.17(m); and,

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Correspondence may also be submitted electronically via EFS-Web.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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DORSEY & WHITNEY LLP - MINNEAPOLIS
ATTENTION: PATENT PROSECUTION DOCKETING DEPARTMENT
INTELLECTUAL PROPERTY PRACTICE GROUP - PT/23RD FL
50 SOUTH SIXTH STREET, SUITE 1500
MINNEAPOLIS MN 55402-1498

MAILED
JAN 06 2012
OFFICE OF PETITIONS

In re Application of	:	
Steven Michael Jensen	:	
Application No. 11/352,722	:	DECISION ON PETITION
Filed: 02/13/2006	:	
Attorney Docket No. P224364.US.01	:	

This is a decision on the petition under 37 CFR 1.137(b), filed December 21, 2011, to revive the above-identified application.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed August 31, 2010, which set a shortened statutory period for reply of three (3) months. Petitioner did not submit a timely request to extend the period for response pursuant to 37 CFR 1.136(a). In the absence of a timely filed reply, the application became abandoned on December 1, 2010. On March 28, 2011, the Office mailed a Notice of Abandonment.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee, and (3) a proper statement of unintentional delay.

This application is being referred to Technology Center AU 3618 for appropriate action by the Examiner on the reply received on December 21, 2011.

Inquiries concerning this decision should be directed to the undersigned at (571) 272-3211.

/Christina Tartera Donnell/

Christina Tartera Donnell
Senior Petitions Attorney

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110929

DATE : September 29, 2011

TO SPE OF : ART UNIT 3662

SUBJECT : Request for Certificate of Correction on Patent No.: 7999720

A response is requested with respect to the accompanying request for a certificate of correction.

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - PK 3-910
Palm location **7590** - Tel. No. 305-8201

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Thank You For Your Assistance **Certificates of Correction Branch**

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

☒ **Approved** **All** changes apply.

☐ **Approved in Part** Specify below which changes **do not** apply.

☐ **Denied** State the reasons for denial below.

Comments:

SPE: /Thomas H. Tarcza/ **Art Unit** 3662

11/352,835

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110929

DATE : September 29, 2011

TO SPE OF : ART UNIT 3662

SUBJECT : Request for Certificate of Correction on Patent No.: 7999720

A response is requested with respect to the accompanying request for a certificate of correction.

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - PK 3-910
Palm location **7590** - Tel. No. 305-8201

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Thank You For Your Assistance **Certificates of Correction Branch**

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

☒ **Approved** **All** changes apply.

☐ **Approved in Part** Specify below which changes **do not** apply.

☐ **Denied** State the reasons for denial below.

Comments:

SPE: /Thomas H. Tarcza/ **Art Unit** 3662

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110822

DATE : June 15, 2010

TO SPE OF : ART UNIT 1642

SUBJECT : Request for Certificate of Correction on Patent No.: 7700288

A response is requested with respect to the accompanying request for a certificate of correction.

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - ST (South Tower) 9A22
Palm location **7590** - Tel. No. (703) 305-8309

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Thank You For Your Assistance **Certificates of Correction Branch**

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriated box.

☒ **Approved** All changes apply.

☐ **Approved in Part** Specify below which changes **do not** apply.

☐ **Denied** State the reasons for denial below.

Comments:

/MISOOK YU/
Supervisory Patent Examiner.Art Unit 1642

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

FAY KAPLUN & MARCIN, LLP
150 BROADWAY, SUITE 702
NEW YORK NY 10038

MAILED
NOV 19 2010
OFFICE OF PETITIONS

In re Application of	:	
Delia Kecskemeti	:	
Application No. 11/352,858	:	DECISION ON PETITION
Filed: February 13, 2006	:	
Attorney Docket No. 40101/11501	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 20, 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 September 22, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed June 22, 2010. Accordingly, the date of abandonment of this application is September 23, 2010. A Notice of Abandonment was mailed on October 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 $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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 2/23/2011

TO SPE OF : ART UNIT 1625 Andres Janet (Spe)

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/352867 Patent No.: 7425550

CofC mailroom date: 2/14/2011

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

Certificates of Correction Branch
703-756-1571 _____

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- [x] **Approved** — **All** changes apply.
- [ ] **Approved in Part** — Specify below which changes **do not** apply.
- [ ] **Denied** — State the reasons for denial below.

Comments: _____

/Janet L. Andres/ — SPE

1625 — Art Unit

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OCT 12 2011
OFFICE OF PETITIONS

BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH VA 22040-0747

In re
I-Ru Liu
Application No. 11/352,997
Filed: February 14, 2006
Patent No. 7,365,702
Issued: April 29, 2008

DECISION

This is a decision on the fee deficiency submission under 37 CFR 1.28(c), filed September 14, 2011.

The fee deficiency submission under 37 CFR 1.28 of $1407 is hereby accepted.

The change of status to large entity has been entered.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

MAILED
OCT 19 2010
OFFICE OF PETITIONS

In re Application of :
Hidenori Miyamoto :
Application No.: 11/353,027 : ON PETITION
Filed: February 14, 2006 :
Attorney Docket No.: 1445.1019 :

This is a decision on the petition, filed October 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 October 8, 2010, cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 2862 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

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.
11/353,027	02/14/2006	Hidenori Miyamoto	1445.1019	6754

21171 7590 07/22/2011
STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

EXAMINER
FULLER, RODNEY EVAN

ART UNIT	PAPER NUMBER
2862	

MAIL DATE	DELIVERY MODE
07/22/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

Application No.: 11353027	:	
Filed: 02/14/2006	:	**DECISION ON PETITION**
Patent Number: 7,925,145	:	
Issue Date: 04/12/11	:	
Attorney Docket No. **1445.1019**	:	

This is a decision on the Petition filed under 37 CFR 1.181 received in the United States Patent and Trademark Office (USPTO) on July 13, 2011. Petitioner seeks relief from filing a Petition for Duplicate Letters Patent in this application due to the non-receipt of a large number of Patent Grants in the April 12, 2011 issue.

The Petition is **GRANTED**.

Petitioner submitted a statement that the Patent Grant was not received at the correspondence address of record; that a search of records did not indicate receipt; and that the docketing system is sufficiently reliable. Petitioner filed a copy of the docketing records showing receipts dates and application history as evidence.

Therefore, the Office of Data Management will provide one additional Original Letters Patent for this application.

Telephone inquiries relating to this matter may be directed to the undersigned in the Office of Data Management at 571-272-4200.

/Kimberly Terrell/
Manager
Office of Data Management
Patent Publication Branch

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAR 23 2012

OFFICE OF PETITIONS

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C
ONE FINANCIAL CENTER
BOSTON MA 02111

In re Patent No. 7,813,725	: DECISION DISMISSING PETITION
Issue Date: October 12, 2010	: UNDER 37 CFR 1.78(a)(3) AND
Application No. 11/353,452	: REQUEST FOR CERTIFICATE OF
Filed: February 13, 2006	: CORRECTION
Attorney Docket No. 18358-013	:

This is a decision on the petition, filed February 22, 2012, which is being treated as a petition under 37 CFR 1.78(a)(3), seeking to add a claim for priority under 35 U.S.C. § 120 to nonprovisional Application No. 10/123,788, filed April 16, 2002, by way of a certificate of correction.

The petition is dismissed.

A review of the file record fails to disclose that a claim for the benefit of priority to the above-noted, prior-filed nonprovisional application was made within the time period set forth in 37 CFR 1.78(a)(2)(ii) and further failed to include a proper reference to the prior-filed application as required by 37 CFR 1.78(a)(2)(i) and 1.78(a)(2)(iii).

The instant application was filed September 8, 2003. Therefore, since this application was filed after November 29, 2000, a petition under 37 CFR 1.78(a)(3), along with submission of a Certificate of Correction, is the appropriate avenue of relief to accept a late claim for the benefit of priority to a prior-filed nonprovisional application after issuance of the application into a patent. See MPEP 1481.

The Office notes:

Where priority is based upon 35 U.S.C. 120 to a national application, the following conditions must be satisfied:

(A) all requirements set forth in 37 CFR 1.78(a)(1) must have been met in the application which became the patent to be corrected;

(B) it must be clear from the record of the patent and the parent application(s) that priority is appropriate (see MPEP § 201.11); and

(C) a grantable petition to accept an unintentionally delayed claim for the benefit of a prior application must be filed, including a surcharge as set forth in 37 CFR 1.17(t), as required by 37 CFR 1.78(a)(3).

MPEP 1481.03(II)(B) .

If all the above-stated conditions are satisfied, a Certificate of Correction can be used to add or correct a claim under 35 U.S.C. 120 for benefit of a prior-filed nonprovisional application.

In this instance, petitioner has not satisfied condition (C) above because he did not submit a grantable petition under 37 CFR 1.78(a)(3).

A petition for acceptance of an unintentionally delayed claim under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. 120 and 37 CFR 1.78(a)(2)(i) and (iii) to the prior-filed application (unless previously submitted);

(2) the surcharge set forth in 37 CFR 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition fails to comply with item (1) above.

The petition must be dismissed because the reference required by 35 U.S.C. 120 and 37 CFR 1.78(a)(2)(i) has not be properly supplied. Specifically, petitioner did not submit the reference in compliance with 37 CFR 1.78(a) by filing an amendment to the first sentence(s) of the specification or in an ADS. Pursuant to 37 CFR 1.78(a)(2)(iii), the reference to the prior-filed nonprovisional application must be included in an application data sheet (§ 1.76) or the specification must contain or be amended to contain such reference in the first sentence(s) following the title. Additionally, the Office notes that the Certificate of Correction form submitted on February 22, 2012, requested correction of the first paragraph of the specification, but not the front page, of the Letters Patent..

In addition, petitioner failed to list the relationship between the subject application and Application No. 11/056,022, filed February 11, 2005, in the certificate of correction.

37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a

proper benefit claim is: "This application is a continuation of Application No. 10/---, filed---." A benefit claim that merely states: "This application claims the benefit of Application No. 10/---, filed---," does not comply with 37 CFR 1.72(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated.

Also, the status of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. See MPEP Section 201.11, Reference to Prior Nonprovisional Applications.

In addition, Application No. 10/657,757 does not contain a reference indicating that it is a continuation of Application No. 10/123,788, filed on April 15, 2002. A petition under 37 CFR 1.78(a)(3) was filed in Application No. 10/657,757 on February 22, 2012 and dismissed on March 21, 2012. Until an appropriate reference is entered in Application No. 10/657,757, the desired change cannot be entered in the subject application. In other words, appropriate references must be present in each intermediate application in the chain of prior applications.

The following must occur to effectuate the desired changes:

(1) Petitioner must file a renewed petition in Application No. 10/657,757 to add a delayed benefit claim to Application No. 10/123,788 and the petition must be granted. [Please review the March 21, 2012 petition decision in Application No. 10/657,757 for further explanation.]&

(2) Petitioner must file a renewed petition under 37 CFR 1.78(a)(3), accompanied by either an ADS or an amendment to the specification listing the relationship between the subject application and Application No. 11/056,022, filed February 11, 2005, listing the status of each nonprovisional parent application, and adding the new benefit claim.[1] Additionally, petitioner must submit a completed Certificate of Correction form listing the relationship between the subject application and Application No. 11/056,022, listing the status of each nonprovisional parent application, and adding the new reference to the prior-filed nonprovisional application on both the front page and the first paragraph of the specification of the Letters Patent. The text of the correction, as well as the location of the error in the printed patent should be identified on form PTO/SB/44 by column and line number.

The Office acknowledges receipt of the $1,410 surcharge fee, as well as the $100 certificate of correction fee. No additional fees will be required when the renewed petition and certificate of correction are filed.

[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).

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
By internet:	EFS-Web www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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APR 13 2012
OFFICE OF PETITIONS

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C
ONE FINANCIAL CENTER
BOSTON MA 02111

In re Patent No. 7,813,725	: DECISION GRANTING PETITION
Issue Date: October 12, 2010	: UNDER 37 CFR 1.78(a)(3) AND
Application No. 11/353,452	: REQUEST FOR CERTIFICATE OF
Filed: February 13, 2006	: CORRECTION
Attorney Docket No. 18358-013	:

This is a decision on the renewed petition, filed April 2, 2012, under 37 CFR 1.78(a)(3), seeking to add a claim for priority under 35 U.S.C. § 120 to nonprovisional Application No. 10/123,788, filed April 16, 2002, by way of a certificate of correction.

The petition is **granted**.

A review of the file record fails to disclose that a claim for the benefit of priority to the above-noted, prior-filed nonprovisional application was made within the time period set forth in 37 CFR 1.78(a)(2)(ii) and further failed to include a proper reference to the prior-filed application as required by 37 CFR 1.78(a)(2)(i) and 1.78(a)(2)(iii).

The instant application was filed September 8, 2003. Therefore, since this application was filed after November 29, 2000, a petition under 37 CFR 1.78(a)(3), along with submission of a Certificate of Correction, is the appropriate avenue of relief to accept a late claim for the benefit of priority to a prior-filed nonprovisional application after issuance of the application into a patent. See MPEP 1481.

The Office notes:

Where priority is based upon 35 U.S.C. 120 to a national application, the following conditions must be satisfied:

(A) all requirements set forth in 37 CFR 1.78(a)(1) must have been met in the application which became the patent to be corrected;

(B) it must be clear from the record of the patent and the parent application(s) that priority is appropriate (see MPEP § 201.11); and

(C) a grantable petition to accept an unintentionally delayed claim for the benefit of a prior application must be filed, including a surcharge as set forth in 37 CFR 1.17(t), as required by 37 CFR 1.78(a)(3).

MPEP 1481.03(II)(B) .

If all the above-stated conditions are satisfied, a Certificate of Correction can be used to add or correct a claim under 35 U.S.C. 120 for benefit of a prior-filed nonprovisional application.

Petitioner has satisfied the above listed requirements.

A petition for acceptance of an unintentionally delayed claim under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. 120 and 37 CFR 1.78(a)(2)(i) and (iii) to the prior-filed application (unless previously submitted);

(2) the surcharge set forth in 37 CFR 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

As the petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the above-noted, prior-filed nonprovisional application satisfies the conditions of 37 CFR 1.78(a)(3) and applicant has submitted a completed Certificate of Correction form correcting the reference to the prior-filed nonprovisional application on both the front page and the first paragraph of the specification of the Letters Patent, the petition is granted.

A corrected Filing Receipt, which includes the priority claim to the above-noted, prior-filed nonprovisional application, accompanies this decision on petition.

Petitioner is advised that the granting of this petition and the mailing of a corrected Filing Receipt should not be viewed as an indication that a determination has been made that this application is entitled to claim benefit of the prior-filed application. A determination that applicant is entitled to claim benefit of the prior-filed application will be made by the Examiner prior to the mailing of a certificate of correction.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3230.

This application is being referred to the Certificates of Correction Branch for processing the request for a certificate of correction in accordance with this decision on the petition under 37 CFR 1.78(a)(3).

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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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
11/353,452	02/13/2006	2617	2865	18358-013	62	4

CONFIRMATION NO. 7884

CORRECTED FILING RECEIPT

30623
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C
ONE FINANCIAL CENTER
BOSTON, MA 02111

OC000000053695566

Date Mailed: 04/12/2012

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

Feyzi Celik, Hopkinton, MA;

Power of Attorney: The patent practitioners associated with Customer Number 30623

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/662,462 03/15/2005
and is a CIP of 11/056,022 02/11/2005 PAT 7349907
which is a CIP of 10/879,331 06/29/2004 PAT 7509349
which is a CIP of 10/657,757 09/08/2003 PAT 7296036
which is a CON of 10/123,788 04/16/2002 PAT 6654768
which is a CON of 09/223,129 12/30/1998 PAT 6374259
which claims benefit of 60/102,614 10/01/1998

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 03/09/2006

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/353,452**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

WIRELESS DATA EXCHANGE

Preliminary Class

455

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

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The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

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MAILED Paper No.
NOV 29 2010
OFFICE OF PETITIONS

MERCK
PATENT DEPARTMENT (K-6-1, 1990)
2000 GALLOPING HILL ROAD
KENILWORTH NJ 07033-0530

In re Application of	:	
Zeng et al.	:	DECISION
Application No. 11/353,474	:	ON APPLICATION FOR
Filed: February 14, 2006	:	PATENT TERM ADJUSTMENT
Atty Docket No. IM06128US01	:	
Title: HETEROARYL SUBSTITUTED	:	
PYRAZINYL-PIPERAZINE-	:	
PIPERIDINES WITH CXCR3	:	
ANTAGONIST ACTIVITY	:	

This is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed November 17, 2010. Applicant submits that the correct patent term adjustment to be indicated on the patent is three hundred and eighty-two (382) days, not two hundred and four (204) 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).

---

[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 37 CFR 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

FITZPATRICK CELLA HARPER & SCINTO
1290 AVENUE OF THE AMERICAS
NEW YORK, NY 10104-3800

MAILED
OCT 01 2010
OFFICE OF PETITIONS

In re Application of	:	
James M. Suttle et al	:	
Application No. 11/353,553	:	DECISION ON PETITION
Filed: February 13, 2006	:	UNDER 37 CFR 1.313(c)(1)
Attorney Docket No. 02280.003790.	:	

This is a decision on the petition under 37 CFR 1.313(c), filed September 30, 2010, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **DISMISSED**.

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.

Upon payment of the issue fee, an application will not be withdrawn from issue upon petition except for the reasons enumerated in 37 CFR 1.313(c). The circumstances of the above-identified application do not fall within any of those exceptions.

For the reason stated above, the petition under 37 CFR 1.313(c) cannot be granted.

Petitioner is reminded that the filing of any renewed petition to withdraw from issue may not be recognized or effective if not received by the appropriate deciding official in time to act prior to issuance. *Note* 37 CFR 1.313(d). It is recommended that the facsimile number listed below be used to file the renewed petition.

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) 273-0025**
Office of Petitions

Any questions concerning this matter may be directed to Irvin Dingle at (571) 272-3210.

/Irvin Dingle/
Irvin Dingle
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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FITZPATRICK CELLA HARPER & SCINTO
1290 AVENUE OF THE AMERICAS
NEW YORK, NY 10104-3800

MAILED
OCT 14 2010
OFFICE OF PETITIONS

In re Application of	:	
James M. Suttle et al	:	
Application No. 11/353,553	:	DECISION ON PETITION
Filed: February 13, 2006	:	UNDER 37 CFR 1.313(c)(1)
Attorney Docket No. 02280.003790.	:	

This is a decision on the petition filed October 12, 2010, which is being treated as a renewed petition under 37 CFR 1.313(c), to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **DISMISSED**.

Upon payment of the issue fee, an application will not be withdrawn from issue upon petition except for the reasons enumerated in 37 CFR 1.313(c). Applicant filed the renewed petition to withdraw from issue under 37 CFR 1.313(c), unpatentability. However, the showing required for unpatentability must consist of the following:

(1) Unpatentability of one of more claims, which petition must be accompanied by an unequivocal statement that one or more claims are unpatentable;

(2) an amendment to such claim or claims;

(3) an explanation as to how the amendment causes such claim or claims to be patentable;

Applicant lack items (2) and (3) above; therefore, the petition under 37 CFR 1.313(c) cannot be granted.

Petitioner is reminded that the filing of any renewed petition to withdraw from issue may not be recognized or effective if not received by the appropriate deciding official in time to act prior to issuance. *Note* 37 CFR 1.313(d). It is recommended that the facsimile number listed below be used to file the renewed petition.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
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Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: **(571) 273-0025**
Office of Petitions

Any questions concerning this matter may be directed to Irvin Dingle at (571) 272-3210.

This matter is being referred to Technology Center AU 1781 for processing of the Request to Correct Inventorship under 37 CFR 1.48(b) filed September 30, 2010.

/Irvin Dingle/
Irvin Dingle
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Paper No.

Hercules Incorporated
Hercules Plaza
1313 N. Market Street
Wilmington DE 19894-0001

MAILED
JUN 21 2011
OFFICE OF PETITIONS

In re Application of	:	
Arisz et al.	:	DECISION ON PETITION
Application No. 11/353,621	:	
Filed: February 14, 2006	:	
Atty Docket No. 10309	:	

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) filed April 28, 2011.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply to the Notice of Non-compliant Amendment (37 CFR 1.121) mailed June 16, 2010. The Notice set a period for reply of one month from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. No reply having been received, the above-identified application became abandoned on July 17, 2010. A courtesy Notice of Abandonment was mailed on January 25, 2011.

Petitioner has satisfied the requirements of 37 CFR 1.137(b). The petition included the required reply in the form of an amendment, the petition fee, and the required statement of unintentional delay.

The application is being forwarded to Technology Center AU 1623, for consideration of the response submitted on petition filed April 28, 2011.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
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MERCK
PATENT DEPARTMENT (K-6-1, 1990)
2000 GALLOPING HILL ROAD
KENILWORTH NJ 07033-0530

MAILED

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OFFICE OF PETITIONS

In re Application of :
Kim, et al. :
Application No. 11/353,641 : ON APPLICATION FOR
Filed: February 14, 2006 : PATENT TERM ADJUSTMENT
Atty Docket No. **IM06188US01** :

This is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)" filed November 23, 2010. Applicants submits that the patent term adjustment to be indicated on the patent is four hundred and forty-four (444) days, not two hundred and sixty-five(265) 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 August 13, 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

UNITED STATES PATENT AND TRADEMARK OFFICE

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J. WILEY HORTON, ESQUIRE
Pennington, Moore, Wilkinson, Bell & Dunbar, P.A.
Post Office Box 10095
Tallahassee FL 32302-2095

MAILED
MAR 05 2012
OFFICE OF PETITIONS

In re Application of	:
Menocal, et al.	: DECISION ON PETITION
Application No. 11/353,658	:
Filed: February 14, 2006	:
For: TRANSPARENT HEALTHCARE	:
TRANSACTION MANAGEMENT SYSTEM	:
	:

This decision is in response to the petition under 37 CFR 1.137(b), filed January 31, 2012.

The petition is **GRANTED**.

This application became abandoned September 23, 2011 for failure to timely submit a proper reply in response to the non-final Office action mailed June 22, 2011. The non-final Office action set a three month shortened statutory period of time for reply. Notice of Abandonment was mailed January 19, 2012.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 C.F.R. § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee set forth in 37 C.F.R. § 1.20(d)) required pursuant to 37 C.F.R. § 1.137(c).

The above-identified application has been carefully reviewed and found in compliance with the requirements set forth above.

The instant petition has been carefully reviewed and found in compliance with the requirements set forth above.

This application is being forwarded to Group Art Unit 3686 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Decision Date : November 30, 2011

In re Application of :

Alexander Frank

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11353675

Filed : 14-Feb-2006

Attorney Docket No : 315605.01

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed November 30, 201,1to 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 3621 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	11353675
Filing Date	14-Feb-2006
First Named Inventor	Alexander Frank
Art Unit	3621
Examiner Name	CALVIN CHEUNG
Attorney Docket Number	315605.01
Title	DISAGGREGATED SECURE EXECUTION ENVIRONMENT

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 2011.12.01

☐ 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	/James Strom/
Name	James Strom
Registration Number	48702

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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PATENT DEPARTMENT
LARKIN, HOFFMAN, DALY & LINDGREN, LTD.
1500 WELLS FARGO PLAZA
7900 XERXES AVENUE SOUTH
BLOOMINGTON MN 55431

MAILED
MAY 03 2011
OFFICE OF PETITIONS

In re Application of	:	
Malcolm R. Christie	:	
Application No. 11/353,756	:	DECISION ON PETITION
Filed: February 14, 2006	:	
Attorney Docket No. **29,920-02**	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 28, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of February 06, 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 07, 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. Accordingly, the reply to the final Office Action of February 06, 2009 is accepted as having been 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.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at (571) 2783.

This application is being referred to Technology Center AU 3634 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Ramesh Krishnamurthy

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

cc: **MICHAEL N. HAYNES**
1341 HUNTERSFIELD CLOSE
KESWICK VA 22947

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Patent No. : 7,358,275 B2
Ser. No. : 11/353,808
Inventor(s) : Maxey et al.
Issued : Apr. 15, 2008
Title : INTERNAL 1,15-LACTONES OF FLUPROSTENOL AND RELATED PROSTAGLANDIN F2A ANALOGS AND THEIR USE IN THE TREATMENT OF GLAUCOMA AND INTRAOCULAR HYPERTENSION
Docket No. : 7919.3004.003 (CAYMN-8823
Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322 and/or 1.323.

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

In view of the foregoing, your request, in this matter, is hereby denied.

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1. 17(i) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (703) 872-9306
ATTN: Office of Petitions

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, no additional fee is required.

Ennis Young
For Mary Diggs
Decisions & Certificates
of Correction Branch
(571) **272-3435** or (703) 756-1814

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PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI LLP
ONE OXFORD CENTRE, 38TH FLOOR
301 GRANT STREET
PITTSBURGH PA 15219-6404

MAILED

NOV 21 2011

OFFICE OF PETITIONS

In re Patent No. 7,358,275	:	
Issue Date : April 15, 2008	:	
Application No. 11/353,808	:	ON PETITION
Filed: February 14, 2006	:	
Attorney Docket No. 7919.3004.003	:	
(CAYMN-8823		

This is a decision on the petition, filed October 17, 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**.

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a)) and the processing fee set forth in § 1.17(i) of this chapter.

[1] *See* MPEP 1309, subsection II and Official Gazette of June 22, 2004

The request under 37 CFR 3.81(b) was not accompanied by a statement that the assignment was submitted for recordation before issuance of the patent. As petitioner has failed to comply with the provisions of 37 CFR 3.81(b), the request cannot be granted at this time.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI LLP
ONE OXFORD CENTRE, 38TH FLOOR
301 GRANT STREET
PITTSBURGH PA 15219-6404

MAILED
JAN 30 2012
OFFICE OF PETITIONS

In re Patent No. 7,358,275	:	
Issue Date : April 15, 2008	:	
Application No. 11/353,808	:	ON PETITION
Filed: February 14, 2006	:	
Attorney Docket No. 7919.3004.003	:	
(CAYMN-8823		

This is a decision on the petition, filed December 2, 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**.

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 Office assignment records disclose that a corrective assignment to the assignee name from "**Cayman Chemical Company Inc.**" to "**Cayman Chemical Company Incorporated,**" was recorded **June 13, 2011**, which is **after** the date of issuance of the patent. Accordingly, since the

[1] *See* MPEP 1309, subsection II and Official Gazette of June 22, 2004

assignment was not submitted for recordation until **after** issuance of the patent, issuance of a certificate of correction would not be proper.

Telephone inquiries concerning this decision should be directed to Diane Goodwyn at (571) 272-6735.

Thurman K. Page
Petitions Examiner
Office of Petitions

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OCT 26 2010

OFFICE OF PETITIONS

MCANDREWS HELD & MALLOY LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

In re Patent No. 7,668,188
Chang, et al.
Issue Date: February 23, 2010
Application No. 11/353,886
Filed: February 14, 2006
Attorney Docket No. 17266US01

DECISION ON
PATENT TERM ADJUSTMENT

This is a decision on the "REQUEST FOR RECONSIDERATION OF USPTO RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH", filed June 11, 2010. Patentees request that the patent term adjustment indicated on the patent be corrected from one thousand thirty-five (1035) days to one thousand thirty-six (1036) days.

The application for patent term adjustment is **DISMISSED**.

On February 23, 2010, the above-identified application matured into U.S. Patent No. 7,668,188 with a patent term adjustment of 1035 days. On May 5, 2010, patentee filed a "REQUEST FOR RECONSIDERATION OF USPTO RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH". The Office mailed a decision on May 11, 2010, stating that the correct patent term adjustment was 1035 days.

Patentees argue that the patent term adjustment should be 1036 days, because the Office erred in according 11 days of Applicant delay pursuant to 37 CFR 1.704(c)(10). Patentees assert that the 1.704(c)(10) delay should instead be 10 days.

A review of the file does not reveal any error in the determination of the patent term adjustment. Applicants filed a Rule 312 Amendment on January 4, 2010. The Office mailed a reply on January 14, 2010. 37 CFR 1.704(c)(10) states that applicant delay shall be assessed "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." Accordingly, the correct number of days of applicant delay was properly assessed as 11 days.

In view thereof, the correct determination of PTA at the time of issuance is **one thousand thirty-five (1035)** days (1046 days of PTO delay, reduced by 11 days of applicant delay).

Receipt of the $200 fee under 37 C.F.R. §1.18(e) is acknowledged.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Cliff Congo at (571)272-3207.

Anthony Knight
Director
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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HAMILTON, BROOK, SMITH & REYNOLDS, P.C.
530 VIRGINIA ROAD
P.O. BOX 9133
CONCORD MA 01742-9133

MAILED

AUG 11 2010

OFFICE OF PETITIONS

DECISION ON PETITION

In re Application of
Samuel Arbefeuille et al.
Application No. 11/353,927
Filed: February 13, 2006
Attorney Docket No. **4221.1000-014**

This is a decision on the petition under 37 CFR 1.182, filed June 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.

The Application Data Sheet (ADS) filed with the instant petition was not properly signed and does not comply with 37 CFR 1.76(c)(2). When changes are being made to the information supplied previously filed in Oath or Declaration/ADS applicants are strongly encouraged to submit a Supplemental Application Data Sheet showing the new order of inventors' names. Therefore, petitioner is requested to submit a new (ADS) that is properly signed and with the changes showing the new order of inventors names. The newly submitted ADS must be titled "**Supplemental Application Data Sheet**". *See 37 CFR 1.76(c)(2) and MPEP § 605.04(f).*

This application is being referred to Technology Center AU 3734 for examination in due course.

Telephone inquiries regarding this decision should be directed to the undersigned at 571-272-4584.

JoAnne Burke
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
11/353,927	02/13/2006	3734	2730	4221.1000-014	34	3

CONFIRMATION NO. 6449

CORRECTED FILING RECEIPT

21005
HAMILTON, BROOK, SMITH & REYNOLDS, P.C.
530 VIRGINIA ROAD
P.O. BOX 9133
CONCORD, MA 01742-9133

OC000000042998024

Date Mailed: 08/11/2010

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)

Humberto Berra, Cooper City, FL;
Samuel Arbefeuille, Hollywood, FL;
Gerry Ouellette, Coral Springs, FL;

Assignment For Published Patent Application

Bolton Medical, Inc.

Power of Attorney: The patent practitioners associated with Customer Number 021005

Domestic Priority data as claimed by applicant

This application is a DIV of 10/844,136 05/12/2004 ABN *
and is a CIP of 10/784,462 02/23/2004
which claims benefit of 60/499,652 09/03/2003
and claims benefit of 60/500,155 09/04/2003
(*)Data provided by applicant is not consistent with PTO records.

Foreign Applications

If Required, Foreign Filing License Granted: 03/08/2006

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/353,927**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Capture device for stent graft delivery

Preliminary Class

623

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

UNITED STATES PATENT AND TRADEMARK OFFICE

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Decision Date : September 7,2011

In re Application of :

Humberto Berra

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11353927

Filed : 13-Feb-2006

Attorney Docket No : 4221.1000-014

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed September 7,2011, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid 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 3734 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	11353927
Filing Date	13-Feb-2006
First Named Inventor	Humberto Berra
Art Unit	3734
Examiner Name	DIANE YABUT
Attorney Docket Number	4221.1000-014
Title	CAPTURE DEVICE FOR STENT GRAFT DELIVERY

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	/Mary K. Murray/
Name	Mary K. Murray
Registration Number	47813

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LLP
901 NEW YORK AVENUE NW
WASHINGTON DC 20001-4413

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OFFICE OF PETITIONS

In re Application	:	
Lawton, et al.	:	
Application No. 11/353,994	:	DECISION ON APPLICATION
Filed: February 15, 2006	:	FOR PATENT TERM ADJUSTMENT
Atty Docket No. 07680.0033	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT - PRE-GRANT", filed December 20, 2011. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from four hundred fifty-nine (459) days to six hundred twenty-one (621) days.

The application for patent term adjustment is **GRANTED.**

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **six hundred twenty-one (621) days.** A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On September 28, 2011, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date is four hundred fifty-nine (459) days.

On December 20, 2011, Applicants timely[1] submitted the instant application for patent term adjustment.

Applicants state that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of four hundred fifty-nine (459) days based on an adjustment of seven hundred three (703) days of PTO delay pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), and twenty (20) days pursuant to 35 U.S.C. 154(b)(1)(A)(ii) and 37 C.F.R. 1.703(a)(2), reduced by ninety-two (92, ninety-one (91), and thirty-two (32) days of applicant delay pursuant to 37 C.F.R. § 1.704(b), and forty-nine (49) days pursuant to 37 C.F.R. § 1.704(c)(8).

Applicants points out that the Office timely responded to Applicants' September 18, 2009 reply on December 23, 2009, but that thereafter the Office mailed a supplemental final Office action on May 11, 2010. As this supplemental Office action set a new shortened statutory period for reply, Applicants argue that the Office should have been accorded delay for not timely responding to their September 18, 2009 reply within four months. Applicants argument has been considered, and is found to be persuasive. Accordingly, the Office should have been assessed 113 days pursuant to 37 C.F.R. § 1.703(a)(2).

Lastly, Applicants assert that they should not have been assessed 49 days of Applicant delay for filing a supplemental reply under 37 CFR 1.704(c)(8) on September 19, 2011. Applicants argue that it was expressly requested by the Examiner, and as such, zero days of Applicant delay should have been assessed. A review of the September 19, 2011 reply reveals that it contains language stating that it was being filed pursuant to a telephonic interview in which the Examiner suggested that Applicants amend the claims. In view thereof, Applicants' argument is persuasive, and zero (0) days of Applicant delay should have been assessed for this filing.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **six hundred twenty-one (621) days** (836 (703+113+20) days of PTO delay, reduced by 215 (92+91+32) days of applicant delay).

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[1] Applicants filed the application for patent term adjustment together with the payment of the issue fee.

Receipt of the $200 fee set forth in 37 C.F.R. § 1.18(e) is acknowledged.

The application is being forwarded to the Office of Data Management for processing into a patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571)272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

Enc: updated PAIR screen

Patent Term Adjustments

PTA/PTE Information | Patent Term Adjustment | Patent Term Extension

Application Number*: Search | Explanation of PTA Calculation | Explanation of PTE Calculation

PTA Calculations for Application: 11353994

Application Filing Date	02/15/2006	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	723
A Delays	723	PTO Manual Adjustment	162
B Delays	0	Applicant Delay (APPL)	264
C Delays	0	Total PTA (days)	621

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
76	01/31/2012		P028	Adjustment of PTA Calculation by PTO	162		0
69	09/28/2011		MN/=.	Mail Notice of Allowance			0
68	09/27/2011		OAR	Office Action Review			0
67	09/27/2011		OAR	Office Action Review			0
66	09/27/2011		IREV	Issue Revision Completed			0
65	09/27/2011		DVER	Document Verification			0
63	09/27/2011		N/=.	Notice of Allowance Data Verification Completed			0
62	09/26/2011		EX.R	Reasons for Allowance			0
61	09/26/2011		CNTA	Allowability Notice			0
60	09/21/2011		FWDX	Date Forwarded to Examiner			0
59	09/19/2011	08/01/2011	SA..	Supplemental Response		49	52
58	08/31/2011		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
57	08/29/2011		OAR	Office Action Review			0
56	08/29/2011		OAR	Office Action Review			0
55	08/26/2011		EXIE	Interview Summary - Examiner Initiated			0
54	08/26/2011		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
53	08/16/2011		FWDX	Date Forwarded to Examiner			0
52	08/01/2011	06/30/2011	A...	Response after Non-Final Action		32	47
51	08/01/2011		XT/G	Request for Extension of Time - Granted			0
50	07/01/2011		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
49	06/29/2011		OAR	Office Action Review			0
48	06/29/2011		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
47	03/30/2011	03/10/2011	MCTNF	Mail Non-Final Rejection	20		43
46	03/27/2011		CTNF	Non-Final Rejection			0
45	11/12/2010		FWDX	Date Forwarded to Examiner			0
42	11/12/2010		ABN9	Disposal for a RCE / CPA / R129			0
43	11/10/2010	08/11/2010	RCEX	Request for Continued Examination (RCE)		91	32
41	11/10/2010		XT/G	Request for Extension of Time - Granted			0
40	11/10/2010		BRCE	Workflow - Request for RCE - Begin			0
39	09/27/2010		MCTAV	Mail Advisory Action (PTOL - 303)			0
38	09/25/2010		CTAV	Advisory Action (PTOL-303)			0
44	09/13/2010		AMPR	RCE- AF Processed			0
37	09/13/2010		FWDX	Date Forwarded to Examiner			0
36	09/13/2010		A.NE	Amendment after Final Rejection			0
35	09/13/2010		XT/G	Request for Extension of Time - Granted			0
34	08/03/2010		MEXIN	Mail Examiner Interview Summary (PTOL - 413)			0
33	07/27/2010		EXIN	Examiner Interview Summary Record (PTOL - 413)			0
32	05/11/2010		MSFR.	Mail Supplemental Final Rejection			0
31	05/10/2010		SFR.	Supplemental Final Rejection			0
30	12/23/2009		MCTFR	Mail Final Rejection (PTOL - 326)			0
29	12/19/2009		CTFR	Final Rejection			0
25	11/13/2009		FWDX	Date Forwarded to Examiner			0
28	09/18/2009		IDSC	Information Disclosure Statement considered			0
27	09/18/2009		RCAP	Reference capture on IDS			0
26	09/18/2009	09/18/2009	M844	Information Disclosure Statement (IDS) Filed			24
24	09/18/2009	06/18/2009	A...	Response after Non-Final Action		92	20
23	09/18/2009		XT/G	Request for Extension of Time - Granted			0
22	09/18/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
21	04/14/2009		DOCK	Case Docketed to Examiner in GAU			0
20	03/18/2009	04/15/2007	MCTNF	Mail Non-Final Rejection	703		0.5
19	03/16/2009		CTNF	Non-Final Rejection			0
16	09/09/2008		DOCK	Case Docketed to Examiner in GAU			0
15	09/08/2008		DOCK	Case Docketed to Examiner in GAU			0
14	03/04/2008		DOCK	Case Docketed to Examiner in GAU			0
13	03/03/2008		DOCK	Case Docketed to Examiner in GAU			0

12	11/10/2007	DOCK	Case Docketed to Examiner in GAU	0
11	08/23/2007	PG-ISSUE	PG-Pub Issue Notification	0
10	08/10/2007	TI1050	Transfer Inquiry to GAU	0
9	11/30/2006	TSSCOMP	IFW TSS Processing by Tech Center Complete	0
8	05/26/2006	OIPE	Application Dispatched from OIPE	0
7	05/26/2006	COMP	Application Is Now Complete	0
6	05/16/2006	ADDFLFEE	Additional Application Filing Fees	0
5	05/16/2006	OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	0
4	03/17/2006	INCD	Notice Mailed--Application Incomplete--Filing Date Assigned	0
3	03/06/2006	L194	Cleared by OIPE CSR	0
2	02/24/2006	SCAN	IFW Scan & PACR Auto Security Review	0
1	02/15/2006	IEXX	Initial Exam Team nn	0
0.5	02/15/2006	EFILE	Filing date	0

Export to: Excel

CERTIFICATION AND REQUEST FOR RELIEF DUE TO EVENTS OF MARCH 11, 2011, IN JAPAN (Page 1 of 2)

Nonprovisional Application Number or Control Number (if applicable): 11/354,029	Patent Number (if applicable):
First Named Inventor: Kenya OHASHI	Title of Invention: METHODS OF FABRICATING NANO-SCALE ...

APPLICANT/PATENTEE/REEXAMINATION PARTY HEREBY CERTIFIES AND REQUESTS THE FOLLOWING FOR THE ABOVE-IDENTIFIED APPLICATION/PATENT/REEXAMINATION PROCEEDING.

1. FOR PATENT APPLICATIONS AND REEXAMINATION PROCEEDINGS PENDING IN THE USPTO AS OF MARCH 11, 2011, IN WHICH A COMMUNICATION FROM THE USPTO IS SOUGHT TO BE REMAILED:

   a. One or more inventors, an assignee, or a correspondence address (for the application/proceeding) is in an area of Japan affected by the earthquake and/or tsunami of March 11, 2011.

   b. A reply or response to an Office action (final, non-final, or other), a notice of allowance, or other Office notice (hereinafter collectively referred to as “Office communication”) is outstanding on March 11, 2011.

   c. The statutory or non-statutory time period set for response has not yet expired.

   d. Withdrawal and reissuance of the Office communication is requested.

   e. It is acknowledged that if this request is not made within sufficient time so that withdrawal and reissuance of the Office communication occur prior to expiration of the statutory or non-statutory time period (as permitted to be extended under 37 CFR 1.136(a), or as extended under 37 CFR 1.550(c) or 1.956), this request may not be granted.

   f. The need for the reissuance of the Office communication was due to the effects of the earthquake and/or tsunami of March 11, 2011.

   g. This request is being sent via EFS-Web or by mail directed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

2. FOR PATENTEES WHO WERE UNABLE TO TIMELY PAY A PATENT MAINTENANCE FEE DURING THE SIX-MONTH GRACE PERIOD FOLLOWING THE WINDOW TO PAY THE MAINTENANCE FEE:

   a. The original window of time to pay the maintenance fee without the surcharge required by 37 CFR 1.20(h) expired on or after March 11, 2011.

   b. The delay in paying the fee was due to the effects of the earthquake and/or tsunami of March 11, 2011.

   c. The USPTO is requested to *sua sponte* waive the surcharge in 37 CFR 1.20(h) for paying a maintenance fee during the six-month grace period following the window to pay the maintenance fee.

   d. This request and payment of the maintenance fee during the six-month grace period following the window to pay the maintenance fee is being mailed to: Director of the United States Patent and Trademark Office, Attn: Maintenance Fee, 2051 Jamieson Avenue, Suite 300, Alexandria, VA 22314; or being transmitted via facsimile to: 571-273-6500.

CERTIFICATION AND REQUEST FOR RELIEF DUE TO EVENTS OF MARCH 11, 2011, IN JAPAN (Page 2 of 2)

3. FOR PATENTEES WHO NEED TO FILE A PETITION TO ACCEPT A DELAYED MAINTENANCE FEE PAYMENT UNDER 37 CFR 1.378(c):
   a. The maintenance fee payment was required to have been paid after March 10, 2011.
   b. A petition under 37 CFR 1.378(c) (using USPTO form PTO/SB/66 – Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c))) is being promptly filed accompanied by the applicable maintenance fee payment (but not the surcharge under 37 CFR 1.20(i)).
   c. The delay in payment of the maintenance fee was due to the effects of the earthquake and/or tsunami of March 11, 2011.
   d. The USPTO is requested to *sua sponte* waive the surcharge in 37 CFR 1.20(i) for accepting a delayed maintenance fee payment.
   e. It is acknowledged that the petition to accept a delayed maintenance fee payment under 37 CFR 1.378(c) must be filed by March 11, 2012, in order to be entitled to a waiver of the surcharge under 37 CFR 1.20(i).
   f. It is acknowledged that the petition to accept a delayed maintenance fee payment under 37 CFR 1.378(c) must be filed within twenty-four months from the expiration date of the patent. *See* 35 U.S.C 41(c).
   g. This request and the petition to accept a delayed maintenance fee payment under 37 CFR 1.378(c) is being submitted via EFS-Web or by mail directed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.
4. FOR NONPROVISIONAL PATENT APPLICATIONS FILED WITHOUT AN EXECUTED OATH OR DECLARATION OR PAYMENT OF THE BASIC FILING FEE, SEARCH FEE, AND/OR EXAMINATION FEE:
   a. The nonprovisional patent application was filed on or after March 11, 2011, and prior to April 12, 2011.
   b. The late filing of the oath or declaration or the basic filing fee, search fee, or examination fee was due to the effects of the earthquake and/or tsunami of March 11, 2011.
   c. The USPTO is requested to *sua sponte* waive the surcharge set forth in 37 CFR 1.16(f) for the late filing of the oath or declaration or basic filing fee, search fee, and/or examination fee.
   d. This request, together with the executed oath or declaration or the basic filing fee, search fee, or examination fee, as well as the reply to the Notice to File Missing Parts, is being submitted via EFS-Web or by mail directed to Mail Stop Missing Parts, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Signature /William I. Solomon/	Date May 5, 2011
Name (Print/Typed) William I. Solomon	Practitioner Registration Number 28,565

***Note**: Signatures of all the inventors, § 1.41(b) applicants, or assignees of record of the entire interest or their representative(s), or reexamination requesters at the appeal stage 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.

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

ANTONELLI, TERRY, STOUT & KRAUS, LLP
1300 NORTH SEVENTEENTH STREET
SUITE 1800
ARLINGTON VA 22209-3873

MAILED
MAY 09 2011
OFFICE OF PETITIONS

In re Application of	:	
Kenya OHASHI et al.	:	
Application No. 11/354,029	:	DECISION ON PETITION
Filed: February 15, 2006	:	
Attorney Docket No.: 500.45933X00	:	

This is a decision on the request filed May 5, 2011, seeking relief under the provisions of "Relief Available to Patent and Trademark Applicants, Patentees and Trademark Owners Affected by the Catastrophic Events of March 11, 2011 in Japan," 1365 Off. Gaz. Pat. Office 170 (April 19, 2011).

The request for relief is **GRANTED**.

In the above-identified application, an Office action was mailed on February 11, 2011. The instant petition was filed prior to the expiration of the period for reply and the certifications for granting of relief are considered to be met by the submission of the request.

Telephone inquires concerning this decision should be directed to the undersigned at 571-272-4914. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

This application is being referred to the Technology Center, Art Unit 1744 for re-mailing the Office action of February 11, 2011. The period for reply will run from the mailing date of the Office action.

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

D. KLIGLER IP SERVICES LTD
PO BOX 25
ZIPPORI 17910 IL ISRAEL

MAILED
AUG 17 2010
OFFICE OF PETITIONS

In re Application of
Yoel Gat, et al.
Application No. 11/354,246
Filed: February 15, 2006
Attorney Docket No. 1021-1008

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 July 29, 2010, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to prior-filed nonprovisional applications.

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 petition does not comply with item (2)

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition to accept an unintentionally delayed claim for priority or to accept an unintentionally delayed claim for priority to the prior filed non-

provisional application set forth in the concurrently filed amendment. In this instance, the fee required by law is $1,410. See 37 CFR 1.27.

The petition in the above identified application was not accompanied by a proper payment of the required fee. No consideration on the merits can be given that petition until the required fee is received.

Before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) an the balance of $1,010 for the to cover the cost of the fee for the petition.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

Telephone inquiries concerning this matter may be directed to April M. Wise at (571) 272-1642. All other inquiries concerning this application should be directed to the Technology Center.

/dab/
David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

D. KLINGLER IP SERVICES, LTD
PO BOX 25
ZIPPORI 17910 IL ISRAEL

MAILED

FEB 15 2011

OFFICE OF PETITIONS

In re Application of
Yoel Gat, et al.
Application No. 11/354,246
Filed: February 15, 2006
Attorney Docket No. 1021-1008

DECISION ON PETITION
UNDER 37 CFR 1.78(a)(3)

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed December 30, 2010, to accept an unintentionally delayed deletion of a previously filed claim for benefit under 35 U.S.C. § 120, as set forth in the concurrently filed amendment.

The petition is **DISMISSED** as unnecessary.

The filing of a petition under 37 CFR 1.78(a)(3) is inappropriate to delete a benefit claim. In this regard, petitioner's attention is directed to MPEP § 201.11(G), under the subheading Deleting Benefit Claims, which states:

> The examiner should consider whether any new prior art may now be available if a benefit claim is deleted. If an applicant is submitting an amendment to the specification or an ADS to delete a benefit claim after final rejection or action, the amendment or ADS will be treated under 37 CFR 1.116 (see MPEP § 714.12 and § 714.13). If the amendment or ADS to delete a benefit claim is submitted after the application has been allowed, the amendment or ADS will be treated under 37 CFR 1.312 (see § MPEP 714.16).

Accordingly, the petition under 37 CFR 1.78(a)(3) is dismissed as unnecessary.

In view of the above, the surcharge fee submitted with the petition is unnecessary and will be refunded to petitioner's credit card in due course.

Any inquiries concerning this decision may be directed to April M. Wise at (571) 272-1642.

Should petitioner wish to have the papers expunged from the file petition needs to file a petition under 37 CFR 1.59.

/dab/
David Bucci
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 08/30/11

TO SPE OF : ART UNIT 2624

SUBJECT : Request for Certificate of Correction for Appl. No 11/354,288 7925051 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)

Should the change(s) Be made?

RoChaun Hardwick
Certificates of Correction Branch
571 272-0470

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

- ☒ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

/Vu Le/ — **SPE**

2624 — **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

BURNS & LEVINSON LLP
125 SUMMER STREET
BOSTON MA 02110-1624

MAILED

AUG 08 2011

OFFICE OF PETITIONS

In re Patent No. 7,139,446 :
Issue Date: November 21, 2006 :
Application No. 11/354,382 : NOTICE
Filed: February 15, 2006 :
Attorney Docket No. 22978.11.02

This is in response to the paper filed January 22, 2010 which is being treated under 37 CFR 1.28(c) seeking status as a large entity.

The request is **DISMISSED.**

The Request For Change of Entity Status received on January 22, 2010 states "A current review of Applicant's/Assignee's records indicate that Applicant's small entity status in the present patent has changed to large entity status on or before December 31, 2009, after the issuance of the patent, but before the payment of the first maintenance fee is due."

The USPTO's Office record show the 3 ½ (first) maintenance fee of $490 was received on May 21, 2010. Since the small entity status changed to large entity status on or before December 31, 2009 a fee deficiency submission under 37 CFR 1.28 of $490 is required. The authorization to charge any additional fees signed by Kathleen Chapman is invalid. This petition can not be treated until the $490 fee deficiency is received.

Inquiries related to this communication should be directed to Irvin Dingle at (571) 272-3210.

Irvin Dingle
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAILED
SEP 07 2011
OFFICE OF PETITIONS

BURNS & LEVINSON LLP
125 SUMMER STREET
BOSTON MA 02110-1624

In re Patent No. 7,139,446	:	
Issue Date: November 21, 2006	:	
Application No. 11/354,382	:	NOTICE
Filed: February 15, 2006	:	
Attorney Docket No. 22978.11.02		

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

Inquiries related to this communication should be directed to Irvin Dingle at (571) 272-3210.

Irvin Dingle
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAILED

MAR 22 2012

OFFICE OF PETITIONS

LAW OFFICES OF MAXIMILLIAN R. PETERSON
P.O. BOX 93005
AUSTIN TX 78709-3005

In re Application of	:
Covey	: DECISION ON PETITION
Application No. 11/354,475	:
Filed: February 14, 2006	:
Atty. Dkt. No.: 048792/306414	:

This is a decision on the petition under 37 CFR 1.137(b), filed March 5, 2012.

The petition is **GRANTED**.

This application became abandoned April 21, 2011 for failure to timely reply to the non-final Office mailed January 20, 2011. The non-final Office action set a three (3) month shortened statutory period of time for reply. Notice of Abandonment was mailed August 8, 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 has been carefully reviewed and found in compliance with the requirements set forth above.

In view thereof, this application is being forwarded to Group Art Unit 2874 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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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ALCATEL-LUCENT
C/O GALASSO & ASSOCIATES, LP
P. O. BOX 26503
AUSTIN, TX 78755-0503

Mail Date: 08/04/2010

Applicant	: Richard M. Czerwiec	: DECISION ON REQUEST FOR
Patent Number	: 7639697	: RECALCULATION of PATENT
Issue Date	: 12/29/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 11/354,525	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/15/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **986** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No.

AUSTIN RAPP & HARDMAN
170 South Main Street
Suite 735
SALT LAKE CITY UT 84101

MAILED
APR 14 2011
OFFICE OF PETITIONS

In re Application of	:	
David Eatough	:	DECISION ON
Application No. 11/354,547	:	PETITION
Filed: February 15, 2006	:	
Attorney Docket No. 3408.2.23	:	

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) filed March 11, 2011.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to file corrected drawings within three months of the mailing date, November 23, 2010, of the Notice of Allowability. This Office action set a three-month nonextendable statutory period for reply. No reply having been received, the above-identified application became abandoned on February 24, 2011. A courtesy Notice of Abandonment was mailed on March 10, 2011.

The petition included the required reply[1] in the form of corrected drawings; payment of the petition fee set forth in 37 CFR § 1.17(m); and the required statement of unintentional delay. No terminal disclaimer is required.

It is concluded that all requirements of 37 CFR 1.137(b) have been met.

[1] There was no distinct but concurrent requirement for payment of a publication fee. The issue fee was timely paid on February 23, 2011.

The Office of Data Management (formerly known as the Office of Patent Publication) has been advised of this decision. The application is, thereby, forwarded for processing into a patent.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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ANDREA Q. RYAN
SANOFI-AVENTIS U.S. LLC
1041 ROUTE 202-206
MAIL CODE: D303A
BRIDGEWATER NJ 08807

MAILED

JUN 03 2011

OFFICE OF PETITIONS

In re Application of :
Kaplow et al. :
Application No.11/354,560 : ON APPLICATION FOR
Filed: February 15, 2006 : PATENT TERM ADJUSTMENT
Atty Docket No. USA3539 US CNT :

This is in response to the Request for Reconsideration of the Patent Term Adjustment Under 37 C.F.R. § 1.705(b), filed May 16, 2011. Applicants submit that the patent term adjustment to be indicated on the patent is one hundred eight (108) days, not one hundred twelve (112) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment.

Applicants disclose that that the Office failed to enter a reduction for the June 12, 2006 reply to the Notice to File Missing Parts of Nonprovisional Application, mailed March 8, 2006. Thus, applicants assert that a period of reduction of 4 days for Applicant delay should be entered in connection with the filing of their reply on June 12, 2006, pursuant to 37 CFR 1.704(b).

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is one hundred eight (108) days. A copy of the updated PAIR screen, showing the determination, is enclosed.

On February 28, 2011, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 112 days.

In the present petition applicants disclose that the Office failed to enter a reduction for the June 12, 2006 reply to the Notice to File Missing Parts of Nonprovisional Application, mailed March 8, 2006. Pursuant to 37 CFR 1.704(b), a period of reduction of 4 days should have been entered in connection with the June 12, 2006 reply to the Notice to File Missing Parts of Nonprovisional Application, mailed March 8, 2006.

37 CFR 1.704(b) provides that:

> With respect to the grounds for adjustment set forth in §§ 1.702(a) through (e), and in particular the ground of adjustment set forth in § 1.702(b), an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

In this instance, applicants failed to engage in reasonable efforts to conclude processing of the application by failing to reply to the Notice to File Missing Parts of Nonprovisional Application, mailed March 8, 2006, within the three-month period provided for in 37 CFR 1.704(b). Applicants did not file a response until June 12, 2006. Accordingly, a period of reduction of 4 days is being entered for the period beginning on June 9, 2006, the day after the date that is three months after the date of mailing of the Notice, and ending on June 12, 2006, the date applicants' reply was filed.

In view thereof, the determination of patent term adjustment at the time of mailing of the Notice of Allowance is **108 days** (347 days of Office delay - 239 (4 + 59 + 86 + 90) days of Applicant delay).

The Office acknowledges receipt of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

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

Enclosure: Copy of updated PAIR screen for Application No. 11/354,560

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

- Patent Official Gazette
- Search Patents & Applications
- Search Biological Sequences
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- Trademarks
- Policy & Law
- Reports

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11/354,560 NUCLEAR FACTOR KAPPAB INDUCING FACTOR

Select New Case | Application Data | Transaction History | Image File Wrapper | Patent Term Adjustments | Continuity Data | Foreign Priority | Published Documents | Address & Attorney/Agent | Supplemental Content

Patent Term Adjustment

Filing or 371(c) Date:	02-15-2006	Overlapping Days Between {A and B} or {A and C}:	0
Issue Date of Patent:	-	Non-Overlapping USPTO Delays:	347
A Delays:	347	PTO Manual Adjustments:	-4
B Delays:	0	Applicant Delays:	235
C Delays:	0	Total PTA Adjustments:	108

Patent Term Adjustment History **Explanation Of Calculations**

Number	Date	Contents Description	PTO (Days)	APPL (Days)	Start
105	06-02-2011	Adjustment of PTA Calculation by PTO		4	0
93	02-28-2011	Mail Notice of Allowance			0
92	02-16-2011	Issue Revision Completed			0
91	02-16-2011	Document Verification			0
90	02-16-2011	Examiner's Amendment Communication			0
89	02-14-2011	Notice of Allowance Data Verification Completed			0
88	02-14-2011	Allowability Notice			0
87	01-20-2011	Information Disclosure Statement considered			0
82	01-20-2011	Information Disclosure Statement (IDS) Filed			0
81	01-21-2011	Date Forwarded to Examiner			0
80	01-20-2011	Amendment Submitted/Entered with Filing of CPA/RCE			0
79	01-20-2011	Request for Continued Examination (RCE)		90	72
78	01-21-2011	Disposal for a RCE / CPA / R129			0
77	01-20-2011	Request for Extension of Time - Granted			0
76	01-20-2011	Information Disclosure Statement (IDS) Filed			0
75	01-20-2011	Workflow - Request for RCE - Begin			0
74	07-22-2010	Electronic Review			0
73	07-22-2010	Email Notification			0
72	07-22-2010	Mail Final Rejection (PTOL - 326)			0
71	07-19-2010	Final Rejection			0
70	05-11-2010	Date Forwarded to Examiner			0
69	05-06-2010	Response after Non-Final Action		86	64
68	05-06-2010	Request for Extension of Time - Granted			0
67	11-18-2009	Email Notification			0
66	11-18-2009	Mail Examiner Interview Summary (PTOL - 413)			0
65	11-09-	Examiner Interview Summary Record (PTOL - 413)			0

	2009				
64	11-09-2009	Mail Non-Final Rejection			0
63	11-04-2009	Non-Final Rejection			0
59	08-21-2009	Information Disclosure Statement considered			0
58	08-21-2009	Information Disclosure Statement (IDS) Filed			0
57	08-21-2009	Information Disclosure Statement (IDS) Filed			0
56	08-25-2009	Date Forwarded to Examiner			0
55	08-21-2009	Request for Continued Examination (RCE)			0
54	08-25-2009	Disposal for a RCE / CPA / R129			0
53	08-21-2009	Information Disclosure Statement (IDS) Filed			0
52	08-21-2009	Workflow - Request for RCE - Begin			0
51	06-08-2009	Electronic Review			0
50	06-08-2009	Email Notification			0
49	06-08-2009	Mail Final Rejection (PTOL - 326)			0
48	06-04-2009	Final Rejection			0
47	03-09-2009	Information Disclosure Statement considered			0
46	03-09-2009	Information Disclosure Statement considered			0
45	04-06-2009	Date Forwarded to Examiner			0
44	03-09-2009	Response after Non-Final Action		59	34
43	03-09-2009	Request for Extension of Time - Granted			0
42	03-09-2009	New or Additional Drawing Filed			0
41	03-09-2009	Reference capture on IDS			0
40	03-09-2009	Information Disclosure Statement (IDS) Filed			0
39	03-09-2009	Information Disclosure Statement (IDS) Filed			0
38	03-09-2009	Information Disclosure Statement (IDS) Filed			0
37	11-18-2008	Email Notification			0
36	11-18-2008	Change in Power of Attorney (May Include Associate POA)			0
35	11-07-2008	Correspondence Address Change			0
34	10-09-2008	Mail Notice of Restarted Response Period			0
33	10-08-2008	Letter Restarting Period for Response (i.e. Letter re: References)			0
32	07-31-2008	Mail Non-Final Rejection			0
31	07-31-2008	Non-Final Rejection			0
27	05-30-2008	Date Forwarded to Examiner			0
26	05-27-2008	Response to Election / Restriction Filed			0
25	05-27-2008	Request for Extension of Time - Granted			0
24	03-27-2008	Mail Restriction Requirement	347		0.5
23	03-25-2008	Restriction/Election Requirement			0

22	11-07-2006	IFW TSS Processing by Tech Center Complete	0
21	07-03-2006	Case Docketed to Examiner in GAU	0
20	06-29-2006	Application Return from OIPE	0
19	06-29-2006	Application Is Now Complete	0
18	06-29-2006	Application Return TO OIPE	0
17	06-29-2006	Application Return from OIPE	0
16	06-29-2006	Application Is Now Complete	0
15	06-12-2006	Additional Application Filing Fees	0
14	06-12-2006	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	0
13	06-12-2006	Applicant has submitted a new specification to correct Corrected Papers problems	0
12	03-30-2006	Cleared by L&R (LARS)	0
11	03-08-2006	Referred to Level 2 (LARS) by OIPE CSR	0
10	03-08-2006	Notice Mailed--Application Incomplete--Filing Date Assigned	0
7	03-07-2006	Application Return TO OIPE	0
6	03-07-2006	Application Dispatched from OIPE	0
5	03-07-2006	Application Is Now Complete	0
4	03-02-2006	CRF Is Good Technically / Entered into Database	0
3	02-24-2006	IFW Scan & PACR Auto Security Review	0
2	02-15-2006	CRF Disk Has Been Received by Preexam / Group / PCT	0
1	02-15-2006	Initial Exam Team nn	0
0.5	02-15-2006	Filing date	0

If you need help:

- *Call the Patent Electronic Business Center at (866) 217-9197 (toll free) or e-mail EBC@uspto.gov for specific questions about Patent Application Information Retrieval (PAIR).*
- *Send general questions about USPTO programs to the USPTO Contact Center (UCC).*
- *If you experience technical difficulties or problems with this application, please report them via e-mail to Electronic Business Support or call 1 800-786-9199.*

You can suggest USPTO webpages or material you would like featured on this section by E-mail to the webmaster@uspto.gov. While we cannot promise to accommodate all requests, your suggestions will be considered and may lead to other improvements on the website.

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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 NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/354,602	02/14/2006	Shane Elwart	81136917	9774

36865 7590 09/01/2010
ALLEMAN HALL MCCOY RUSSELL & TUTTLE, LLP
806 S.W. BROADWAY, SUITE 600
PORTLAND, OR 97205

EXAMINER
HAN, KWANG S

ART UNIT	PAPER NUMBER
1795	

MAIL DATE	DELIVERY MODE
09/01/2010	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.

Commissioner for Patents
United States Patent and Trademark Office
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wk

Mailed: SEP 01 2010

In re application of	:	
Elwart et al.	:	DECISION ON
Serial No. 11/354,602	:	PETITION
Filed: February 14, 2006	:	
For: SYSTEM AND METHOD TO OPERATE A FUEL CELL IN THE EXHAUST OF AN INTERNAL COMBUSTION ENGINE		

This is a response to a PETITION UNDER RULE 37 C.F.R. 1.181 filed February 24, 2010 requesting withdrawal of an improper requirement for restriction and withdrawal of finality.

A review of the record indicates that the application has been allowed on August 26, 2010.

DECISION

Accordingly, the instant petition is **DISMISSED.**

/W. GARY JONES/
Gary W. Jones, Director
Technology Center 1700
Chemical and Materials Engineering

John D. Russell
ALLEMAN HALL MCCOY RUSSELL & TUTTLE, LLP
806 S.W. BROADWAY, SUITE 600
PORTLAND OR 97205

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MCDERMOTT, WILL & EMERY
600 13TH STREET, NW
WASHINGTON, DC 20005-3096

MAILED
FEB 16 2011
OFFICE OF PETITIONS

In re Application of
PIRAN SIOSHANSI ET AL
Application No. 11/354,620
Filed: February 15, 2006
Attorney Docket No. 71602-015 (ARTK-2B)

DECISION ON PETITION
TO MAKE SPECIAL UNDER
37 CFR 1.102(d)

This is a decision on the petition under 37 CFR 1.102(d), filed February 15, 2006, to make the above-identified application special based on the invention materially contributing to the diagnosis and treatment of cancer set forth in M.P.E.P. § 708.02, Section X.

The petition is **GRANTED**.

A grantable petition to make an application special under 37 CFR 1.102(d) and MPEP § 708.02, Section X: Inventions Relating to HIV/AIDS and Cancer. The fee of $130.00 required under 37 CFR 1.17(h) has been charged to petitioner's Deposit Account 50-1133.

The instant application describes a type of technology for the treatment of cancer. Specifically the invention is directed to contributing to non-invasive brachytherapy treatments of cancer. Accordingly, the above-identified application has been accorded "special" status.

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-0602.

All other inquiries concerning either the examination or status of the application should be directed to the Technology Center 3700.

The application is being forwarded to the Technology Center Art Unit 3735 for action on the merits commensurate with this decision.

Thurman K. Page
Petitions Examiner
Office of Petitions

Electronic Acknowledgement Receipt

EFS ID:	7477897
Application Number:	11354668
International Application Number:	
Confirmation Number:	1411
Title of Invention:	SYSTEM AND METHOD FOR ONLINE INFORMATION ANALYSIS
First Named Inventor/Applicant Name:	Gary N. Boone
Customer Number:	26212
Filer:	David Jordan/Arlene Yates
Filer Authorized By:	David Jordan
Attorney Docket Number:	12587-078001/01718-00/US
Receipt Date:	23-APR-2010
Filing Date:	14-FEB-2006
Time Stamp:	15:42:41
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	Deposit Account
Payment was successfully received in RAM	$100
RAM confirmation Number	2043
Deposit Account	061050
Authorized User	
The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows: Charge any Additional Fees required under 37 C.F.R. Section 1.21 (Miscellaneous fees and charges)	

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Request for Certificate of Correction	12587-0078001CertificateofCorrection.pdf	386441 206c24098671c7d011a0a8c88c66ff88e5e0f683	no	3
Warnings:					
Information:					
2	Fee Worksheet (PTO-875)	fee-info.pdf	29984 5fd789f59216efaa42ef9bfb41eb99e0adcc00d3	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	416425		

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111
If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371
If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office
If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

Appl # 11/354,668

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 4/29/10

TO SPE OF : ART UNIT 2156 Vital Pierre (spe)

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/354668 Patent No.: 7685091

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

2156
Art Unit

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ANTONELLI, TERRY, STOUT & KRAUS, LLP
1300 NORTH SEVENTEENTH STREET
SUITE 1800
ARLINGTON VA 22209-3873

MAILED
AUG 03 2011
OFFICE OF PETITIONS

In re Patent No. 7,474,818	:	
Issue Date: January 6, 2009	:	
Application No. 11/355,016	:	DECISION ON PETITION
Filed: February 16, 2006	:	
Attorney Docket No. 500.45938X00	:	

This is a decision on the Petition For Suspension Of The Rules Under 37 CFR 3.81 And Certificate Of Correction Under 37 CFR 1.323, filed June 23, 2011, to accept the omission of the second assignee's name. A completed Certificate of Correction Form (PTO/SB/44) was submitted with Petition.

The petition under 37 CFR §3.81(b) is **GRANTED**.

Petitioner urges that the present petition was submitted to accept the omission of the second assignee's name on the previously submitted PTOL 85B. Accordingly, petitioner urges that a Certificate of Correction (PTO/SB/44) be issued to add the omitted second assignee's name to the Title Page of the Letters Patent.

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in §3.11 before issuance of the patent, and must include a request for a certificate of correction under §1.323 of this chapter (accompanied by the fee set forth in §1.20(a) and the processing fee set forth in §1.17(i) of this chapter.

The requisite $100.00 fee (Fee Code 1811), as set forth under 37 CFR 1.20(a), and the requisite $130.00 processing fee (Fee Code 1464), as set forth under 37 CFR 1.17(i), have been submitted. Further, Office assignment records are consistent with the requested correction. Accordingly, since the Petition complies with the provisions of 37 CFR §3.81(b), it is appropriate for the Office to issue a Certificate of Correction in accordance with the content of the Form (PTO/SB/44) submitted with the petition.

Inquiries related this communication should be directed to the undersigned at (571)272-3213.

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (703)756-1814.

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. 7,474,818.

Cheryl Gibson Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

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HUNTSMAN LAW GROUP, PLLC
4466 RIVA RIDGE WAY
BOISE ID 83709

MAILED
NOV 05 2010
OFFICE OF PETITIONS

In re Application of	:	
Stokkan et al.	:	
Application No. 11/355,044	:	DECISION ON PETITION
Filed: February 14, 2006	:	
Attorney Docket No. C79.U04-TRIGEO	:	

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 application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, November 23, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on February 24, 2010. A Notice of Abandonment was mailed June 1, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Amendment, (2) the petition fee of $810.00, and (3) a proper statement of unintentional delay.

Further, 37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Since the statement appearing in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the required statement. Petitioner must notify the Office if this is **not** a correct reading of the statement appearing in the petition.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This application is being referred to Technology Center AU 2156 for further appropriate action by the Examiner in the normal course of business on the reply received.

Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Jerry L. Mahurin
The Gates Corporation
MS: IP Law Dept. 10-A3
1551 Wewatta Street
Denver, CO 80202

MAILED
AUG 01 2011
OFFICE OF PETITIONS

In re Application of	:	
Colin Knight	:	
Application No. 11/355,063	:	ON PETITION
Filed: February 15, 2006	:	
Attorney Docket No. C04-056A	:	
For: **FLARED CONE FITTING**		

This is a decision on the "Petition and Submission under 35 USC § 118 and 37 CFR § 1.47(b)", filed May 4, 2011.

The petition under 37 CFR 1.47(b) is **dismissed as moot.**

The above-identified application was filed on February 15, 2006, without an executed oath or declaration. Accordingly, a "Notice to File Missing Parts Nonprovisional Application" (the "Notice") was mailed on March 14, 2006, requiring an executed oath or declaration and a surcharge for the late filing of the oath or declaration. A petition under 37 CFR 1.47(b) was filed on September 14, 2006, and dismissed by a decision mailed December 4, 2006. A renewed petition was filed on February 2, 2007. The application was granted status under 37 CFR 1.47(b) pursuant to a decision mailed July 27, 2007. The decision noted that the petitioner had established that the sole inventor has refused to join the prosecution of the application and that the 37 CFR 1.47(b) applicant has sufficient proprietary interest to proceed with prosecution of the application without the sole inventor.

By the instant petition, the 37 CFR 1.47(b) applicant requests that it be allowed to file a recordation of assignment for this application and subsequent applications. It is noted that the non-signing inventor has not executed an assignment to 37 CFR 1.47(b) applicant, but is petitioner's contention that the 37 CFR 1.47(b) applicant is the owner of invention claimed. Petitioner requests that the USPTO recognize the 37 CFR 1.47(b) applicant's ownership of the invention claimed.

It is noted that Section 301(V) of the Manual of Patent Examining Procedure (MPEP) provides that:

An assignment can be made of record in the United States Patent and Trademark Office (Office) in two different ways, for two different purposes. The differences are important to note:

(A) An assignment can be made of record in the assignment records of the Office. Recordation of the assignment provides legal notice to the public of the assignment. **It should be noted that recording of the assignment is merely a ministerial act; it is not an Office determination of the validity of the assignment document nor the effect of the assignment document on the ownership of the patent property. See 37 CFR 3.54 and MPEP § 317.03**; and

(B) An assignment can be made of record in the file of a patent application, patent, or other patent proceeding (e.g., reexamination proceeding). This step is necessary to permit the assignee to "take action" in the application, patent, or other patent proceeding under the conditions set forth in 37 CFR 3.73 and MPEP § 324. Recordation of an assignment in the assignment records of the Office does **not**, by itself, permit the assignee to take action in the application, patent, or other patent proceeding. For a patent to issue to an assignee, the assignment must have been recorded or filed for recordation in accordance with 37 CFR 3.11. See 37 CFR 3.81(a).

Thus, the USPTO will record assignment documents Office record that are resolved between the assignee(s) and assignor(s). The USPTO does not determine ownership of an invention or determine the validity of an assignment document. If there is some dispute as to the ownership of an invention claimed, this is a matter to litigate in the appropriate court of law—not before the USPTO.

The petition under 37 CFR 1.47(b) is dismissed as moot as there is no other relief that can be provided as the application was previously granted status under 37 CFR 1.47(b) and the USPTO does not determine ownership of any invention claimed or resulting patent.

Telephone inquiries regarding 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

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United States Patent and Trademark Office
P.O. Box 1450
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Jerry L. Mahurin
The Gates Corporation
MS: IP Law Dept. 10-A3
1551 Wewatta Street
Denver CO 80202

MAILED

OCT 17 2011

OFFICE OF PETITIONS

In re Application of	:	
Colin Knight	:	
Application No. 11/355063	:	DECISION
Filing or 371(c) Date: 02/15/2006	:	ON PETITION
Attorney Docket Number: C04-056A	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 29, 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 March 18, 2011. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that prima facie places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). Accordingly, the date of abandonment of this application is June 19, 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; and an Amendment as the submission required by 37 CFR 1.114; (2) the petition fee; and (3) a proper statement of unintentional delay.

This application is being referred to Technology Center AU 3679 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted with the petition in accordance with 37 CFR 1.114.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

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OFFICE OF PETITIONS

FISH & RICHARDSON P.C. (DA)
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

In re Application of
Gary M. Horndeski
Application No. 11/355,126
Filed: February 15, 2006
Attorney Docket No. 18577-007001

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 September 13, 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.

Petitioner should note that the Office will no longer accept address changes to a new practitioner of 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, the most current address information provided for the first named inventor.

Accordingly, the request to withdraw from record does not include an acceptable current correspondence address for future communications from the Office. Petitioner should also note that the oath/declaration filed in this application does not contain any information concerning the address of the applicants listed.

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

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FISH & RICHARDSON P.C. (DA)
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

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OFFICE OF PETITIONS

In re Application of
Gary M. Horndeski
Application No. 11/355,126
Filed: February 15, 2006
Attorney Docket No. 18577-007001

DECISION ON PETITION
TO WITHDRAW
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 October 12, 2010 and supplemented November 2, 2010.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others

The request was signed by Jonathan A. Solomon on behalf of all attorneys of record who are associated with customer No. 26231. All attorneys/agents associated with the Customer Number 26231 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address indicated below.

Applicant should note that there is an appeal brief under 37 CFR 41.37 (accompanied by the fee required by 37 CFR 41.20(b)(2)), due by November 10, 2010 that is running from the filing of the Notice of Appeal received September 10, 2010.

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: GARY M. HORNDESKI
14887 SOUTHWEST FREEWAY
SUGARLAND, TX 77478

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
11/355,126	02/15/2006	Gary M. Horndeski	18577-007001

CONFIRMATION NO. 7833

POWER OF ATTORNEY NOTICE

26231
FISH & RICHARDSON P.C. (DA)
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

OC000000044322001

Date Mailed: 11/02/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 11/02/2010.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/amwise/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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: 068911-0145	
Application Number: 11/355/145	Filing Date (or 371(b) or (f) Date): 02/15/2006
Patent Number: 7,666,449	Issue Date: 02/23/2010
First Named Inventor: John G. Babish et al.	
Title: Anti-Inflammatory Pharmaceutical Compositions for Reducing Inflammation and the Treatment or Prevention of Gastric Toxicity	

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-*WYETH* INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

**Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Signature	Date August 20, 2010
Name (Print/Typed) Atabak R. Royaee	Registration Number 59,037

***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.

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McDermott Will & Emery
600 13th Street, NW
Washington, DC 20005-3096

Mail Date: 09/13/2010

Applicant	: John G. Babish	: DECISION ON REQUEST FOR
Patent Number	: 7666449	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/355,145	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/15/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **322** 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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PATENT MANAGEMENT GROUP
1320 North Court House Road
9th Floor
ARLINGTON VA 22201-2909

In re Application of	:	
James E. Curry et al.	:	
Application No. 11/355,171	:	DECISION ON PETITION
Filed: February 16, 2006	:	
Attorney Docket No. VE13.25C1	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 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 final Office action mailed, February 22, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on May 23, 2010. A Notice of Abandonment was mailed on September 2, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a RCE (Request for Continued Examination, with the required fee of $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 2614 for appropriate action by the Examiner in the normal course of business on the reply received December 28, 2010.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

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NATH & ASSOCIATES, PLLC
112 SOUTH WEST STREET
ALEXANDRIA VA 22314

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JUL 12 2011

OFFICE OF PETITIONS

In re Application:	:	
Rosenberg et al.	:	
Application No. 11/355,181	:	ON PETITION
Filed: February 16, 2006	:	
Attorney Docket No. 27251U	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed June 16, 2011.

On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This 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.

Further, according to a review of USPTO registration records, it is noted that the Registration No. 33,247 is associated with the name Susanne Hopkins-Klima.

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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Paper No.

MCANDREWS HELD & MALLOY, LTD
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SUITE 3400
CHICAGO IL 60661

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AUG 30 2010

OFFICE OF PETITIONS

In re Application of	:	
Catreux-Erceg et al.	:	
Application No. 11/355,222	:	ON APPLICATION FOR
Filed: February 15, 2006	:	PATENT TERM ADJUSTMENT
Atty Docket No. 16999US01	:	
Title: METHOD AND SYSTEM FOR	:	
CONTROLLING TRANSMIT	:	
CIRCUITRY IN A WIDE BAND CDMA	:	
NETWORK	:	

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 August 3, 2010. Applicant submits that the correct patent term adjustment to be indicated on the patent is one thousand and forty-one (1041) days, not five hundred and fifty-six (556) 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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BANNER & WITCOFF, LTD.
1100 13th STREET, N.W.
SUITE 1200
WASHINGTON DC 20005-4051

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DEC 20 2010

OFFICE OF PETITIONS

In re Application of	:	
Robnett et al.	:	
Application No. 11/355,291	:	DECISION ON PETITION
Filed: February 16, 2006	:	UNDER 37 CFR 1.182
Attorney Docket No.	:	
006681.00074		

This is a decision on the petition under 37 CFR 1.181, filed July 29, 2010. This petition is properly treated as a petition under 37 CFR 1.182, requesting entry of an amendment to the specification to delete reference to earlier-filed applications pursuant to the provisions of 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications. Receipt of the $400 fee for consideration of the petition under 1.182 is acknowledged.

For the reasons stated herein, the petition is **DISMISSED**.

The above-noted application made specific reference to the prior-filed applications; namely, 10/925,937, filed August 26, 2004, and 11/320,805, filed December 30, 2005, prior to abandonment. Petitioner now requests that the abandoned application be amended by deleting reference to the earlier-filed applications.

35 U.S.C. § 120 permits entry of a subsequent amendment to an abandoned application in applications filed prior to November 29, 2000 to include the benefit of an earlier filing date for purposes other than prosecution. *See* Sampson v. Commissioner of Patents and Trademarks, 195 USPQ 136 (DC DC 1976). In a pending

application, no petition is necessary to delete a benefit claim. However, for entry of a subsequent amendment to an abandoned application to delete priority claims, a petition under 37 CFR 1.182 is required.

However, this petition is not accompanied by an amendment to delete reference to the prior-filed applications in the first line of the specification following the title of the invention. The "amendment" appears only in the petition. It is not proper to incorporate an amendment into the petition. It is well established that an amendment (in compliance with §1.121) must be filed in a separate paper.

In view thereof, at this time, the request for entry of an amendment to delete reference to the above-noted, earlier-filed applications 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 FAX: (571) 273-8300
ATTN: NANCY JOHNSON
SENIOR PETITIONS ATTORNEY

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3219.

Nancy Johnson

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

CARR & FERRELL LLP
120 CONSTITUTION DRIVE
MENLO PARK CA 94025

In re Application of
Harris
Application No. 11/355,327
Filed: February 15, 2006
Attorney Docket No. PA3519US

DECISION ON PETITION

This is a decision on the petition, filed May 20, 2010, which is being treated as a petition under 37 CFR 1.181 requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **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 submit the issue fee, as required by the Notice of Allowance and Fee (s) Due, which was mailed December 17, 2009. The Notice of Allowance and Fee (s) Due and the Notice of Allowability set a three (3) month statutory period for reply. Extensions of time were not available under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on March 18, 2010. A Notice of Abandonment was mailed on April 2, 2010.

Petitioner contends that the application was improperly held abandoned because a the examiner issued a second Notice of Allowance on March 16, 2010 that indicated a new time period for reply. Further, petitioner contends the interview summary of March 16, 2010 indicated that a new time period would be reset.

Petitioner's argument has been considered but has been deemed unpersuasive. A review of the record confirms that only one Notice of Allowance was mailed on December 17, 2009. Contrary to petitioner's argument, a supplemental Notice of Allowability was mailed on March 16, 2010. The Notice of Allowability informed petitioner "if not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. In this instance, the Notice of Allowance (PTOL-85) was previously mailed on December 17, 2009. Although the interview

summary indicated that the time period for reply would be reset, the time period was not reset while the application was pending.

Thus, the application was properly held abandoned.

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 (small entity) petition fee.

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)

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3215.

Charlema Grant
Petitions Attorney
Office of Petitions

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CARR & FERRELL LLP
120 CONSTITUTION DRIVE
MENLO PARK CA 94025

MAILED
MAY 18 2011
OFFICE OF PETITIONS

In re Application of :
Harris :
Application No. 11/355,327 : DECISION ON PETITION
Filed: February 15, 2006 :
Attorney Docket No. PA3519US :

This is a decision on the renewed petition filed January 3, 2011, which is being treated as a petition under 37 CFR 1.181 requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DENIED**. No further consideration of this matter will be undertaken by the Office. Petitioner is not precluded from seeking revival of the present application under 37 CFR 1.137 as explained in the conclusion to this decision.

BACKGROUND

This application became abandoned for failure to timely submit the issue fee, as required by the Notice of Allowance and Fee (s) Due, which was mailed December 17, 2009. The Notice of Allowance and Fee (s) Due and the Notice of Allowability set a three (3) month statutory period for reply. Extensions of time were not available under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on March 18, 2010. A Notice of Abandonment was mailed on April 2, 2010.

Petitioner contends that the application was improperly held abandoned because the examiner issued a second Notice of Allowance on March 16, 2010 that indicated a new time period for reply. Further, petitioner contends the interview summary of March 16, 2010 indicated that a new time period would be reset. Thus petitioner contends that he relied upon the written record pursuant to 37 CFR 1.2.

APPLICABLE RULES AND REGULATIONS

35 U.S.C. 151 Issue of patent in pertinent part:

If 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. The notice shall specify a sum, constituting the issue fee or a portion thereof, which shall be paid within three months thereafter. Upon payment of this sum the patent shall issue, but if payment is not timely made, the application shall be regarded as abandoned.

MPEP 203.05 Abandoned

An abandoned application is, inter alia, one which is removed from the Office docket of pending applications:
(A) through formal abandonment by the applicant (acquiesced in by the assignee if there is one) or by the attorney or agent of record;
(B) through failure of applicant to take appropriate action at some stage in the prosecution of a nonprovisional application;
(C) for failure to pay the issue fee (MPEP * § 711 to § 711.05); or
(D) in the case of a provisional application, no later than 12 months after the filing date of the provisional application (see MPEP § 711.03(c) and 35 U.S.C. 111 (b) (5)).

37 CFR 1.316 Application abandoned for failure to pay issue fee.

If the issue fee is not paid within three months from the date of the notice of allowance, the application will be regarded as abandoned. Such an abandoned application will not be considered as pending before the Patent and Trademark Office.

ANALYSIS

Petitioner's argument has been considered but has been deemed unpersuasive. A review of the record confirms that only one Notice of Allowance was mailed on December 17, 2009. A supplemental Notice of Allowability was mailed on March 16, 2010. The Notice of Allowability informed petitioner "if not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. In this instance, the Notice of Allowance (PTOL-85) was previously mailed on December 17, 2009.

Petitioner contends that the Notice of Allowability mailed on March 16, 2010 provided applicant with three months to respond. However, the Notice of Allowability mailed on March 16, 2010 did not provide a three month reply period. The Notice of Allowability states "Applicant has THREE MONTHS FROM THE MAILING DATE" of this communication to file a reply complying with the requirements noted below." Since the Notice of Allowability did not indicate requirements such as a substitute oath or declaration, corrected drawings, or deposit of and/or Information about the deposit Biological Material were required, the three month reply period was not applicable. The controlling three month reply period for submitting the issue and publication fee was provided in the Notice of Allowance mailed on December 17, 2009.

35 U.S.C. 151 requires that the submission of the issue fee within three months. Although the interview summary indicated that the time period for reply would be reset, the time period was not reset while the application was pending. Once the application was abandoned, it was no longer considered pending. See 37 CFR 1.316. Thus, the examiner

did not have the authority to restart the time period of reply in an abandoned application. Essentially petitioner seeks to waive the requirement that an issue fee be submitted within three months of the mailing of the Notice of Allowance which is statutory and thus cannot be waived. The interview summary cannot overcome the statutory requirements that the failure to submit the issue fee within three months of the mailing of the Notice of Allowance will result in the abandonment of the application.

CONCLUSION

As such, the holding of abandonment will not be withdrawn.

Petitioner may wish to consider filing a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the $810.00 petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Telephone inquiries concerning this decision should be directed to Petitions Attorney, Charlema Grant at (571) 272-3215.

Anthony Knight
Director
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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CARR & FERRELL LLP
120 CONSTITUTION DRIVE
MENLO PARK CA 94025

MAILED
JUN 10 2011
OFFICE OF PETITIONS

In re Application of
Harris
Application No. 11/355,327
Filed: February 15, 2006
Attorney Dkt No. PA3519US
For: SYSTEMS AND METHODS FOR SERVER MANAGEMENT

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 31, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely submit the issue and publication fees, as required by the Notice of Allowance and Fee (s) Due, which was mailed December 17, 2009. The Notice of Allowance and Fee (s) Due and the Notice of Allowability set a three (3) month statutory period for reply. Extensions of time were not available under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on March 18, 2010. A Notice of Abandonment was mailed on April 2, 2010. A petition filed under 37 CFR 1.181 was dismissed on November 3, 2010. A petition filed under 37 CFR 1.181 was denied on May 18, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the $1510 issue fee and the $300 publication fee, (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) 272-3215.

This application is being referred to the Office of Data Management for further processing.

Charlema Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

CARLSON, GASKEY & OLDS, P.C.
400 WEST MAPLE ROAD
SUITE 350
BIRMINGHAM, MI 48009

Mail Date: 08/06/2010

Applicant	: Thomas R. Soupal	: DECISION ON REQUEST FOR
Patent Number	: 7658453	: RECALCULATION of PATENT
Issue Date	: 02/09/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/355,383	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/16/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1030** 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 : September 1, 2010

TO SPE OF : ART UNIT 1652 - SPE

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/355,444 Patent No.: 7,741,037 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 to insert Foreign Patent Documents are approved. The applicant requested the documents to be inserted in 1449 dated November 3, 2008. The references were not initialed by examiner and office wants to ensure the references are to be allowed?
See COCIN dated 07-30-2010 and 1449 dated 11-03-2008)

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: OK to include FOREIGN PATENT DOCUMENTS EP 1230856 and WO 96/19919

Please see IDS dated 08/07/08 which bears the examiner initial /GR/

/Ganapthirama Raghu/ 09/01/10

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

SPE Robert Mondesi Art Unit 1652

ROBERT MONDESI
SUPERVISORY PATENT EXAMINER

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MAILED
APR 15 2011
OFFICE OF PETITIONS

MICHAEL B. MARTIN
NALCO COMPANY
PATENT AND LICENSING DEPARTMENT
1601 WEST DIEHL ROAD
NAPERVILLE, IL 60563-1198

In re Application of	:	
TRAN, et al	:	
Application No. 11/355,468	:	DECISION ON PETITION
Filed: February 16, 2006	:	
Attorney Docket No. 7922	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 22, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file pay the issue fee on or before January 20, 2011, as required by the Notice of Allowance and Fee(s) Due, mailed October 20, 2010, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on January 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 the issue fee of $1510; (2) the petition fee of $1620; and (3) the required statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

The application is being referred to the Office of Data Management for processing into a patent.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAILED
JUN 09 2011
OFFICE OF PETITIONS

ROPES & GRAY LLP
IPRM – FLOOR 43
PRUDENTIAL TOWER
800 BOYLSTON STREET
BOSTON MA 92199-3600

In re Application of	:	
MILLIKEN	:	
Application No. 11/355,484	:	DECISION ON PETITION
Filed: February 15, 2006	:	
Attorney Docket No. BBNT-P01-373	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 25, 2011, 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 September 10, 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)(II)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is December 11, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Notice of Appeal; (2) the petition fee of $1620; and (3) a proper statement of unintentional delay.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See* In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $1110 extension of time fee submitted with the petition on April 25, 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 the undersigned at (571) 272-6735.

This application is being referred to Technology Center AU 2465 to await the filing of an appeal brief or for such other appropriate reply as may be submitted to continue prosecution of the application.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Alexandria, VA 22313-1450
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MARGARET ANDERSON
106 E. 6TH STREET, SUITE 900
AUSTIN TX 78701

MAILED

MAR 11 2011

OFFICE OF PETITIONS

In re Application of	:	
Jung et al.	:	DECISION ON PETITION
Application No. 11/355,517	:	TO WITHDRAW
Filed: February 16, 2006	:	FROM RECORD
Attorney Docket No. QQ1-0199US	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed January 26, 2011.

The request is **NOT APPROVED**.

The Office will only accept correspondence address changes to the most current address information provided for the assignee of the entire interest *who properly became of record under 37 CFR 3.71,* or, if no assignee of the entire interest has properly been made of record, the most current address information provided for the first named inventor. 37 CFR 3.71(c) states:

An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.

According to a review of current USPTO records petitioner has not requested the address be changed to a properly recorded assignee or the first listed inventor. The Customer Number 55922 is neither the first named inventor nor the assignee who properly became of record under 37 CFR 3.71 As such, all future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Further, the address given on the petition differs from the address of record. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Currently, a Board of Patent Appeals and Interferences Docketing Notice was mailed January 12, 2011 in the above-identified application.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-7751.

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: LEE & HAYES, PLLC
601 W RIVERSIDE
SUITE 1400
SPOKANE, WA 99201

Doc Code: PET.GREEN
Document Description: Petition for Green Tech Pilot

PTO/SB/420 (11-10)
Approved for use through 01/31/2011. OMB 0651-0062
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.

PETITION TO MAKE SPECIAL UNDER THE GREEN TECHNOLOGY PILOT PROGRAM

Attorney Docket Number: 81133484 (67,600-089)	Application Number (if known): 11/355,566	Filing date: 02/15/2006
First Named Inventor: Shazad Butt		
Title: Humidity Measuring Device and Method		

APPLICANT HEREBY REQUESTS TO PARTICIPATE IN THE GREEN TECHNOLOGY PILOT PROGRAM FOR THE ABOVE-IDENTIFIED APPLICATION. See Instruction Sheet on page 2.

This petition must be timely filed electronically using the USPTO electronic filing system, EFS-Web.

1. By filing this petition:

   Applicant is requesting early publication: Applicant hereby requests early publication under 37 CFR 1.219 and the publication fee set forth in 37 CFR 1.18(d) accompanies this request.

2. By filing this petition: applicant is agreeing to make an election without traverse in a telephonic interview and elect an invention that meets the eligibility requirements for the Green Technology Pilot Program, if the Office determines that the claims are not obviously directed to a single invention. See Instruction Sheet.

3. This request is accompanied by statements of special status for the eligibility requirement.

4. The application contains no more than three (3) independent claims and twenty (20) total claims.

5. The application does not contain any multiple dependent claims.

6. Other attachments: _____

Signature /RANDYW.TUNG/	Date 03/04/2011
Name (Print/Typed) RANDY W. TUNG	Registration Number 31,311

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 Petition to Make Special Under the Green Technology Pilot Program

(Not to be Submitted to the USPTO)

The following is a summary of the requirements (for more information see the notices (i) "Pilot Program for Green Technologies Including Greenhouse Gas Reduction," (ii) "Elimination of Classification Requirement in the Green Technology Pilot Program," and (iii) "Expansion and Extension of the Green Technology Pilot Program," available on the USPTO web site at http://www.uspto.gov/patents/init_events/green_tech.jsp):

1) The application must be a non-reissue, non-provisional utility application filed under 35 U.S.C. 111 (a), or an international application that has entered the national stage in compliance with 35 U.S.C. 371, irrespective of the filing date of the application. Reexamination proceedings are excluded from this pilot program.

2) The application must contain three or fewer independent claims and twenty or fewer total claims. The application must not contain any multiple dependent claims. For an application that contains more than three independent claims or twenty total claims, or multiple dependent claims, applicant must file a preliminary amendment in compliance with 37 CFR 1.121 to cancel the excess claims and/or the multiple dependent claims at the time the petition to make special is filed.

3) The claims must be directed to a single invention that materially enhances the quality of the environment, or that materially contributes to: (1) the discovery or development of renewable energy resources; (2) the more efficient utilization and conservation of energy resources; or (3) green house gas emission reduction (see the eligibility requirements of sections II and III of the notice (i) cited above). The petition must include a statement that, if the USPTO determines that the claims are directed to multiple inventions (e.g., in a restriction requirement), applicant will agree to make an election without traverse in a telephonic interview, and elect an invention that meets the eligibility requirements in section II or III of the notice (i) cited above.

4) The petition to make special must be timely filed electronically using the USPTO electronic filing system, EFS-Web, and selecting the document description of "Petition for Green Tech Pilot" on the EFS-Web screen. Applicant should use form PTO/SB/420, which is available as a Portable Document Format (PDF) fillable form in EFS-Web and on the USPTO Web site.

5) The petition to make special must be filed at least one day prior to the date that a first Office action (which may be an Office action containing only a restriction requirement) appears in the Patent Application Information Retrieval (PAIR) system. Applicant may check the status of the application using PAIR.

6) The petition to make special must be accompanied by a request for early publication in compliance with 37 CFR 1.219 and the publication fee set forth in 37 CFR 1.18(d).

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/355,566	02/15/2006	Shazad Butt	81133484 (67,600-089)	2804

32997 7590 04/29/2011
TUNG & ASSOCIATES
838 WEST LONG LAKE, SUITE 120
BLOOMFIELD HILLS, MI 48302

EXAMINER
SCULLY, STEVEN M

ART UNIT	PAPER NUMBER
1727	

MAIL DATE	DELIVERY MODE
04/29/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
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TUNG & ASSOCIATES
838 WEST LONG LAKE, SUITE 120
BLOOMFIELD HILLS MI 48302

4/29/2011

In re Application of	:	
Butt et al.	:	DECISION ON PETITION
Application No. 11/355,566	:	TO MAKE SPECIAL UNDER
Filed: 2/15/2006	:	THE GREEN TECHNOLOGY
Attorney Docket No. **81133484 (67,600-089)**	:	PILOT PROGRAM

This is a decision on the petition under 37 CFR 1.102, filed 3/8/2011, to make the above-identified application special under the pilot program for applications pertaining to Green Technologies as set forth 74 Federal Register Notice 64666 (December 8, 2009).

The petition is **DENIED**.

A grantable petition to make an application special under 37 CFR 1.102 and the pilot program as set forth in 74 FR 64666 must be directed to a nonprovisional application filed under 35 USC 111(a) or be a national stage entry under 35 USC 371, exclusive of any reissue applications and be filed prior to the date of the notice, December 8, 2009.

In order to qualify for special status, the following requirements must be met. 1) The application must have no more than 3 independent claims and no more than 20 total claims. 2) The application must not contain any multiple dependent claims. 3) The petition must state the basis for seeking special status, i.e., the claimed invention either: A) materially enhances the quality of the environment or B) materially contributes to: i) the discovery or development of renewable energy resources, ii) the more efficient utilization and conservation of energy resources, or iii) greenhouse gas emission reduction. 4) If the disclosure is not clear on its face that the claimed invention materially contributes under category (A) or (B), the petition must be accompanied by a statement by the applicant, assignee, or an attorney/agent registered to practice before the Office explaining how the materiality standard is met. 5) A statement that applicant will agree to make an election without traverse in a telephonic interview if a restriction requirement is made by the examiner. 6) The petition to make special must be filed electronically. 7) The petition must be filed at least one day prior to the date that a first Office Action appears in the Patent Application Information Retrieval (PAIR) system. 8) The petition must be accompanied by a request for early publication in compliance with 37 CFR 1.219 and include the publication fee as set forth in 37 CFR 1.18(d).

The requirement for a fee for consideration of the petition to make special for applications pertaining to Green Technologies has been waived.

The petition lacks item(s) 7.

Several Office actions have been mailed in this application. The filing of an RCE does not re-set the prosecution of the application nor does it give the application a new application number/filing date.

Any reconsideration of this decision should be submitted through the USPTO electronic filing system, EFS-Web, and selecting the document description of "Petition for Green Tech Pilot" on the EFS-Web screen.

Telephone inquiries concerning this decision should be directed to Tom Dunn at 571-272-1171.

The application is being forwarded to the Technology Center Art Unit 1727 for action in its regular turn.

/Tom Dunn/

Tom Dunn
Quality Assurance Specialist
Technology Center 1700

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Paper No.

MAILED
AUG 10 2011
OFFICE OF PETITIONS

FISH & RICHARDSON P.C.
P.O. Box 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 7,945,651	:	
Sankaran	:	DECISION ON
Issue Date: May 17, 2011	:	REQUEST FOR
Application No. 11/355,612	:	RECONSIDERATION OF
Filed: February 15, 2006	:	PATENT TERM ADJUSTMENT
Attorney Docket No. 26310-0161001	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705(d)," filed July 18, 2011, requesting that the patent term adjustment determination for the above-identified patent be changed from seven hundred and forty-seven (747) days to eight hundred and seventy-eight (878) days.

The request for reconsideration of patent term adjustment is **DISMISSED**.

BACKGROUND

On May 17, 2011, the above-identified application matured into US Patent No. 7,945,651 with a patent term adjustment of 747 days. This request for reconsideration of patent term adjustment was timely filed within two months of the issue date of the patent. See 37 C.F.R. § 1.705(d).

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Patentee maintains entitlement to a period of adjustment due to the Three Year Delay by the Office, pursuant to 37 CFR § 1.703(b), of 245 days.

RELEVANT STATUTE AND REGULATIONS

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including –

> (i) any time consumed by continued examination of the application requested by the applicant under section 132(b);
> (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or
> (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 C.F.R. § 1.702(b) provides that:

> Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:
> (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);
> (2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);
> (3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;
> (4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or
> (5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

The sole item that is in dispute is the effect of the RCE-cutoff on B-delay: at issue is the period not included in the B-delay for "any time consumed by continued examination of the application requested by the applicant under section 132(b)."

See U.S.C. 154(b)(1)(B)(i). **The Office maintains that the entire period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period.** As such, the over three-year period begins on February 16, 2009 and ends on June 9, 2009, the day before the first RCE was filed, which amounts to 114 (not 245) days.

Patentee argues that the 130-day[1] period between the mailing of the notice of allowance on January 7, 2011 and the issuance of the patent on May 17, 2011 should be included in the period of B-delay, as this time "was not 'consumed by continued examination of the application."[2] As such, Patentee argues that the over three-year period begins on February 16, 2009 (the day after the three-year anniversary of the filing of the application), pauses on June 9, 2009 (the day before the filing of the first RCE), restarts on January 7, 2011 with the mailing of the notice of allowance, and ends on May 17, 2011 with the issuance of the patent.

Patentee's argument has been considered, but not found persuasive. Counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56365, 56376 (Sept. 18, 2000) (response to comment 8). Thus,

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[1] Patentee has miscalculated this period to constitute 131 days.
[2] Petition, page 2.

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"[3] 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."

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[3] Id.

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, No. 07-1492, 580 F.Supp.2d 138 (D.D.C., September 30, 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)[4]. Clause (i) specifies "any time consumed by

[4] 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

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

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the patent term reduced for applicant delay in taking in excess of three months to respond.

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[5] 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

[5] 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.

Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

Accordingly, at issuance, the Office properly entered 114 additional days of patent term adjustment for the Office taking in excess of 3 years to issue the patent. It follows that Patentee is entitled to a patent term adjustment of 747 days:

	633 days of examination delay
+	114 days attributable to the Office taking in excess of 3 years to issue the patent
–	0 days of overlap
–	0 days of applicant delay.

CONCLUSION

In view thereof, no adjustment to the patent term will be made. It follows that a certificate of correction is not required.

Patentee is given **two (2) months** from the mail date of this decision to respond. No extensions of time will be granted under 37 C.F.R. § 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.

Any response to this decision should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail,[6] hand-delivery,[7] or facsimile.[8]

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[6] Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
[7] Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.
[8] (571) 273-8300: please note this is a central facsimile number.

Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web.[9]

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3225.[10]

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

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[9] https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html

[10] Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 10/27/10

TO SPE OF : ART UNIT 2184 TSAI HENRY (Spe)

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/355622 Patent No.: 7694047

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D40-A
Palm Location 7580

H. Rly

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: No new matter has been introduced; and the scope and meaning of the claims have not been changed after the correction. OK to enter.

/Henry Tsai/ — **SPE**

2184 — **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

THOMAS A MILLER
MILLER, MATTHIAS & HULL
SUITE 2350
ONE NORTH FRANKLIN STREET
CHICAGO IL 60606

MAILED

MAR 02 2011

OFFICE OF PETITIONS

In re Application of	:	
Charters et al.	:	DECISION ON PETITION
Application Number: 11/355,668	:	UNDER
Filing or 371(c) Date: 02/15/2006	:	37 CFR 1.78(a)(6)
Attorney Docket Number: RPO-P045	:	

This is a decision on the petition under 37 CFR 1.78(a)(6), filed on December 17, 2010, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional application set forth in the application data sheet (ADS) filed on February 22, 2011.

The petition is **GRANTED.**

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

(1) the reference required by 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5)(i) to the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

Additionally, the instant nonprovisional application must be pending at the time of filing of the reference to the prior-filed provisional application as required by 37 CFR 1.78(a)(5)(ii). Further, the nonprovisional application claiming the benefit of the prior-filed provisional application must have been filed within twelve months of the filing date of the prior-filed provisional application.

All of the above requirements having been satisfied, the late claim for priority under 35 U.S.C. § 119(e) is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(6) should not be construed as meaning that this application is entitled

to the benefit of the filing date of the prior-filed application. In order for this application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed application, accompanies this decision on petition.

Any questions concerning this matter may be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231. 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 1714 for consideration by the examiner of the claim under 35 U.S.C. § 119(e) for the benefit of the prior-filed provisional application.

Christopher Bottorff
Supervisory Petitions Examiner
Office of Petitions

ATTACHMENT : Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/355,668	02/15/2006	1714	1610	RPO-P045	32	7

CONFIRMATION NO. 3714

CORRECTED FILING RECEIPT

Thomas A Miller
Miller, Matthias & Hull
Suite 2350
One North Franklin Street
Chicago, IL 60606

OC000000046244098

Date Mailed: 03/02/2011

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)

Robert Charters, Palmerston, AUSTRALIA;
Dax Kukulj, Ainslie, AUSTRALIA;

Assignment For Published Patent Application

RPO Pty Limited, Acton, AUSTRALIA

Power of Attorney: The patent practitioners associated with Customer Number 57726

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/653,346 02/15/2005

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: 03/15/2006

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/355,668**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No
**** SMALL ENTITY ****

Title

PHOTOLITHOGRAPHIC PATTERNING OF POLYMERIC MATERIALS

Preliminary Class

427

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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Michael Charles Dixon
253 Roycroft Avenue
Long Beach CA 90803

MAILED
MAY 12 2011
OFFICE OF PETITIONS

In re Application of	:	
Ratner et al.	:	
Application No.: 11/355748	:	DECISION ON
Filing or 371(c) Date: 02/15/2006	:	PETITION
Title of Invention:	:	
ELECTRIC-SWITCH ACTIVATED BY	:	
SENSING A TOUCH THROUGH A LARGE	:	
VARIETY OF COVER-PLATE MATERIALS	:	

This is a decision in response to the Petition for Revival of Application Abandoned Unintentionally Under 37 CFR 1.137(b), filed March 30, 2011.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the Office communication, mailed February 27, 2007. The Office communication set a one (1) month or 30 day period for reply. Extensions of time were available under 37 CFR 1.136(a). No reply having been received, the application became abandoned on March 28, 2007. A Notice of Abandonment was mailed November 2, 2007.

Applicant files the present petition and Amendment in response to the Office communication. The Examiner has approved the Amendment. The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that the petition includes (1) the reply; (2) the petition fee; and (3) the required statement of unintentional delay. Accordingly, the reply is accepted as having been 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.

This application is being referred to Technology Center Art Unit 2832 for processing of the reply to the Office communication filed with the petition in due course.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

CC: BRINKS HOFFER GIBSON & LIONE
222 SOUTH MAIN STREET
SUITE 1930
SALT LAKE CITY, UT 84101-2001

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

MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP
123 SOUTH BROAD STREET
AVENUE OF THE ARTS
PHILADELPHIA, PA 19109

Mail Date: 01/25/2011

Applicant	: John Barthelow Classen	: DECISION ON REQUEST FOR
Patent Number	: 7653639	: RECALCULATION of PATENT
Issue Date	: 01/26/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/355,763	: OF WYETH
Filed	: 05/15/2006	:
		:

The Patentee's Request for Recalculation is **DISMISSED.**

This Request is deemed ineligible for consideration for one or more of the following reasons:

(A). The patent for which PTA recalculation is requested is either a design or reissue application or is a reexamination proceeding;

(B). The patent for which PTA recalculation is requested resulted from a utility or plant application filed under 35 USC 111(a) before May 29, 2000 and no CPA filed in the application on/after May 29, 2000;

(C). The patent for which PTA recalculation is requested resulted from an international application in which the international filing date was before May 29, 2000 and no CPA filed in the application on/after May 29, 2000;

(D). The patent for which PTA recalculation is requested issued on/after March 2, 2010;

(E). The Request for Recalculation was filed more than 180 days after the grant date of the patent and the request was not filed within two months of a dismissal of a request for reconsideration of the of the patent term under 37 CFR 1.705(d);

(F). The Request for Recalculation is not solely limited to USPTO pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A);

or

(G). A civil action was filed pursuant to 35 U.S.C. 154(b)(4)(A)concerning the same patent at issue in this request.

Patentee may file a reply to this decision dismissing the Request for Recalculation. Patentee must file such reply within one month or thirty days, whichever is longer, of the mail date of the decision dismissing the Request for Recalculation. No fee is required if patentee is asserting in the reply that the dismissal for ineligibility is improper.

Patentee should use document code PET.OP if electronically filing a reply to this dismissal. If the USPTO finds that the request was improperly deemed ineligible, the USPTO will mail applicant a recalculation determination.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A). Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154 (b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

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Browdy and Neimark LLP
1625 K Street NW
Suite 1100
Washington DC 20006

MAILED
FEB 24 2011
OFFICE OF PETITIONS

In re Patent No. 7,653,639
Classen et al.
Issue Date: January 26, 2010
Application No. 11/355,763
Attorney Docket No. Classen=6B
Title: Improved Computer Algorithms and Methods for Product Safety

: WITHDRAW OF DECISION ON
: REQUEST FOR RECALCULATION
: OF PATENT TERM ADJUSTMENT
: IN VIEW OF WYETH UNDER INTERIM
: PROCEDURE

This Office hereby withdraws the Decision on Request for Recalculation of Patent Term Adjustment in view of Wyeth that was mailed to appellant on January 25, 2011.

FACTS

1. On June 18, 2010, the appellant filed a request for reconsideration of the Wyeth v. Kappos calculation provided under the interim procedures.

2. On July 21, 2010, the appellant commenced a civil action under 35 U.S.C. 154(b)(4)(A).

3. On January 25, 2011, the Office mailed a decision dismissing the request for recalculation of PTA under the Wyeth interim procedure (June 18, 2010) because the application was under the jurisdiction of the district court and accordingly the PTA needed to be addressed through the remand from the district court and not according to interim procedure. Moreover, the Wyeth interim procedure was inapplicable to this specific application because the issues involved in the request for recalculation were not solely limited to the pre-Wyeth interpretation of 35 USC 154(b)(2)(A). See *Interim Procedure for Patentees To Request a Recalculation of the Patent Term Adjustment To Comply With the Federal Circuit Decision in Wyeth v. Kappos Regarding the Overlapping Delay Provision of 35 U.S.C. 154(b)(2)(A)* 75 Fed. Reg. 5043(Feb. 2010).

DECISION

In order to prevent any undue confusion, the Office hereby withdraws the notice dated January 25, 2011. The Office apologizes for any unnecessary confusion as to the purpose of the decision mailed January 25, 2011. The Office will substantively review the PTA calculation to provide a determination that is consistent with the decision in Wyeth v. Kappos and notify appellant of such determination based upon the remand from the district court.

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

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MARK S. NOWOTARSKI
30 GLEN TERRACE
STAMFORD CT 06906

MAILED

SEP 30 2010

OFFICE OF PETITIONS

In re Application of	:
William J. Conner III, et al.	: DECISION ON APPLICATION FOR
Application No. 11/355,781	: PATENT TERM ADJUSTMENT
Filed: February 16, 2006	:
Attorney Docket No.: PR080505USNP	:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT 37 C.F.R. 1.705(b)", filed June 4, 2010. Applicants request that the initial determination of patent term adjustment be corrected from one hundred ninety-three (193) days to one thousand one hundred thirty (1130) days.

The request for correction of the initial determination of patent term adjustment (PTA) is **GRANTED**. The determination of PTA at the time of the mailing of the Notice of Allowance is one thousand one hundred thirty (1130) days.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is one thousand one hundred thirty (1130) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On May 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 to date is one hundred ninety-three (193). The initial determination only included an adjustment for PTO delay pursuant to 35 U.S.C. 154(b)(1)(A)(I) and 37 CFR §§1.702(a)(1) and did not include any adjustment of applicant delay pursuant to 37 C.F.R. §1.704(b).

Applicant disputes the determination and argues that an adjustment in the amount of 1130 days should be accorded for Office failure to mail a first action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151. Applicant asserts that "the Office mistakenly categorized the "Non-Final Rejection" mailed October 26, 2007 as an action under 35 U.S.C. 132 for this application. Said non-final rejection, however, was with respect to a different application and was sent to the Applicant due to a clerical error made by the Office in the serial number. The Office subsequently acknowledged this error and mailed a notice vacating the office action on November 23, 2007..... Said non-final office action, therefore, does not qualify as an action under 35 U.S.C. 132 for this application."

The record supports a conclusion that the first mailing of either an action under 35 U.S.C 132 or a notice of allowance under 35 U.S.C. 151 was the mailing of the Notice of Allowance on May 20, 2010. It is clear from the record that the Office action mailed October 26, 2007 was mailed in this application due to a typographical error in entering the application number. As reflected in the Office letter of November 23, 2007, the Office action mailed October 26, 2007 was based on examination of another application and mailed using the application number of this case in error. Following these actions, a first Office action was mailed directed to the examination of this application on May 20, 2010.

The number of days in the period of adjustment pursuant to § 1.703(a)(1) for the Office's mailing of a first action under 35 U.S.C. 151 on May 20, 2010, is 1130 days. This period is counted beginning on the day after the date that is fourteen months after the filing date, and ending on the date of the mailing of the first action under 35 U.S.C. 151, May 20, 2010.

The correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is therefore one thousand one hundred thirty (1130) days.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. The application is, thereby, forwarded to the Office of Data Management for issuance of the application. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3212.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of Revised PALM Screen

Day :
Monday
Date:
9/27/2010
Time:
17:16:14

PALM INTRANET

PTA Calculations for Application: 11/355781			
Application Filing Date:	**02/16/2006**	PTO Delay (PTO):	**193**
Issue Date of Patent:		Three Years:	**0**
Pre-Issue Petitions:	**0**	Applicant Delay (APPL):	**0**
Post-Issue Petitions:	**0**	Total PTA (days):	**1130**
PTO Delay Adjustment:	**937**		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
77	09/27/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	1130		
76	09/27/2010	ADJUSTMENT OF PTA CALCULATION BY PTO		193	
60	05/20/2010	MAIL NOTICE OF ALLOWANCE			
59	05/18/2010	ISSUE REVISION COMPLETED			
58	05/18/2010	DOCUMENT VERIFICATION			
57	05/18/2010	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
56	03/03/2010	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
55	03/30/2010	ADD FAOM COUNT			
54	03/30/2010	FAOM FLAG CHANGE			
53	03/30/2010	ADD FAOM 1.25 COUNT			

52	03/30/2010	SUBTRACT FAOM 0.75 COUNT			
51	03/29/2010	EXAMINER'S AMENDMENT COMMUNICATION			
50	03/29/2010	NOTICE OF ALLOWABILITY			
40	03/03/2010	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
39	03/03/2010	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
33	12/14/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
31	12/14/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
30	02/20/2010	CASE INHERITED			
29	02/20/2010	CASE DOCKETED TO EXAMINER IN GAU			
28	02/17/2010	CASE INHERITED			
25	12/14/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
24	12/07/2009	CASE DOCKETED TO EXAMINER IN GAU			
23	10/14/2009	CASE DOCKETED TO EXAMINER IN GAU			
22	10/07/2009	TRANSFER INQUIRY TO GAU			
21	10/06/2009	TRANSFER INQUIRY TO GAU			
		CASE DOCKETED TO			

20	05/21/2009	EXAMINER IN GAU			
18	04/30/2009	CASE DOCKETED TO EXAMINER IN GAU			
17	11/23/2007	MAIL NOTICE OF WITHDRAWN ACTION			
16	11/20/2007	LETTER WITHDRAWING / VACATING OFFICE ACTION			
13	11/09/2007	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
12	10/30/2007	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
11	10/26/2007	MAIL NON-FINAL REJECTION	193		-1
10	10/25/2007	NON-FINAL REJECTION			
9	10/25/2007	CASE DOCKETED TO EXAMINER IN GAU			
8	05/24/2007	PG-PUB ISSUE NOTIFICATION			
7	06/21/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
6	06/21/2006	CASE DOCKETED TO EXAMINER IN GAU			
5	03/21/2006	APPLICATION DISPATCHED FROM OIPE			
4	03/22/2006	APPLICATION IS NOW COMPLETE			
3	03/08/2006	CLEARED BY OIPE CSR			
2	03/01/2006	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	02/16/2006	INITIAL EXAM TEAM NN			

Search Another: Application# [ ] Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

To go back, right click here and select Back. To go forward, right click here and select Forward. To refresh, right click here and select Refresh.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/355,804	02/16/2006	Uri Galili	UMASSW-10253	3850

7590 09/20/2010
MEDLEN & CARROLL, LLP
101 HOWARD STREET
SUITE 350
SAN FRANCISCO, CA 94105

EXAMINER
CRANE, LAWRENCE E

ART UNIT	PAPER NUMBER
1623	

MAIL DATE	DELIVERY MODE
09/20/2010	PAPER

ACKNOWLEDGEMENT OF REQUEST

Notice of Allowance/Allowability Mailed

The request to print a color drawing reference as the first paragraph in the portion of the specification containing a brief description of the drawings as required by 37 CFR 1.84 and MPEP § 608.02 has been received by the United States Patent and Trademark Office and will be entered into the specification.

571-272-4200 or 1-888-786-0101
Application Assistance Unit
Office of Data Management

FORM PTOM327-5 (Rev. 02/08)

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September 20, 2010

MEDLEN & CARROLL, LLP
101 HOWARD STREET
SUITE 350
SAN FRANCISCO CA 94105

In re Application of	:	
Uri Galili	:	**DECISION ON PETITION**
Application No. 11355804	:	
Filed: 02/16/2006	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. **UMASSW-10253**	:	***DRAWINGS***

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) July 20, 2006.

The petition is **GRANTED**.

A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

1. The fee set forth under 37 C.F.R. 1.17(h),
2. Three (3) sets of the color drawings in question, or (1) set if filed via EFS, and
3. The specification containing the following language as the first paragraph in that portion of the specification relating to the brief description of the drawings.

   "The file of this patent contains at least one drawing executed in color. Copies of this patent with color drawing(s) will be provided by the Patent and Trademark Office upon request and payment of the necessary fee."

The petition was accompanied by all of the required fees and drawings. The specification contains the appropriate language. Therefore, the petition is GRANTED.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

/Kimberly Terrell/
Manager
Office of Data Management
Publications Branch

UNITED STATES PATENT AND TRADEMARK OFFICE

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BOYLE FREDRICKSON S.C.
840 NORTH PLANKINTON AVENUE
MILWAUKEE, WI 53203

MAILED

NOV 24 2010

OFFICE OF PETITIONS

In re Application of
Gunter Woog
Application No. 11/355,847
Filed: February 16, 2006
Attorney Docket No. 1389.006

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 7, 2010.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others.

The request was signed by Michael J. Gratz on behalf of all attorneys of record who are associated with customer No. 23598. All attorneys/agents associated with the Customer Number 23598 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address indicated below.

There are no pending Office actions at the present time.

Telephone inquiries concerning this decision should be directed to undersigned at 571-272-1642. All other 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: GUNTER WOOG
825 SHOENJAAR DRIVE
WEST BEND, WI 53090

UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/355,847	02/16/2006	Gunter Woog	1389.006

CONFIRMATION NO. 1554

POWER OF ATTORNEY NOTICE

23598
BOYLE FREDRICKSON S.C.
840 North Plankinton Avenue
MILWAUKEE, WI 53203

OC000000044437902

Date Mailed: 11/10/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 10/07/2010.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/amwise/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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COWAN LIEBOWITZ & LATMAN P.C.
JOHN J TORRENTE
1133 AVE OF THE AMERICAS
NEW YORK, NY 10036

MAILED
JAN 31 2011
OFFICE OF PETITIONS

In re Application of	:	
Tomohiro SEKIGUCHI	:	
Application No. 11/355,876	:	DECISION ON PETITION
Filed: February 16, 2006	:	UNDER 37 CFR 1.181
Attorney Docket No. **B422-309 (25813.332)**	:	

This is a decision on the petition, filed August 27, 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 May 20, 2010, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on August 21, 2010.

Petitioner asserts that the Office action dated May 20, 2010 was not received.

A review of the written record indicates no irregularity in the mailing of the Office action and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner;

2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and

3. a copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in the practitioner's statement.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition satisfies the above-stated requirements. Accordingly, the application was not abandoned in fact.

In view of the above, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See* In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $1110 extension of time fee submitted on November 22, 2010 was subsequent to the maximum extendable period for reply, petitioner may request a refund of this fee by writing to the following address: Mail Stop 16, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany petitioner's request.

This application is being referred to the Technology Center technical support staff of Art Unit 2622 for re-mailing the Office action of May 20, 2010. The period for reply will run from the mailing date of the Office action.

Thurman K. Page
Petitions Examiner
Office of Petitions

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MAY 09 2011

OFFICE OF PETITIONS

COWAN LIEBOWITZ & LATMAN P.C.
JOHN J. TORRENTE
1133 AVE OF THE AMERICAS
NEW YORK NY 10036

In re Application of	:	
Tomohiro Sekiguchi	:	
Application No. 11/355,876	:	DECISION ON REQUEST FOR REFUND
Filed: February 16, 2006	:	
Attorney Docket No. B422-309 (25813.332)	:	

This is a decision on the Request For Refund filed May 2, 2011.

The request is **GRANTED**.

Applicant files the above request for refund of the fee of $1,110.00 (extension fee) paid on November 22, 2010, in the above-identified application.

The request for refund states that "Applicant requests the refund due to the Office of Petitions unduly long delay in acting on applicant's Petition Under 37 CFR § 1.181 To Withdraw Abandonment Of Application And Re-Mail Office Action Based On Failure To Receive Office Action. Applicant filed this Petition on August 27, 2010 and continually checked with the Examiner in the application and the Office of Petitions to determine whether the Petition would be granted prior to the six month statutory deadline for responding to the May 29, 2010. This deadline ended on November 20, 2010 which was a Saturday, extending the six month due date to Monday, November 22, 2010. By that date almost three months had past since filing to the Petition, but the Office of Petitions had still not acted on the Petition. It was not until two months later, on January 31, 2011, that the Office of Petitions did finally act on the Petition by granting it which resulted in a new Office Action being issued in the subject application."

However, in the decision mailed January 31, 2011, it stated that:

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See* In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $1,110.00 extension of time fee submitted on November 22, 2010 was subsequent to the maximum extendable period for reply, petitioner may request a refund of this fee by writing to the following address: Mail Stop 16, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany petitioner's request.

In view of the above, the request for refund of the $1,110.00 (extension fee) submitted on November 22, 2010 is granted.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Alexandria, VA 22313-1450
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Papér No.

FOLEY & LARDNER LLP
111 HUNTINGTON AVENUE
26TH FLOOR
BOSTON MA 02199-7610

MAILED
NOV 09 2010
OFFICE OF PETITIONS

In re Application of	:	
Sun et al.	:	
Application No. 11/355,922	:	ON APPLICATION FOR
Filed: 02/16/2006	:	PATENT TERM ADJUSTMENT
Atty Docket No.	:	
096171-0585	:	

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FOR PATENT APPLICATION UNDER 37 C.F.R. §1.705(b)," filed on August 25, 2010, which is treated as a petition under 37 CFR 1.705(b). Applicants submit that the patent term adjustment to be indicated on the patent should be increased from 802 days to 1331 days. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue the 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). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, 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.

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.

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1 For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3231.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
7,253,659	2007-08-07	11/355,930	2006-02-17	TIER-0001C

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY
☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☒ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity			Small Entity		
	Fee	Code		Fee	Code
◉	3 ½ year	(1551)	○	3 ½ year	(2551)
○	7 ½ year	(1552)	○	7 ½ year	(2552)
○	11 ½ year	(1553)	○	11 ½ year	(2553)

SURCHARGE
The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

MAINTENANCE FEE (37 CFR 1.20(e)-(g))
The appropriate maintenance fee must be submitted with this petition.

STATEMENT
THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

◉ An attorney or agent registered to practice before the Patent and Trademark Office

○ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

○ A joint patentee; all of whom are signing this e-petition

○ The assignee of record of the entire interest

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Jose S. Garcia/	Date (YYYY-MM-DD)	2011-08-24
Name	Jose S. Garcia	Registration Number	43628

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.**

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

UNITED STATES 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. 7253659
Issue Date: August 7,2007
Application No. 11355930
Filed: February 17,2006
Attorney Docket No. MADURAWE029

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed August 24,2011 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of August 24,2011 . 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)
7,176,716	2007-02-13	11/355,931	2006-02-17	TIER-0002P

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY
☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☒ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity		Small Entity	
Fee	Code	Fee	Code
◉ 3 ½ year	(1551)	○ 3 ½ year	(2551)
○ 7 ½ year	(1552)	○ 7 ½ year	(2552)
○ 11 ½ year	(1553)	○ 11 ½ year	(2553)

SURCHARGE
The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

MAINTENANCE FEE (37 CFR 1.20(e)-(g))
The appropriate maintenance fee must be submitted with this petition.

STATEMENT
THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

◉ An attorney or agent registered to practice before the Patent and Trademark Office

○ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

○ A joint patentee; all of whom are signing this e-petition

○ The assignee of record of the entire interest

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Jose S. Garcia/	Date (YYYY-MM-DD)	2011-08-31
Name	Jose S. Garcia	Registration Number	43628

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.**

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

UNITED STATES 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. 7176716
Issue Date: February 13,2007
Application No. 11355931
Filed: February 17,2006
Attorney Docket No. MADURAWE030

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed August 31,2011 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of August 31,2011 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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	11355965
Filing Date	17-Feb-2006
First Named Inventor	Hiroyuki Nagasaka
Art Unit	2882
Examiner Name	MICHAEL LIU
Attorney Docket Number	127108
Title	IMMERSION EXPOSURE APPARATUS AND DEVICE MANUFACTURING METHOD WITH NO LIQUID RECOVERY DURING EXPOSURE

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	/Mario Costantino/
Name	Mario A. Costantino
Registration Number	33565

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Decision Date : June 10,2011

In re Application of :

Hiroyuki Nagasaka

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11355965

Filed : 17-Feb-2006

Attorney Docket No : 127108

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed June 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 2882 for processing of the request for continuing examination under 37 CFR 1.114 .

Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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KENYON & KENYON LLP
1500 K STREET N.W.
SUITE 700
WASHINGTON DC 20005

MAILED
MAR 09 2011
OFFICE OF PETITIONS

In re Patent No. 7,768,716 :
Issue Date: August 3, 2010 :
Application No. 11/356,205 : DECISION ON PETITION
Filed: February 17, 2006 :
Attorney Docket No. 13914/30014 :

This is a decision on the Request For Certificate Of Correction Pursuant To 37 C.F.R. §1.323, filed November 5, 2010, requesting correction on the Title Page of the subject patent to include the second assigneee's name and residence. The Request is being treated as a Petition Under 37 CFR §3.81(b). A completed Certificate of Correction Form (PTO 1050 Modified) was submitted with Petition.

The petition under 37 CFR §3.81(b) is **GRANTED**.

Petitioner requests that the present Petition was submitted to include the second assignee's name and residence on the previously submitted PTOL 85B and such error was a mistake. Accordingly, petitioner requests that a Certificate of Correction (PTO/SB/44) be issued to include the second assignee's name and residence to the Title Page of the Letters Patent.

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter.

The requisite $100.00 fee (Fee Code 1811), as set forth under 37 CFR 1.20(a), has been submitted. However, the $130.00 processing fee (Fee Code 1464), as set forth under 37 CFR 1.17(i), was accompanied deposit account authorization to charge any required fees. As such, the fee has been charged as authorized. Further, Office assignment records are consistent with the requested correction. Accordingly, since the Petition complies with the provisions of 37 CFR §3.81(b), it is appropriate for the Office to issue a Certificate of Correction in accordance with the content of the Form (PTO 1050 Modified) submitted with the petition.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Inquiries related this communication should be directed to the undersigned at (571)272-3213.

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. 7,768,716.

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

cc: KENYON & KENYON LLP
One Broadway
New York, NY 10004

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

PAUL W. MARTIN
NCR CORPORATION, LAW DEPT.
3097 SATELLITE BLVD., 2nd FLOOR
DULUTH GA 30096

MAILED
FEB 28 2012
OFFICE OF PETITIONS

In re Application of	:	
HALBROOK et al.	:	
Application No. 11/356,357	:	DECISION ON PETITION
Filed: 02/16/2006	:	
Attorney Docket No. 12319	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 30, 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 August 10, 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 November 11, 2010. A Notice of Abandonment was mailed on March 9, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee, and (3) a proper statement of unintentional delay.

This application is being referred to Technology Center AU 1788 for appropriate action by the Examiner on the reply received on June 30, 2011.

Inquiries concerning this decision should be directed to the undersigned at (571) 272-3211.

/Christina Tartera Donnell/

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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CARLSON, GASKEY & OLDS, P.C.
400 WEST MAPLE ROAD
SUITE 350
BIRMINGHAM MI 48009

MAILED
NOV 02 2010
OFFICE OF PETITIONS

In re Application of	:	
Stephen J. OWEN	:	
Application No. 11/356,406	:	DECISION ON PETITION
Filed: February 16, 2006	:	
Attorney Docket No. 67008-134; S-5835	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 24, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to file a proper reply to the Office letter mailed July 12, 2010, which set a period for reply of one (1) month. Accordingly, this application became abandoned on August 13, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment; (2) the petition fee of $1620; and (3) a proper statement of unintentional delay.

The Office acknowledges receipt of the issue fee of $1510 and publication fee of $300.

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.

All other inquiries should be directed to the Office of Data Management at (571) 272-4200.

The application is being referred to the Office of Data Management for processing into a patent.

/DCG/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MICHAEL E. MCKEE
ATTORNEY AT LAW
804 SWAPS LANE
KNOXVILLE, TN 37923

MAILED

AUG 04 2010

OFFICE OF PETITIONS

In re Application of	:	
Hurst et al.	:	
Application No. 11/356,431	:	ON PETITION
Filed: February 16, 2006	:	
Attorney Docket No. 220-001	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 17, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of November 12, 2009. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is February 13, 2010. A Notice of Abandonment was mailed May 25, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE), including the fee of $405 and the submission required by 37 CFR 1.114 (previously submitted on January 28, 2010), (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 Technology Center AU 2629 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.

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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MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO, P.C.
ONE FINANCIAL CENTER
BOSTON, MA 02111

MAILED
MAY 25 2011
OFFICE OF PETITIONS

In re Application of	:	
Angela Soito et al	:	
Application No. 11/356,460	:	DECISION ON PETITION
Filed: February 17, 2006	:	TO WITHDRAW
Attorney Docket No.: 34668-503F01US	:	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 April 28, 2011.

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 request is filed by Sean M. Coughlin on behalf of all the practitioners of record.

The Office no longer accepts an address change to the new practitioner identified in the request, absent the filing of a power of attorney to the new representative. The Office will, however, change the correspondence address of record to the most current address provided for (1) the intervening assignee of the entire interest or (2) the first named inventor.

The request to withdraw from record cannot be approved at this time, since the correspondence address provided is not the intervening assignee of the entire interest or 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 undersigned at 571-272-3210. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

Irvin Dingle
Petitions Examiner
Office of Petitions

cc: Sean M. Coughlin
Mintz Levin Cohn Ferris Glovsky and Popeo, P.C.
3580 Carmel Mountain Road, Suite 300
San Diego, CA 92130-6768

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

JONES DAY
222 EAST 41ST ST
NEW YORK, NY 10017

MAILED

AUG 25 2010

OFFICE OF PETITIONS

In re Application of :
Casey D. STOKES :
Application No. 11/356,490 : DECISION GRANTING PETITION
Filed: February 16, 2006 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **12190-054-999 /T-6697** :

This is a decision on the petition under 37 CFR 1.313(c)(2), filed August 20, 2010, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on July 27, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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. Robert Chang 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. Chang desires to receive correspondence regarding this file, the appropriate power of attorney documents must be submitted.

Telephone inquiries should be directed to the undersigned at (571) 272-7253.

This application is being referred to Technology Center AU 1796 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.*

UNITED STATES 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.

JONES DAY
222 EAST 41ST ST
NEW YORK NY 10017

MAILED

MAY 05 2011

OFFICE OF PETITIONS

In re Patent No. 7,816,459	:	DECISION ON REQUEST
Casey Stokes	:	FOR
Issue Date: October 19, 2010	:	RECONSIDERATION OF
Application No. 11/356,490	:	PATENT TERM ADJUSTMENT
Filed: February 16, 2006	:	and
Atty Docket No. 12190-054-999	:	NOTICE OF INTENT TO ISSUE
/T-6697	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on December 20, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand thirty-five **(1035)** 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 thirty-four (1034)** days.

Patentee is correct that the Office failed to account for the filing in this application of a request for continued examination (RCE) on August 20, 2010. As the period from the filing date of the RCE to the issue date of the patent is not included in the "B" delay period, the over three year period begins on February 17, 2009 and ends on August 19, 2010, the day *before* the RCE was filed. See 35 U.S.C. 154(b)(1)(B)(i). Thus, the over 3 year period is 549, not 550 days.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or

patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one thousand thirty-four **(1034)** 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 : 7,816,459 B2

DATED : **October 19, 2010** **DRAFT**

INVENTOR(S) : Stokes

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 1095 days

Delete the phrase "by 1095 days" and insert – by 1034 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Decision Date : September 21,2011

In re Application of :

Vincent Cyr

Application No : 11356538

Filed : 17-Feb-2006

Attorney Docket No : PROM DIV

DECISION ON PETITION

UNDER CFR 1.137(b)

This is an electronic decision on the petition under 37 CFR 1.137(b), filed September 21,2011, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Allowance and Issue Fee(s) Due. The date of abandonment is the day after the expiration date of the period set for reply in the Notice.

The electronic petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of payment of the Issue Fee and the Publication Fee (if necessary); (2) the petition fee as set forth in 37 CFR 1.17 (m); (3) the drawing correction and/or other deficiencies (if necessary); and (4) the required statement of unintentional delay have been received. Accordingly, the Issue Fee payment is accepted as having been unintentionally delayed.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

This application file is being directed to the Office of Data Management.

Office of Petitions

Doc Code: PET.AUTO Document Description: Petition automatically granted by EFS-Web	PTO/SB/64 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)
Application Number	11356538
Filing Date	17-Feb-2006
First Named Inventor	Vincent Cyr
Art Unit	2192
Examiner Name	CHAMELI DAS
Attorney Docket Number	PROM DIV
Title	APPARATUS AND SYSTEMS FOR MEASURING, MONITORING, TRACKING AND SIMULATING ENTERPRISE COMMUNICATIONS AND PROCESSES

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:
(1) Petition fee;
(2) Reply and/or issue fee;
(3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995; and for all design applications;
(4) Statement that the entire delay was unintentional.

Petition fee
The petition fee under 37CFR 1.17(m) is attached.

☐ Applicant claims SMALL ENTITY status. See 37 CFR 1.27.

☐ Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

☒ Applicant(s) status remains as SMALL ENTITY.

☐ Applicant(s) status remains as other than SMALL ENTITY.

Issue Fee and Publication Fee :

Issue Fee and Publication Fee are not due.

☒ Issue Fee Transmittal is attached

Drawing corrections and/ or other deficiencies.

- (●) Drawing corrections and/ or other deficiencies are not required
- ( ) I certify, in accordance with 37 CFR 1.4.(D)(4), that drawing corrections and/ or other deficiencies have previously been filed on
- ( ) Drawing corrections and/ or other deficiencies are attached.
- [x] STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

I certify, in accordance with 37 CFR 1.4(d)(4) that I am:

- ( ) An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application.
- (●) An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity.
- ( ) A sole inventor
- ( ) A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors.
- ( ) A joint inventor; all of whom are signing this e-petition.
- ( ) The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71.

Signature	/Joseph E Chovanes/
Name	Joseph E. Chovanes
Registration Number	33481

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20120129

DATE : October 05, 2011

TO SPE OF : ART UNIT 1643

SUBJECT : Request for Certificate of Correction on Patent No.: 7,910,544

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:

Sequence listing could not be accepted due to errors in computer readable form.

/MISOOK YU/
Supervisory Patent Examiner.Art Unit 1643

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

SCHLUMBERGER OILFIELD SERVICES
200 GILLINGHAM LANE
MD 200-9
SUGAR LAND TX 77478

MAILED
FEB 25 2011
OFFICE OF PETITIONS

In re Application of	:	
Keith A. Moriarty	:	
Application No. 11/356,573	:	DECISION ON PETITION
Filed: February 17, 2006	:	
Attorney Docket No. 19.0327	:	

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**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, May 10, 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 11, 2010. A Notice of Abandonment was mailed 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 $1,620.00, and (3) a proper statement of unintentional delay.

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 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. Additionally, the address given on the petition differs from the address of record. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This application is being referred to Technology Center AU 3745 for appropriate action by the Examiner in the normal course of business on the reply received.

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: Jeremy P. Welch
Brunel Way, Stonehouse
Gloucestershire GL 10 3SX
United Kingdom

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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CROCKETT & CROCKETT, PC
26020 ACERO
SUITE 200
MISSION VIEJO, CA 92691

MAILED

FEB 28 2011

OFFICE OF PETITIONS

In re Application of
Alex Vayser, et al.
Application No. 11/356,758
Filed: February 17, 2006
Attorney Docket No. 212/691

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 20, 2011.

The request is **DISMISSED** as moot.

A review of the file record indicates that the power of attorney to Crocket & Crocket, PC has been revoked by the assignee of the patent application on January 31, 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 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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MAILED
NOV 17 2010
OFFICE OF PETITIONS

HUGH D. JAEGER, ESQ.
HUGH D. JAEGER, P.A.
P.O. BOX 432
WAYZATA MN 55391-0432

In re Application of	:	
Prager et al.	:	
Application No. 11/356,873	:	ON PETITION
Filed: February 17, 2006	:	
Attorney Docket No. BURBA P598	:	

This is a decision on the petition under 37 CFR 1.102(c)(1), filed October 25, 2010, to make the above-identified application special based on applicant's age as set forth in M.P.E.P. § 708.02, Section IV.

The petition is **GRANTED**.

A grantable petition to make an application special under 37 CFR 1.102(c)(1) and MPEP § 708.02, Section IV: Applicant's Age must be accompanied by evidence showing that at least one of the applicants is 65 years of age, or more, such as a birth certificate or a statement by applicant. No fee is required.

The instant petition includes a statement from the applicant. Accordingly, the above-identified application has been accorded "special" status.

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-3206. All other inquiries concerning either the examination or status of the application should be directed to the Technology Center.

This matter is being referred to the Technology Center Art Unit 3777 for action on the merits commensurate with this decision.

Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS TX 75265

MAILED
MAR 13 2012
OFFICE OF PETITIONS

In re Patent No. 7,388,359 :
Issued: June 17, 2008 :
Application No. 11/357,353 : DECISION ON PETITION
Filed: February 17, 2006 :
Attorney Docket No. P06525 :

This is a decision on the petition under 37 CFR 1.182, filed, January 31, 2012, to change the name of inventor "Lawrence Hok-Sun Ling." to – HOK-SUN LING--.

The petition is DISMISSED.

Petitioner herein indicates that the patent incorrectly sets forth the name of the inventor as Lawrence Hok-Sun Ling rather than the inventor's correct name which is Hok-Sun Ling (Lawrence being the patentee's "nickname"). Patentee thus requests the issuance of a certificate of correction in the name of Hok-Sun Ling.

The issued patent reflects the spelling of the inventor's name as taken from the oath or declaration filed, or any subsequently filed application data sheet submitted prior to the issuance of the patent. There is no indication in the record that the request to change the name of the inventor was submitted prior to the issuance of the patent. In other words, the instant request is deemed untimely submitted. For the reasons set forth herein, the relief requested cannot be granted pursuant to 37 CFR 1.182.

Petitioner may wish to avail himself to the provisions of 37 CFR 1.48. Any such request under 37 CFR 1.48 should be directed to the Technology Center as the Office of Petitions does not handle matters submitted solely under 37 CFR 1.48.

Any request for reconsideration under 37 CFR 1.182 should be submitted within TWO MONTHS of the decision mail date indicated above. The petition should be entitled "Request for Reconsideration under 37 CFR 1.182." Extensions of time are permitted under 37 CFR 1.136.

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) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAILED
NOV 22 2010
OFFICE OF PETITIONS

WHITHAM, CURTIS & CHRISTOFFERSON
& COOK, P.C.
11491 SUNSET HILLS ROAD
SUITE 340
RESTON VA 20190

In re Patent No. 7,638,988	:	
Issue Date: December 29, 2009	:	
Application No. 11/357,424	:	NOTICE
Filed: February 21, 2006	:	
Attorney Docket No. 01640544AA	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed October 15, 2010. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby accepted. The petition is **GRANTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

This file is being forwarded to Files Repository.

Telephone inquiries related to this decision should be directed to the Kimberly Inabinet at (571) 272-4618.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Paul F. Wille
6407 East Clinton St.
Scottsdale AZ 85254

MAILED
MAR 21 2012
OFFICE OF PETITIONS

In re Application of
Thomasson et al.
Application No. 11/357,450
Filed: February 17, 2006
Attorney Dkt. No. 99743.017
For: METHOD FOR CALIBRATING A HEARING AID

: DECISION ON PETITION

This is a decision on the petition under the unavoidable provisions of 37 CFR 1.137(a), filed February 7, 2012, to revive the above-identified application.

The petition is **DISMISSED.**

Any further petition to revive must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)." This is **not** a final agency action within the meaning of 5 U.S.C.§ 704.

This above-identified application became abandoned for failure to timely file a proper response to a final Office Action, which was mailed on July 18, 2011. The final Office Action set a three (3) month shortened statutory period for reply. No timely request for extension of time was obtained under the provisions of 37 CFR §1.136(a). Accordingly, this application became abandoned on October 19, 2011. This decision precedes the mailing of a Notice of Abandonment.

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d). The instant petition lacks item (s) (3).

As to item (3), the showing of record is not sufficient to establish to the satisfaction of the Director that the delay was unavoidable within the meaning of 37 CFR §1.137(a).

The Office may revive an abandoned application if the delay in responding to the relevant outstanding office requirement is shown to the satisfaction of the Commissioner to have been

"unavoidable." See, 37 CFR § 1.137(a)(3). Decisions on reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887) (the term "unavoidable" is applicable to ordinary human affairs, and requires no more greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business."); In re Mattullath, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913). In addition, decisions on revival are made on a "case by case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). A petition to revive an application as unavoidably abandoned cannot be granted where petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay. Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2D 1130 (N.D. Ind. 1987).

Applicants' counsel Attorney Willie asserts illness/incapacitation as the cause of unavoidable delay. Petitioner states that he was diagnosed with inoperable pancreatic cancer. On September 9, 2011 after radiation, the first of three surgeries was performed. Three surgeries took place in two weeks. The third surgery removed the pancreas, the gall bladder and the spleen. Attorney Willie states that he was in the hospital from September 9 to November 3. Thereafter, Attorney Willie was in rehabilitation from November 3 until December 28. Upon release from the rehabilitation facility, Attorney Willie could provide basic care for himself. Attorney Willie states that he is physically impossible to provide a timely reply to the October 6, 2011 Advisory Action because of the effects of chemotherapy, radiation and surgery.

Petitioner's argument has been considered but deemed not persuasive. It is first noted Attorney Willie has failed to provide any evidence to substantiate the claims made in the petition. No evidence has been provided to establish the failure to submit a response was due to the illness described in the petition. A showing of "unavoidable" delay based upon illness must establish that Attorney Willie's incapacitation was of such nature and degree as to render petitioner unable to conduct business (*e.g.*, correspond with the Office) during the period between October 6, 2011 and January 18, 2012. Such a showing must be supported by a statement from petitioner's treating physician, and such statement must provide the nature and degree of petitioner's illness during this above-mentioned period.

It is further noted the Office looks to the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant/patentee and their successors, and the applicant/patentee and their successors are bound by the consequences of those actions or inactions. Link v. Wabash, 370 U.S. 626, 633-34 (1962).

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the

documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

If petitioner cannot provide the evidence necessary to establish unavoidable delay, or simply does not wish to, petitioner may wish to consider filing a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the $810.00 petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By facsimile: **(571) 273-8300**
Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3215.

Charlema Grant
Attorney Advisor
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAR 10 2011
OFFICE OF PETITIONS

FOLEY & LARDNER LLP
777 EAST WISCONSIN AVENUE
MILWAUKEE, WI 53202-5306

In re Patent No.: 7,519,349	:	
Issued: April 14, 2009	:	
Application No. 11/357,472	:	NOTICE
Filed: February 17, 2006	:	
Atty Docket No.: 062222-0103	:	

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) 272-3204.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JONES DAY
222 EAST 41ST ST
NEW YORK NY 10017

MAILED
JUL 29 2011
OFFICE OF PETITIONS

In re Application of	:	
STOKES et al.	:	
Application No. 11/357,562	:	ON APPLICATION FOR
Filed: 02/16/2006	:	PATENT TERM ADJUSTMENT
Docket No. 12190-051-999 /T-6696	:	

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT" filed July 14, 2011. Applicants submit that the correct patent term adjustment to be indicated on the patent is 881 days, not 290 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.

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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OSTROLENK FABER GERB & SOFFEN
1180 AVENUE OF THE AMERICAS
NEW YORK NY 10036-8403

MAILED

SEP 13 2010

OFFICE OF PETITIONS

In re Application of	:	
Mario Ricco et al	:	
Application No. 11/357,594	:	DECISION ON PETITION
Filed: February 17, 2006	:	
Attorney Docket No. P/2528-36	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 25, 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 August 19, 2009, is accepted as having been unintentionally delayed.

Further, the request for refund submitted on June 25, 2010 is granted (see decision mailed June 15, 2010 ($620.00 extension and $400.00 petition fee)). Therefore, a total of 1,020.00 is being credited to petitioner's deposit account as authorized.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

This application is being referred to Technology Center AU 3753 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

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.
11/357,601	02/17/2006	Jeffrey B. Parham	14917.0206USC1	4446

7590 09/24/2010

Microsoft Corporation
Attention: Patent Group - Docketing Department
One Microsoft Way
Redmond, WA 98052

EXAMINER
DOAN, DUYEN MY

ART UNIT	PAPER NUMBER
2452	

MAIL DATE	DELIVERY MODE
09/24/2010	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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COMMISSIONER FOR PATENTS
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Elizabeth J. Reagan
Microsoft Corporation
Attention: Patent Group - Docketing Department
One Microsoft Way
Redmond WA 98052

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SEP 24 2010

DIRECTOR OFFICE
TECHNOLOGY CENTER 2400

In re Application of: PARHAM, J.B.)
Application No. **11/357,601**)
Filed: February 17, 2006)
Atty Docket No.: 14917.0206USC1)
Title of Invention: NON-INVASIVE)
LATENCY MONITORING IN A)
STORE-AND -FORWARD)
REPLICATION SYSTEM)

DECISION ON PETITION FOR EXPUNGING INFORMATION UNDER UNDER 37 CFR § 1.59

This is a decision on the renew petition under 37 CFR § 1.59(b), filed on February 17, 2009, to expunge information from the above identified application.

The petition is **GRANTED**.

Petitioner requests that the information submitted on January 23 2008, be expunged from the record. Petitioner states that the information contains proprietary material and/or material that is subjected to a protective order which has not been made public. The petition fee set forth in 37 CFR 1.17(g) has been paid.

The information in question has been determined by the undersigned to not be material to the examination of the instant application. Applicant is required to retain the expunged material(s) for the life of any patent which issues on the above-identified application. The expunged material has been destroyed, the artifact folder closed and therefore the material will not be returned.

Any inquiry regarding this decision should be directed the undersigned whose telephone number is (571) 272-3902.

/Beatriz Prieto/

Beatriz Prieto, Quality Assurance Specialist
Technology Center 2400
Network, Multiplexing, Cable and Security

UNITED STATES
PATENT AND
TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
Alexandria, VA. 22313-1450
WWW.USPTO.GOV

David Perry
Anacor Pharmaceuticals
1020 East Meadow Circle

Palo Alto, CA 94303-4230

Date: December 30, 2011
Application No. 11/357,687
Filed: February 16, 2006
Subject: **BORON-CONTAINING SMALL MOLECULES**

ON PETITION
37 CFR 1.324

Receipt is acknowledged of the petition filed on May 20, 2010 under 37 CFR 1.324 for correction of inventorship. The petition has been **GRANTED**.

In view of the papers filed, it has been found that during the prosecution of the instant application a restriction was required and therefore, not all of the inventors contributed to the invention as now claimed. Accordingly, this application has been changed by the **deletion of the inventor Carolyn Bellinger-Kawahara and Kirk R. Maples.** The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of the file jacket and PTO PALM data to reflect the inventorship as corrected.

Brandon Fetterolf
United States Patent and Trademark Office
Technology Center 1600
SPE, ART UNIT 1628
Remsen 5C09
571-272-2919

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TRASKBRITT, P.C./ ALLIANT TECH SYSTEMS
P.O. BOX 2550
SALT LAKE CITY UT 84110

MAILED
DEC 01 2010
OFFICE OF PETITIONS

In re Patent No. 7,700,202	:	
Issue Date: April 20,2010	:	
Application No. 11/357,716	:	DECISION ON PETITION
Filed: February 16, 2006	:	
Attorney Docket No. 2507-7346US(22123-US-01)	:	

This is a decision on the Request Under 37 CFR §3.81(b) To Correct Assignee's Name, filed September 23, 2010, which is being treated as a Petition Under 37 CFR §3.81(b), to identify the correct assignee's name and residence. A completed Certificate of Correction Form (PTO/SB/44) was submitted with Petition.

The petition under 37 CFR §3.81(b) is **GRANTED**.

Petitioner urges that the present Petition was submitted to correct the assignee's name and residence on the previously submitted PTOL 85B and such error was inadvertent. Accordingly, petitioner requests, in effect, that the Title Page of the above-identified patent be corrected, via issuance of Certificate of Correction, to correct the assignee's name identified thereon from:

"Alliant Techsystems Inc., Minneapolis, MN (US)"

to:

--COI Ceramics, Inc., San Diego, CA (US)--

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter.

The requisite $100.00 fee (Fee Code 1811), as set forth under 37 CFR 1.20(a), and the requisite $130.00 processing fee (Fee Code 1464), as set forth under 37 CFR 1.17(i), have been submitted. Further, Office assignment records are consistent with the requested correction. Accordingly, since the Petition complies with the provisions of 37 CFR 3.81(b), it is appropriate for the Office to issue a Certificate of Correction in accordance with the content of the Form PTO/SB/44 submitted with the Petition.

Inquiries related this communication should be directed to the undersigned at (571)272-3213.

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. 7,700,202.

Cheryl Gibson-Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
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In re Application of
James R. Muldoon

Application No. 11357723

Filed: February 17,2006

Attorney Docket No. MULDOO-48570

:DECISION ON PETITION TO MAKE SPECIAL
:UNDER 37 CFR 1.102(c)(1)

This is a decision on the electronic petition under 37 CFR 1.102 (c)(1), filed 27-JAN-2011 to make the above-identified application special based on applicant's age as set forth in MPEP § 708.02, Section IV.

The petition is **GRANTED**.

A grantable petition to make an application special under 37 CFR 1.102(c)(1), MPEP § 708.02, Section IV: Applicant's Age must include a statement by applicant or a registered practitioner having evidence that applicant is at least 65 years of age. No fee is required.

Accordingly, the above-identified application has been accorded "special" status and will be taken up for action by the examiner upon the completion of all pre-examination processing.

Telephone inquiries concerning this electronic decision should be directed to the Electronic Business Center at 866-217-9197.

All other inquiries concerning either the examination or status of the application should be directed to the Technology Center.

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TRASKBRITT, P.C.
P.O. BOX 2550
SALT LAKE CITY, UT 84110

MAILED

SEP 27 2010

OFFICE OF PETITIONS

In re Application of	:	
Leif ANDERSSON, et *al.*	:	
Application No. 11/357,733	:	DECISION GRANTING PETITION
Filed: February 17, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **2183-7695US**	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed September 23, 2010, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on August 31, 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 1633 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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NOV 02 2010

OFFICE OF PETITIONS

ENTELOS, INC.
C/O LAW OFFICES OF KAREN E. FLICK
P. O. BOX 515
EL GRANADA CA 94018-0515

In re Application of	:	
Georges NATSOULIS, et al	:	
Application No. 11/357,887	:	DECISION ON PETITION
Filed: February 17, 2006	:	TO WITHDRAW
Attorney Docket No. ENTL-055 US2	:	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 5, 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 does not include a proper power of attorney nor is the address that of the first named inventor or an assignee of the entire interest under 37 C.F.R 3.71.

Further, 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. Accordingly, since the request does not include a clear indication as to which attorneys are to be withdrawn, it cannot be approved.

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: NIH OFFICE OF GENERAL COUNSEL
31 CENTER DRIVE, BUILDING 31,
ROOM 28-47
BETHESDA MD 20892

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paul F. Wille
6407 East Clinton St.
Scottsdale, AZ 85254

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SEP 14 2010

OFFICE OF PETITIONS

In re Application of
Scott Raymond Fink, et. al.
Application No. 11/357,913
Filed: February 17, 2006
Attorney Docket No. 99743.014

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 29, 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 a Notice of Appeal with the $270 fee; (2) the petition fee of $810; and (3) a proper statement of unintentional delay. Therefore, the petition is **granted**.

The two-month period for filing an appeal brief under 37 CFR 41.37 (accompanied by the $270 fee required by 37 CFR 41.20(b)(2)), runs from the date of this decision.

This application is being referred to Technology Center Art Unit 2614 to await the filing of an appeal brief or for such other appropriate reply as may be submitted to continue prosecution of the application.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

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MAILED
DEC 15 2010
OFFICE OF PETITIONS

NEKTAR THERAPEUTICS
455 Mission Bay Blvd., South, Suite 100
San Francisco CA 94158

In re Patent of Bossard et al.	:	DECISION ON REQUEST
Patent No. 7,714,114	:	FOR RECONSIDERATION OF
Issue Date: May 11, 2010	:	PATENT TERM ADJUSTMENT
Application No. 11/357,936	:	AND NOTICE OF INTENT TO
Filing Date: February 16, 2006	:	ISSUE CERTIFICATE OF
Attorney Docket No. SHE0113.00	:	CORRECTION

This is a decision on the petition filed July 9, 2010, which is being treated as a petition under 37 C.F.R. § 1.705(d) requesting the patent term adjustment indicated on the patent be corrected to indicate the term of the patent is extended or adjusted by nine hundred ten (910) days.

The petition to correct the patent term adjustment indicated on the patent to indicate the term of the patent is extended or adjusted by nine hundred ten (910) days is **dismissed**.

Action to be Taken by the Office

As a result of the instant decision, the Office will *sua sponte* issue a certificate of correction indicating the term of the patent is extended or adjusted by eight hundred forty-five (845) days. Pursuant to 37 C.F.R. § 1.322, the Office will not issue a certificate of correction without first providing an assignee or patentee an opportunity to be heard. Accordingly, if Patentees wish to file a response to the instant decision, Patentees must file the response within **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision. Extensions of time will NOT be granted under 37 C.F.R. § 1.136.

No portion of this decision should be construed as a waiver of the requirement, set forth in 35 U.S.C. § 154(b)(4), that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. § 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Issue 1

The Office mailed a non-final Office action on March 20, 2008.

A response to the Office action was filed May 28, 2008.

The Office mailed a second non-final Office action on December 18, 2008.

The Office entered an 81-day increase in patent term adjustment under 37 C.F.R. § 1.703(a)(2) for Office delay in responding to the reply filed May 28, 2008.

Patentees argue the Office should have entered a 129-day, not an 81-day, increase in patent term adjustment under 37 C.F.R. § 1.703(a)(2).

Patentees' argument that the Office should have entered a 129-day, not an 81-day, increase in patent term adjustment for Office delay under 37 C.F.R. § 1.703(a)(2) could have been made in a application for patent term adjustment under 37 C.F.R. § 1.705(b).

37 C.F.R. § 1.705(d) states in part,

> 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.

Since Patentees' argument that the Office should have entered a 129-day, not an 81-day, increase in patent term adjustment for Office delay under 37 C.F.R. § 1.703(a)(2) could have been made in an application under 37 C.F.R. § 1.705(b), the argument is untimely and will not be considered.

Issue 2

Patentees assert the period of delay under 37 C.F.R. § 1.703(b) ("B Delay") is 449 days, not 436 days.

The number of days beginning February 17, 2009, the day after the date three years after the filing date, and ending May 11, 2010, the date the patent issued, is 449 days. However, the period of B Delay is not 449 days.

Pursuant to 37 C.F.R. § 1.703(b)(4), the period of B Delay does not include:

> The number of days, if any, in the period beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31 of this title and ending on the date of the last decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145, or on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first, if the appeal did not result in a decision by the Board of Patent Appeals and Interferences.

A notice of appeal was filed November 30, 2009, and a notice of allowance was subsequently issued December 16, 2009. The number of days beginning November 30, 2009, the date the notice of appeal was filed, and ending December 16, 2009, the date the Office mailed a notice of allowance, is 17 days.

The period of B Delay is 432 days, which is the 449 days beginning February 17, 2009, the day after the date three years after the filing date, and ending May 11, 2010, the date the patent issued, reduced by the 17-day period consumed by appellate review.

Issue 3

When calculating the patent term adjustment, the Office entered a 6-day increase in patent term adjustment for A Delay. Specifically, the Office entered a 6-day increase in patent term adjustment under 37 C.F.R. § 1.703(a)(2) as a result of the Office mailing an Office action on July 31, 2009, four months and 6 days after Patentees filed a reply to a prior non-final Office action.

The petition does not mention the 6-day period of A Delay. As a result, the Office has reviewed the propriety of the entry of the 6-day period of A Delay.

A review of the record indicates entry of the 6-day increase in patent term adjustment was proper.

Issue 4

As a result of the petition's failure to mention the 6-day period of A Delay previously discussed, the petition does not discuss the number of days of overlap between the periods of A Delay and B Delay.

The 6-day period of A Delay fell within the 449-day period beginning February 17, 2009, the day after the date three years after the filing date, and ending May 11, 2010, the date the patent issued. Therefore, the number of days of overlap between the periods of A Delay and B Delay is 6 days.

Conclusion

The period of A Delay is 426 (339 + 81 + 6) days.

The period of B Delay is 432 days.

The number of days of overlap between A Delay and B Delay is 6 days.

The undisputed period of delay under 37 C.F.R. § 1.704 ("Applicant Delay") is 7 days.

The correct patent term adjustment is 845 days, which is the sum of 426 days of A Delay and 432 days of B Delay reduced by 6 days of overlap and 7 days of Applicant Delay.

The Office acknowledges submission of the $200.00 fee set forth in 37 C.F.R. § 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the patent is extended or adjusted by **eight hundred forty-five (845)** days.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO.	:	7,714,114 B2
APPLICATION NO.	:	11/357,936
DATED	:	May 11, 2010
INVENTOR(S)	:	Mary J. Bossard et al.

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the Title page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 846 days.

Delete the phrase "by 846 days" and insert -- by 845 days--

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DIW Jan-11

GIDEON SAMID
13 TAPIOLA CT
ROCKVILLE MD 20850

MAILED

JAN 03 2011

OFFICE OF PETITIONS

In re Application of :
Gideon Samid :
Application NO. 11/357,940 :
Filed: 02/22/2006 :
For: TRADECHESS: A GAME :
FORMATTED TRADING ENVIRONMENT :

ON PETITION

This is a decision in response to the petition under 37 CFR 1.137(b) filed on October 22, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on November 24, 2009, for failure to timely submit a reply to the Notice of Non-Compliant Amendment (37 CFR 1.121) mailed on October 23, 2009, which set a one (1) month shortened period for reply. An untimely reply was filed on May 17, 2010. The filing of the present petition precedes the mailing of Notice of Abandonment.

Although the petition states that the required reply is enclosed, no reply is enclosed with the petition. Nevertheless, the amendment filed on May 17, 2010, will be construed as the required reply. Petitioner must inform the Office if this is an incorrect interpretation.

The application is referred to Technology Center Art Unit 3691 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

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VIENNA VA 22182-6212

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DEC 22 2010

OFFICE OF PETITIONS

In re Patent No. 7,653,140	:	
Issue Date: January 26, 2010	:	
Application No. 11/357,958	:	DECISION ON PETITION
Filed: February 22, 2006	:	
Attorney Docket No. 60091.00398	:	

This is a decision on the petition under 37 CFR 1.183, filed September 1, 2010, which is a request that the requirement of 37 CFR 3.81 be waived or suspended pursuant to 37 CFR 1.183.

The petition is **dismissed**.

37 CFR 1.183 provides that in an extraordinary situation, when justice requires, any requirement of the regulations which is not a requirement of the statutes may be suspended or waived by the Commissioner.

The fee for a petition filed under 37 CFR 1.183 is set forth under § 1.17(f) which is $400. The petition included a fee for $130. The balance of the petition fee of $270 has been charged to petitioner's deposit account.

The petition requests that the requirements of 37 CFR 3.81 be waived to accept a certificate of correction under 37 CFR 1.323 for correction of claim language. 37 CFR 3.81 is directed to issuance of a patent to an assignee. Specifically paragraph (b) is directed to correction of the assignee via certificate of correction. There is no reason to waive any requirement of 37 CFR 3.81 if petitioner's purpose is to correct an error in claim language.

The Office has rules in place for providing for the correction of claim language in a patent. See MPEP 1400. Therefore, the circumstances presented in the petition are not extraordinary circumstances where the interests of justice requires the granting of relief.

For the above reasons, the petition is dismissed.

Telephone inquiries regarding this communication should be directed to Carl Friedman at (571) 272-6842.

David Bucci
Petitions Examiner
Office of Petitions

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30 ROCKEFELLER PLAZA
44th Floor
NEW YORK, NY 10112-4498

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AUG 2 6 2010

OFFICE OF PETITIONS

In re Application of :
David Lowe, et al. :
Application No.: 11/358,279 : ON PETITION
Filed: February 21, 2006 :
Attorney Docket No.: 003168.0447 :

This is a decision on the petition, filed August 25, 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 21, 2010, cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 3774 for further processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed amendment.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

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THE LUTHER LAW FIRM, PLC
10575 N. 114th Street
Suite 103
Scottsdale, AZ 85259

MAILED

OCT 12 2010

OFFICE OF PETITIONS

In re Application of	:	
Jifan Hu	:	
Application No. 11/358,465	:	DECISION ON PETITION
Filed: February 21, 2006	:	TO WITHDRAW
Attorney Docket No. GMR-002ORD	:	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 17, 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 Barbara J. Luther on behalf of all attorneys of record. All attorneys/agents have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the first named inventor Jifan Hu at the address indicated below.

Telephone inquiries concerning this decision should be directed to Terri Johnson at 571-272-2991.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

cc: **Jifan Hu**
745 Seminole Way
Palo Alto, CA 94303

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/358,465	02/21/2006	Jifan Hu	GMR-002ORD

CONFIRMATION NO. 6024

POWER OF ATTORNEY NOTICE

51951
THE LUTHER LAW FIRM, PLC
10575 N 114TH STREET
SUITE 103
SCOTTSDALE, AZ 85259

OC000000043941773

Date Mailed: 10/12/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/17/2010.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/tsjohnson/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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CINCINNATI OH 45202

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FEB 23 2011

OFFICE OF PETITIONS

In re Application of	:
Albenice et al.	:
Application No. 11/358,546	: DECISION ON PETITION
Filed: February 21, 2006	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. MUCC-72CP	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed December 21, 2010, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the amendment filed concurrently with the instant petition. This is also a decision on the petition under 37 CFR 1.48(a) to amend the inventive entity by the addition of Jean-Paul Laprade, Jean Donatelli, and John W. Geurtsen filed concurrently

The petition under 37 CFR 1.78(a) 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(s), unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant petition does not comply with item (1) above.

With regards to item (1), a reference to add the above-noted, prior-filed application on page one following the first sentence of the specification has been included in a concurrently filed amendment. However, the amendment is not acceptable as drafted since it improperly incorporates by reference the prior-filed application. Petitioner's attention is directed to Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980), where the court drew a distinction between a permissible 35 U.S.C. § 120 statement and the impermissible introduction of new matter by way of incorporation by reference in a 35 U.S.C. § 120 statement. The court specifically stated:

> Section 120 merely provides a mechanism whereby an application becomes entitled to benefit of the filing date of an earlier application disclosing the same subject matter. Common subject matter must be disclosed, in both applications, either specifically or by an express incorporation-by-reference of prior disclosed subject matter. Nothing in section 120 itself operates to carry forward any
>
> disclosure from an earlier application. In re deSeversky, supra at 674, 177 USPQ at 146-147. Section 120 contains no magical disclosure-augmenting powers able to pierce new matter barriers. It cannot, therefore, "limit" the absolute and express prohibition against new matter contained in section 251.

In order for the incorporation by reference statement to be effective as a proper safeguard against the omission of a portion of a prior application, the incorporation by reference statement must be included in the specification-as-filed, or in an amendment specifically referred to in an oath or declaration executing the application. *See* In re deSeversky, *supra*. *Note also* MPEP 201.06(c).

Accordingly, before the petition under 37 CFR 1.78(a)(3) can be granted, a substitute amendment[1] deleting the incorporation by reference statement, along with a renewed petition under 37 CFR 1.78(a)(3), is required.

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).

The instant petition has met all of the above requirements. Accordingly, Jean-Paul Laprade, Jean Donatelli and John W. Geurtsen have been added as inventors in the instant application.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS

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[1] *Note* 37 CFR 1.121

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By hand: Customer Window located at:
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Customer Service Window Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

Any questions concerning this matter may be directed to Joan Olszewski at (571) 272-7751.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

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APR 11 2011
OFFICE OF PETITIONS

In re Application of	:	
Albenice et al.	:	
Application No. 11/358,546	:	DECISION GRANTING PETITION
Filed: February 21, 2006	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. MUCC-72CP	:	

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed March 7, 2011, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application as set forth in the amendment filed concurrently with the instant petition.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional application is submitted after expiration of the period specified by 37 CFR 1.78(a)(2)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3).

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) a reference to the prior-filed nonprovisional application has been included in an amendment to the first sentence of the specification following the title, as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the prior-filed

nonprovisional application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional application, accompanies this decision on petition.

Additionally, petitioner has submitted two unnecessary duplicate $1,410.00 petition fees. The amount of $2,820.00 will be refunded to petitioner's deposit account in due course.

Any inquiries concerning this decision may be directed to Joan Olszewski at (571) 272-7751.

This matter is being referred to Technology Center Art Unit 1782 for appropriate action on the amendment filed March 7, 2011, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional application.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

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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
11/358,546	02/21/2006	1782	1458	MUCC-72CP	25	1

CONFIRMATION NO. 7625

CORRECTED FILING RECEIPT

26875
WOOD, HERRON & EVANS, LLP
2700 CAREW TOWER
441 VINE STREET
CINCINNATI, OH 45202

OC000000047010522

Date Mailed: 04/07/2011

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)

Philip J. Albenice, Sellersburg, IN;
John Voelker, Walton, KY;
JEAN-PAUL LAPRADE, NORTH SMITHFIELD, RI;
JEAN DONATELLI, CINCINNATI, OH;
JOHN W. GEURTSEN, HOLLISTON, MA;

Assignment For Published Patent Application

Multi-Color Corporation

Power of Attorney: The patent practitioners associated with Customer Number 26875

Domestic Priority data as claimed by applicant

This application is a CIP of 11/253,044 10/18/2005 PAT 7,829,163
and is a CIP of 11/260,528 10/27/2005

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: 03/21/2006

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/358,546**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Shrink sleeve for an article closure

Preliminary Class

428

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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696 RENOLDA WOODS CT.
DAYTON OH 45429-3415

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OFFICE OF PETITIONS

In re Application of	:	
Martin A. Schneble	:	
Application No. 11/358,655	:	DECISION ON PETITION
Filed: February 21, 2006	:	
Attorney Docket No. MDS 001 P2	:	

This is a decision on the petition, filed February 10, 2010 and supplemented on February 11, 2010, entitled "Petition for Adjustment and/or return of Extension Fee." The petition is being treated under 37 CFR 1.181 (no fee).

The Office apologizes for the delay in replying to the above matter.

The petition is **DISMISSED**.

BACKGROUND:

A nonfinal Office action was mailed on June 12, 2009.

An amendment to the Office action was received in the USPTO on September 8, 2009.

A Notice of Non-Compliant Amendment (37 CFR 1.121) was mailed on October 26, 2009.

Applicant now files the above petition, requesting a refund of all, or a major portion of the three (3) months extension of time fee ($555.00) paid on February 10, 2010, and asserts that the Notice mailed October 26, 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.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions). (Emphasis supplied).

The petition fails to satisfy item(s) (4) of the above requirements.

As to item (4), the Office is unclear as to what the significance is of Exhibits 1-2 regarding applicant's assertion of nonreceipt of the Notice mailed June 12, 1009. Also, Exhibits 3-10, reference the year of 2007, which is not relevant to the date of mailing of the Notice on October 26, **2009**. Lastly, the Office is not in receipt of Exhibit 11, as stated in the petition.

In view of the above, the petition requesting refund under 37 CFR 1.181 is dismissed at this time.

Further correspondence with respect to this matter should be delivered through one of the following mediums:

By mail:	Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450
By hand:	Customer Service Window Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(571) 273-8300 ATTN: Office of Petitions
By internet:	EFS-Web www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

NOVO NORDISK, INC.
INTELLECTUAL PROPERTY DEPARTMENT
100 COLLEGE ROAD WEST
PRINCETON NJ 08540

MAILED
SEP 24 2010
OFFICE OF PETITIONS

In re Patent No. 7,749,955	: DECISION ON REQUEST
Hansen, et al.	: FOR
Issue Date: July 6, 2010	: RECONSIDERATION OF
Application No. 11/358,676	: PATENT TERM ADJUSTMENT
Filed: February 21, 2006	: and
Atty Docket No. **6669.204-US**	: NOTICE OF INTENT TO ISSUE
	: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on September 3, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by five hundred and forty-seven (547) 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 twenty (520) days** is **GRANTED to the extent indicated herein**.

It is noted that entry of a reduction to the patent term adjustment pursuant to 37 CFR 1.704(c)(10)[1] of 27 days is warranted for the filing of an Information Disclosure Statement (IDS) on March 18, 2010, after the mailing of the Notice of Allowance on December 10, 2010[2].

---

[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;

[2] A review of the file history reveals that a Notice of Allowance and Issue Fee Due was mailed on December 10, 2009. On March 10, 2010, patentees filed a Request for Continued Examination which tolled the time period under 37 CFR 1.704(b). On March 18, 2010, patentees filed an IDS which warrants a reduction to the patent term adjustment under 37 CFR 1.704(c)(10), rather than 37 CFR 1.704(c)(8).

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 March 18, 2010, reveals that it did include a § 1.704(d) statement. Accordingly, the filing of the IDS on March 18, 2010, 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 27 days is being entered, with said period beginning on March 18, 2010, and ending on April 13, 2010—the date the response to the IDS was mailed.

The Office acknowledges receipt of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **five hundred and twenty (520)** 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 : 7,749,955 B2

DATED : Jul. 6, 2010

INVENTOR(S) : Hansen, et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (548) days

Delete the phrase "by 548 days" and insert – by 520 days--

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INTELLECTUAL PROPERTY
DEPARTMENT
100 COLLEGE ROAD WEST
PRINCETON NJ 08540

MAILED
NOV 09 2010
OFFICE OF PETITIONS

In re Patent No. 7,749,955	:	
Hansen, et al.	:	DECISION DISMISSING
Application No. 11/358,676	:	REQUEST FOR
Issue Date: July 6, 2010	:	RECONSIDERATION OF
Filed: February 21, 2006	:	PATENT TERM ADJUSTMENT
Attorney Docket No.	:	UNDER 37 CFR 1.705
6669.204-US	:	

This is in response to the "Response to Decision on Request for Reconsideration of Patent Term Adjustment" filed October 13, 2010. Patentees requests that the determination of patent term adjustment be corrected from five hundred and twenty (520) days to five hundred and forty-seven (547) days.

The request for reconsideration of 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 five hundred and twenty (520) days.

This application was filed on February 21, 2006. On July 6, 2010, the application matured into U.S. Patent No. 7,749,955 with a revised patent term adjustment of 547 days. A petition under 37 CFR 1.705(d) was filed on September 3, 2010. The petition was granted by a decision mailed September 24, 2010, according 520 days of patent term adjustment.

By the instant petition, patentees request that the patent term adjustment be changed to 547 days. Specifically, patentees' state:

> Applicants believe that the Request for Continued Examination and Information Disclosure Statement filed by

> Applicants on March 10, 2010 withdrew the Notice of Allowance mailed December 10, 2009, and, therefore, reopened prosecution in this matter. Therefore, the Information Disclosure Statement filed by Applicants on March 18, 2010 should not be considered an amendment under 37 CFR 1.312 or other paper after Notice of Allowance (37 CFR 1.704(c)(10)) and should not count toward Applicant delay.

Excerpt from "Response to Decision on Request for Reconsideration of Patent Term Adjustment" filed October 13, 2010, pg.1.

Patentees' argument has been considered and is not persuasive. A review of the file history reveals that a Notice of Allowance and Issue Fee Due was mailed February 19, 2010. On March 10, 2010, a Request for Continued Examination and Information Disclosure Statement was filed. This filing on March 10, 2010, was patentees' response pursuant to 37 CFR 1.704(b). Patentees are advised that after the mailing of the Notice of Allowance, patentees were entitled to file a response pursuant to 37 CFR 704(b)—usually an issue fee payment or a Request for Continued Examination. With few exceptions, any paper filed thereafter, prior to the mailing of a non-final Office action or a Notice of Allowance and Issue Fee Due, warrants a reduction to the patent term adjustment under 37 CFR 1.704(c)(10)[1]. The filing of the Information Disclosure Statement filed March 18, 2010, warrants a reduction to the patent term adjustment under 37 CFR 1.704(c)(10) as it was filed after the Notice of Allowance and

---

[1] 37 CFR 1.704(c)(10)provides that:

> (c) Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the periods of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:
>
> (10) Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the periods of adjustment set forth in § 1.703 shall be reduced by the lesser of:
>
> (i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or other such paper; or
>
> (ii) Four months…

Issue Fee Due was mailed, prior to the mailing of a non-final Office action or Notice of Allowance, and after patentee filed the response under 37 CFR 1.704(b). Further, the Information Disclosure Statement filed March 18, 2010, did not contain a statement under 37 CFR 1.704(d). Accordingly, it is appropriate to reduce the patent term adjustment by 27 days, with said period beginning on the date the IDS was filed, March 18, 2010, and ending on April 13, 2010, the date a response thereto was mailed.

In view thereof, the Office affirms that the revised determination of patent term adjustment at the time of the issuance of the patent is 520 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 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 **five hundred and twenty (520) 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: DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,749,955 B2

DATED : Jul. 6, 2010

INVENTOR(S) : Hansen, et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (548) days

Delete the phrase "by 548 days" and insert – by 520 days--

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EDWARD ANGELL PALMER & DODGE LLP
P.O. BOX 55874
BOSTON, MA 02205

MAILED

JAN 27 2011

OFFICE OF PETITIONS

In re Application of :
Shingo Hori et al :
Application No. 11/358,742 : ON PETITION
Filed: February 22, 2006 :
Attorney Docket No. 80259(302743) :

This is a decision on the petition under 37 CFR 1.137(b), filed December 11, 2010, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed May 4, 2009, which set a shortened statutory period for reply of three (3) months. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on August 5, 2009.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (571) 272-3210.

This matter is being referred to Technology Center AU 2123 for further processing.

Irvin Dingle
Petitions Examiner
Office of Petitions

cc: James E. Armstrong, IV
Edwards, Angell, Palmer & Dodge LLP
1875 Eye Street, NW
Washington, DC 20006

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Post Office Box 803338
#8973
Chicago IL 60680-3338

MAILED

JAN 20 2011

OFFICE OF PETITIONS

In re Application of :
Michael J. Andres :
Application No. 11/358,791 :
Filed: February 20, 2006 :
Attorney Docket No. PA-035.05774-US :

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 3, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Office action under Ex parte Quayle, 1935 Dec. Comm'r Pat. 11 (1935), mailed May 14, 2010, which set a shortened statutory period for reply of two (2) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on July 15, 2010. A Notice of Abandonment was mailed on December 27, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of 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 3744 for appropriate action by the Examiner in the normal course of business on the reply received January 3, 2011.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

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Commissioner for Patents
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HAO & BARNES LLP
TWO NORTH MARKET STREET
THIRD FLOOR
SAN JOSE CA 95113

MAILED

SEP 27 2010

OFFICE OF PETITIONS

In re Application of	:	
Dawson, et al.	:	
Application No. 11/358,824	:	DECISION
Filed/Deposited: 21 February, 2006	:	
Attorney Docket No. SONY-50S5114.01	:	

This is a decision on the petition filed on 3 August, 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.

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).

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the non-final Office action (copy enclosed) mailed on 15 January, 2010, with reply due absent extension of time on or before 15 April, 2010.

The application went abandoned by operation of law after midnight 15 April, 2010.

Although Petitioner references a 29 July, 2010, Notice of Abandonment, it does not appear that the Office mailed the Notice of Abandonment before a petition was filed.

On 3 August, 2010, Petitioner filed, *inter alia*, a one-and-one-half- (1½ -) page form petition pursuant to 37 C.F.R. §1.181, with almost no detail whatsoever and an general averment of non-receipt, with two pages of what Petitioner identifies as "our docket report," but otherwise wholly failed to comply with the requirements 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.)

***

On any renewed petition, Petitioner must:

- make the statements as required and expressly set forth in the guidance in the Commentary at MPEP §711.03(c)(I)—as highlighted above for Petitioner's reference; and

- supplement his documentary showing by presenting a copy of the due date calendar and a copy of the docket sheet or file jacket cover for the instant application.

Should Petitioner find it not possible to satisfy these requirements, Petitioner may alternatively chose to present a petition pursuant to 37 C.F.R. §1.137(b) with fee, reply (a copy of the 3 December, 2008, Notice of Allowance/Allowability is enclosed for Petitioner's ease of reference), 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).

---

[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).

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. 11/358,824

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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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.
11/358,824	02/21/2006	Thomas P. Dawson	SONY-50S5114.01	7288

45589 7590 01/15/2010
SONY C/O MURABITO, HAO & BARNES LLP
TWO NORTH MARKET STREET
THIRD FLOOR
SAN JOSE, CA 95113

EXAMINER
PATEL, PREMAL R

ART UNIT	PAPER NUMBER
2629	

MAIL DATE	DELIVERY MODE
01/15/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	11/358,824	DAWSON ET AL.
	Examiner	Art Unit
	PREMAL PATEL	2629

-- 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 *14 December 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) *26-30,33-41,44-51 and 54-56* 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) *26-30,33-41,44-51 and 54-56* 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

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on **December 14, 2009** has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> 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.

3. Claim 37-41 and 44-46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 37 recites the limitation "**said motion detection**" in line 4. There is insufficient antecedent basis for this limitation in the claim. For the purpose of examination examiner is treating as "said motion detector".

5. Claim 47 recites the limitation "**said motion detection**" in line 5. There is insufficient antecedent basis for this limitation in the claim. For the purpose of examination examiner is treating as "said motion detector".

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. **Claims 26-28, 30, 33-39, 41, 44-49, 51 and 54-56** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hashimoto et al. (5,554,980) in view of Kim et al. (2004/0054512).

Regarding **claim 26**, Hashimoto teaches a method for controlling a display device (21; **Fig 4**) comprising: displaying a cursor (108; **Fig 4**) upon said display device at a first cursor position (**Fig 4**); detecting a change in orientation (**Column 3, lines 31-34**) of a housing of a controller (1; **Fig 4**), wherein said change in orientation comprises movement of said housing from a first orientation to a second orientation (**Column 3, lines 31-44**), and wherein said detecting further comprises detecting said change in orientation using a motion detector (2,3; **Fig 1**) ; generating a signal (**Column 3, lines 8-11**) from said controller in response to said detecting of said change in orientation, wherein said controller comprises said motion detector; processing said signal to determine a second cursor position; and displaying said cursor at said second position (**Column 3, lines 20-30; Column 15, lines 45-50**) (**Note:** The cited reference clearly teaches changing the orientation of the controller which indicates it moves from a first orientation to a second orientation. Further it teaches moving a cursor based on the

change in orientation, which clearly indicates the cursor is moved from a first cursor position to a second cursor position).

Hashimoto fails to teach wherein said movement comprises motion in three dimensions; as claimed.

Kim teaches a method of generating motion data wherein movement comprises motion in three dimensions (x, y, and z; **para [0015]; Fig 1; Fig 2; Claim 5**).

It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the method of Hashimoto with the motion detection as taught by Kim, because this would reduce the time required to calculate the data and associated cost, thereby making generation of motion data easier (Kim: **para [0008], para [0009]**).

Regarding **claim 37 and 47**, Hashimoto teaches a controller (or a device) (1; **Fig 4**) for a display device (21; **Fig 4**) comprising: a housing (**Fig 1; Fig 2**); a motion detector (2,3; **Fig 1**) disposed within said housing and operable to detect a changes in orientation of said housing (**Column 3, lines 7-11; Column 14, lines 5-10**); a processor (125; **Fig 1**) disposed within said housing and operable to generate a signal in response to said change in orientation (**Column 3, lines 8-11; Column 15, lines 38-44**); and a communication device (12; **Fig 1**) disposed within said housing and operable to transmit said signal to said display device (**Column 14, lines 30-33**)for changing an image displayed thereon (**Column 15, lines 45-57**).

Hashimoto fails to teach wherein said motion detector is operable to detect motion in three dimensions; as claimed.

Kim teaches a device for generating motion data wherein motion detector (20, Fig 1; Fig 2) is operable to detect motion in three dimensions (x, y, and z; **para [0012]; para [0015]; para [0036]; Claim 5**).

It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the device of Hashimoto with the motion sensor as taught by Kim, because this would reduce the time required to calculate the data and associated cost, thereby making generation of motion data easier (Kim: **para [0008], para [0009]**).

Regarding **claims 27, 38 and 48**, Hashimoto further teaches the method, wherein said change in orientation constitutes substantially angular motion (**Fig 1; Column 14, lines 5-14**).

Regarding **claim 30, 41 and 51**, Hashimoto further teaches, the method wherein said change in orientation is selected from a group consisting of a change in roll (movement in forward and backward direction; **Column 15, lines 25-35**), a change in pitch (movement in horizontal direction; **Column 4, lines 15-16**) and a change in yaw (movement in vertical direction; **Column 4, lines 15-16**).

Regarding **claim 30, 41 and 51**, Kim also teaches, the method wherein said change in orientation is selected from a group consisting of a change in roll (x; **para [0015]; Claim 5**), a change in pitch (y; **para [0015]; Claim 5**) and a change in yaw (z; **para [0015]; Claim 5**).

Regarding **claim 33**, Hashimoto further teaches, the method, wherein said processing is executed after said signal is generated from said controller (**Column 3, lines 1-25**).

Regarding **claim 35**, Hashimoto further teaches, the method, wherein said processing is executed within said controller and results in the generation of a processed signal, and wherein said displaying said cursor at said second cursor position is responsive to said processed signal (**Column 14, 31-60; column 15, lines 38-50**).

Regarding **claim 34, 36, 44 and 54**, Hashimoto further teaches, the method further comprising transmitting said signal from said controller over a wireless connection (**Column 14, lines 30-35**).

Regarding **claims 45 and 55**, Hashimoto further teaches the controller, wherein said image comprises a cursor (108; **Fig 4**) displayed in a first cursor position (**Fig 4**) on said display device (**Fig 4**), wherein said changing said image comprises displaying said cursor in a second cursor position on said display device (**Column 14, 31-60; column 15, lines 38-50**). (**Note:** The cited reference clearly teaches changing the orientation of the controller which indicates it moves from a first orientation to a second orientation.

Further it teaches moving a cursor based on the change in orientation, which clearly indicates the cursor is moved from a first cursor position to a second cursor position).

Regarding **claims 46 and 56**, Hashimoto further teaches the controller, wherein said processor is further operable to: a) determine said first cursor position; and b) determiner said second cursor position in response to said changes in orientation (**Column 15, lines 1-18, lines 38-50**).

Regarding **claims 28, 39 and 49**, Hashimoto further teaches the method, wherein said motion detector comprises one of more accelerometers (19, 19a; **Column 8, lines 37-52; Fig 62, Fig 63; Column 33, lines 2-15**).

8. **Claims 29, 40 and 50** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hashimoto et al. (5,554,980) in view of Kim et al. (2004/0054512) as applied to claims 27, 38 and 48 above, and further in view of Paull et al. (5,945,981).

Regarding **claims 29, 40 and 50**, Hashimoto and Kim teaches the method device for controlling a display as explained above for claims 27, 38 and 48 respectively.

Hashitmoto and Kim fail to teach the motion detector comprising at least one tilt sensor; as claimed.

Paull teaches a wireless input device for use with a computer wherein pen (**130, Fig 2**) comprises a least one tilt sensor (**column 6, lines 33-35**).

It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the device of Hashimoto and Kim with the teaching of Paull because this will enhance the functionality of the controller for controlling the objects on the display.

Response to Arguments

9. Applicant's arguments filed December 14, 2009 have been fully considered but they are not persuasive. Argument on page 8-11 regarding "detecting motion in three dimensions" is not persuasive because this claim limitation was not presented in claims as submitted earlier.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. **Verplaetse et al. (2002/0167699); Begin (2002/0022924); Saleh et al. (6,992,585) and Donskoy et al. (7,073,384)**.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PREMAL PATEL whose telephone number is (571)270-5892. The examiner can normally be reached on Monday to Friday, 6:30 to 4:00, with every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amare Mengistu can be reached on (571)272-7674. 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.

/P. P./
Examiner, Art Unit 2629

/Amare Mengistu/
Supervisory Patent Examiner, Art Unit 2629/Amare Mengistu/
Supervisory Patent Examiner, Art Unit 2629

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JAN 03 2011

OFFICE OF PETITIONS

In re Application of	:	
Dawson, et al.	:	
Application No. 11/358,824	:	DECISION
Filed/Deposited: 21 February, 2006	:	
Attorney Docket No. SONY-50S5114.01	:	

This is a decision on the petition filed on 8 October, 2010, considered as a petition under 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

> **NOTE:** For the second time Petitioner submitted a petition apparently without consulting, reviewing and following the guidance expressly set forth in the Commentary at MPEP §711.03(c)(I). Petitioner is cautioned that continued failure to satisfy the express requirements as therein set forth may be considered as *indicia* of a delay that is other than unintentional.

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.

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Application No. 11/358,824

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).

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the non-final Office action (copy enclosed) mailed on 15 January, 2010, with reply due absent extension of time on or before 15 April, 2010.

The application went abandoned by operation of law after midnight 15 April, 2010.

Although Petitioner referenced a 29 July, 2010, Notice of Abandonment, it does not appear that the Office mailed the Notice of Abandonment before a petition was filed.

On 3 August, 2010, Petitioner filed, *inter alia*, a one-and-one-half- (1½ -) page form petition pursuant to 37 C.F.R. §1.181, with almost no detail whatsoever and an general averment of non-receipt, with two pages of what Petitioner identifies as "our docket report," but otherwise wholly failed to comply with the requirements 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 27 September, 2010.

On 8 October, 2010, Petitioner re-advanced (with a one-and-three-quarter- (1¾ -) page form petition pursuant to 37 C.F.R. §1.181, again with almost no detail whatsoever and an general averment of non-receipt, with two pages of what Petitioner identifies as "our docket report," but otherwise Petitioner wholly failed to comply with the requirements 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).

Again, 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**:

- make the statements as required and expressly set forth in the guidance in the Commentary at MPEP §711.03(c)(I)—as highlighted above for Petitioner's reference; and

- supplement his documentary showing by presenting a copy of the due date calendar and a copy of the docket sheet or file jacket cover for the instant application.

---

[1] *See*: MPEP §711.03(c) (I)(A).

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Should Petitioner find it not possible to satisfy these requirements, Petitioner may alternatively chose to present a petition pursuant to 37 C.F.R. §1.137(b) with fee, reply (a copy of the 3 December, 2008, Notice of Allowance/Allowability is enclosed for Petitioner's ease of reference), 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).

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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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OFFICE OF PETITIONS

In re Application of	:	
Dawson, et al.	:	
Application No. 11/358,824	:	DECISION
Filed/Deposited: 21 February, 2006	:	
Attorney Docket No. SONY-50S5114.01	:	

This is a decision on the petition filed on 2 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.

NOTE:

Petitioner has provided what is averred to be a copy of the docket sheet in this matter, but not the due date calendar for Petitioner's office (for the due date of the reply) as required by the guidance in the Commentary at MPEP §711.03(c)(I). The guidance requires that:

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 and establish that the docketing system is sufficiently reliable;
- the application record that includes (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's statement 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, which will include:

—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—e.g., 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; and

—thus, Petitioner must supply a copy of the docket sheet or file jacket cover and a copy of the due date calendar for Petitioner's office for the due date of the reply.[1]

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).

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the non-final Office action (copy enclosed) mailed on 15 January, 2010, with reply due absent extension of time on or before 15 April, 2010.

The application went abandoned by operation of law after midnight 15 April, 2010.

[1] *See*: MPEP §711.03(c) (I)(A).

Although Petitioner referenced a 29 July, 2010, Notice of Abandonment, it does not appear that the Office mailed the Notice of Abandonment before a petition was filed.

On 3 August, 2010, Petitioner filed, *inter alia*, a one-and-one-half- (1½ -) page form petition pursuant to 37 C.F.R. §1.181, with almost no detail whatsoever and an general averment of non-receipt, with two pages of what Petitioner identifies as "our docket report," but otherwise wholly failed to comply with the requirements 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 27 September, 2010.

(The Office mailed the Notice of Abandonment on 14 October, 2010.)

On 8 October, 2010, Petitioner re-advanced (with a one-and-three-quarter- (1¾ -) page form petition pursuant to 37 C.F.R. §1.181, again with almost no detail whatsoever and an general averment of non-receipt, with two pages of what Petitioner identifies as "our docket report," but Petitioner failed to comply with the requirements 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 3 January, 2011.

On 2 March, 2011, Petitioner re-advanced (with a two- (2-) page form petition pursuant to 37 C.F.R. §1.181. Petitioner provided a copy of what he avers to be the docket sheet, but no due date calendar for his Office. If Petitioner's office not have a due date calendar for replies to Office actions, Petitioner must provide such documentation that functions in its stead and briefly detail how that documentation so functions.

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.[2] (Emphasis supplied.)

***

On any renewed petition, Petitioner **must**:

- make the statements as required and expressly set forth in the guidance in the Commentary at MPEP §711.03(c)(I)—as highlighted above for Petitioner's reference; and

- supplement his documentary showing by presenting a copy of the due date calendar and a copy of the docket sheet or file jacket cover for the instant application.

Should Petitioner find it not possible to satisfy these requirements, Petitioner may alternatively chose to present a petition pursuant to 37 C.F.R. §1.137(b) with fee, reply (a copy of the 3 December, 2008, Notice of Allowance/Allowability is enclosed for Petitioner's ease of reference), 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

---

[2] *See*: MPEP §711.03(c) (I)(A).

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)

---

[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).

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[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
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Alexandria, VA 22313-1450
www.uspto.gov

SONY C/O MURABITO,
HAO & BARNES LLP
TWO NORTH MARKET STREET
THIRD FLOOR
SAN JOSE CA 95113

MAILED
MAY 09 2011
OFFICE OF PETITIONS

In re Application of	:	
Dawson, et al.	:	
Application No. 11/358,824	:	DECISION
Filed/Deposited: 21 February, 2006	:	
Attorney Docket No. SONY-50S5114.01	:	

This is a decision on the petition filed on 6 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.

The petition pursuant to 37 C.F.R. §1.181 is **GRANTED**.

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 pursuant to 37 C.F.R. §1.181.

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the non-final Office action (copy enclosed) mailed on 15 January, 2010, with reply due absent extension of time on or before 15 April, 2010.

The application went abandoned by operation of law after midnight 15 April, 2010.

Although Petitioner referenced a 29 July, 2010, Notice of Abandonment, it does not appear that the Office mailed the Notice of Abandonment before a petition was filed.

On 3 August, 2010, Petitioner filed, *inter alia*, a one-and-one-half- (1½ -) page form petition pursuant to 37 C.F.R. §1.181, with almost no detail whatsoever and an general averment of non-receipt, with two pages of what Petitioner identifies as "our docket report," but otherwise wholly failed to comply with the requirements 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 27 September, 2010.

On 8 October, 2010, Petitioner re-advanced (with a one-and-three-quarter- (1¾ -) page form petition pursuant to 37 C.F.R. §1.181, again with almost no detail whatsoever and an general averment of non-receipt, with two pages of what Petitioner identifies as "our docket report," but Petitioner failed to comply with the requirements 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 Office mailed the Notice of Abandonment on 14 October, 2010.

The 8 October, 2010, petition was dismissed on 3 January, 2011.

On 2 March, 2011, Petitioner re-advanced the petition pursuant to 37 C.F.R. §1.181. When the petitions/submissions of 3 August, 2010, and 8 October, 2010, and 2 March, 2011, are considered *in globo*, Petitioner provided copies of what are averred to be the docket sheet and due date calendar for his Office, and Petitioner has made the statements of non-receipt at the correspondence address of record, of search and non-discovery, as to the nature of the docketing system and its sufficient reliability, and it appears that Petitioner has so sought to comply with 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.[1] (Emphasis supplied.)

***

Out of an abundance of caution, Petitioners always are reminded that the filing of a petition pursuant to 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 pursuant to 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]

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).

---

[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).

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 to have made the showing required.

CONCLUSION

Accordingly, The petition pursuant to 37 C.F.R. §1.181 is **granted** and the 14 October, 2010, Notice of Abandonment hereby is **vacated**.

The instant application is released to the Technology Center/AU 2629 for further processing in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the instant decision to ensure that the revival has been acknowledged by the TC/AU in response to this decision. It is noted that all inquiries with regard to that change in status need be directed to the TC/AU where that change of status must be effected—that does not occur in the Office of Petitions.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[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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DIW Aug-11

STEPHEN GEORGE MICAN
1808 SOUTH ASHLAND AVENUE #8973
CHICAGO IL 60508

MAILED
AUG 09 2011
OFFICE OF PETITIONS

In re Application of	:	
Josef Maier	:	
Application Number: 11/358,870	:	DECISION ON PETITION
Filing Date: 02/20/2006	:	
Attorney Docket Number: PA-035.05921-US	:	

This is a decision on the petition under 37 CFR 1.137(b), filed on June 14, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on February 19, 2010, for failure to timely file a proper reply to the final Office action mailed on November 18, 2009, 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. On December 31, 2009, an amendment after final rejection was filed. On January 20, 2010, an Advisory Action Before the Filing of an Appeal Brief was mailed, stating that the reply filed on December 31, 2009 failed to place the application in condition for allowance. A Notice of Abandonment was mailed on June 29, 2011.

Receipt of the Request for Continued Examination and submission under 37 CFR 1.114 filed on June 14, 2011, is acknowledged.

The address in the petition is different than the correspondence address. A courtesy copy of this decision is being mailed to the address in the petition. All future correspondence, however, will be mailed solely to the address of record. A change of correspondence address should be filed if the correspondence address needs to be updated.

The application is referred to Technology Center 2836 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

Cc:

STEPHEN G. MICAN
1608 S. ASHLAND AV #8973
CHICAGO IL 60608

UNITED STATES PATENT AND TRADEMARK OFFICE

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Novak, Druce & Quigg LLP
300 New Jersey Ave, NW
Fifth Floor
WASHINGTON DC 20001

MAILED
MAY 17 2011
OFFICE OF PETITIONS

In re Application of	:	
Robert Russell GALLUCCI et al.	:	
Application No. 11/358,871	:	ON PETITION
Filed: February 21, 2006	:	
Attorney Docket No. US 192052-1	:	

This is a decision on the petition under 37 CFR 1.137(b), filed April 19, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed November 16, 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 above-identified application became abandoned on February 17, 2010.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment, a Request for Continued Examination, and the $810 filing fee; (2) the petition fee of $1620; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final Office Action of November 16, 2009 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to David A. Bucci at (571) 272-7099.

The application file is being referred to Technology Center AU 1763 for appropriate action on the concurrently filed Request for Continued Examination and amendment.

David A. Bucci
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 1/03/2010

TO SPE OF : ART UNIT 2831

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/358,981 Patent No. 7,446,998

CofC mailroom date 1/10/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Ernest C. White, LIE

Certificates of Correction Branch

703-756-1814

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

XApproved	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: _____

_____

_____

_____

_____ **SPE** _____ **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

FISH & RICHARDSON P.C.
PO BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 7,820,677	: DECISION ON APPLICATION FOR
Issued: October 26, 2010	: PATENT TERM ADJUSTMENT
Application No. 11/359,152	:
Filed: February 22, 2006	:
Dkt. No.: 13425-116002	:

This is a decision on the petition filed December 27, 2010 requesting that the patent term adjustment be increased from 517 days to 684 days.

The request for reconsideration of the patent term adjustment indicated on the above-identified patent is **DISMISSED**.

The above-identified application issued as U.S. Pat. No. 7,820,677 on October 26, 2010. The patent issued with a patent term adjustment of 517 days. The instant application for patent term adjustment was timely filed December 27, 2010. Patentees assert entitlement to an adjustment of 956 days pursuant to 37 CFR 1.703 (391 days under 37 CFR 1.703(a) + 611 days under 37 CFR 1.703(b) – 46 overlapping days) and an applicant delay of 272 days.

Patentees' calculation does not appear to reflect that the period of adjustment pursuant to 37 CFR 1.703(b) shall not include any time consumed by review by the Board of Patent Appeals. Accordingly, the period of adjustment of 611 days pursuant to 37 CFR 1.703(b) cannot include the period of 168 days from December 29, 2009, the date that the Notice of Appeal was filed, to June 14, 2010, the date that the Notice of Allowance was mailed. See, 37 CFR 1.703(b)(4).

In view thereof, no adjustment to the patent term will be made.

Receipt is hereby acknowledged of the required $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) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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SEP 22 2011
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FISH & RICHARDSON P.C. (TC)
PO BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 7,820,677 :
Issued: October 26, 2010 : DECISION ON PATENT TERM
Application No. 11/359,152 :
Filed: February 22, 2006 :
Atty. Dkt. No.: 13425-116002 :

This is a decision on the request for reconsideration of decision mailed March 1, 2011 with respect to the application for patent term adjustment under 37 CFR 1.704(d) filed December 27, 2010. This request, filed May 2, 2011, is deemed timely filed within the meaning of 37 CFR 1.181(f).

RELEVANT BACKGROUND

Patentees request that a decision on this request for reconsideration of patent term adjustment be deferred or delayed until after a final decision has been rendered in Japan Tobacco, Inc. v. Kappos, No. 1:10-cv-01023 (D.D.C. filed Jun. 17, 2010). The request is hereby DENIED. This decision is a final agency action within the meaning of 5 USC §704 for purposes of seeking judicial review. See MPEP 1002.02.

The above-identified application matured into U.S. Patent No. 7,820,677 on October 26, 2010 with a revised patent term adjustment of 517 days. On March 1, 2011, a decision on patentees' application for patent term adjustment under 37 CFR 1.705(d), filed December 27, 2010, was mailed. The decision under 37 CFR 1.705(d) mailed March 1, 2011 dismissed patentees' request for increase in patent term adjustment from 517 days to 684 days.

Patentees herein request that the patent term adjustment for the above-identified patent be increased from 517 days to 684 days (391 days pursuant to 37 CFR 1.703(a) plus 611 days pursuant to 37 CFR 1.703(b) less 46 overlapping days less 272 of applicant delay pursuant to 37 CFR 1.704(b)).

Patentees maintain that the Office incorrectly calculated Office delay pursuant to 37 CFR 1.702(b). Patentees contend that the Office erred in subtracting from the "B delay" a period of time that was not "encompassed by actual appellate review." Specifically, patentees argue that subsequent to the filing of the Notice of Appeal December 29, 2009, but prior to jurisdiction of the case passing to the Board of Patent Appeals and Interferences, the examiner withdrew the finality of the final rejection mailed June 29, 2009 and mailed a Notice of Allowance on June 14,

2010. Thus, patentees argue that no time was consumed by review by the Board of Patent Appeals and Interferences or a Federal court within the meaning of 37 CFR 1.702(b)(4) during the 168 day period from December 29, 2009 (the filing date of the Notice of Appeal) until June 14, 2010 (the mail date of the Notice of Allowance). As such, patentees maintain that the "B delay" should be increased 444 days to 611 days. Thus, patentees conclude that the correct patent term adjustment is thus 684 days (the sum of 391 days of "A delay" and 611 days of "B delay" minus 46 overlapping days minus 272 days of "applicant delay").

RELEVANT STATUTES

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.

DECISION

Patentees do not dispute that time consumed by appeal under 37 CFR 41.31 is properly excluded the B delay and that the calculation of the excluded period begins on the date of filing of the Notice of Appeal. Instead, patentees argue that in the case at issue, no appellate review took place between the date of filing of the Notice of Appeal to the date of mailing of a Notice of Allowance.

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).

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 appeal to the Board of Patent Appeals and Interferences under 35 U.S.C. 134. So, with respect to calculating the "B delay" where applicant has filed a Notice of Appeal, 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 Notice of Appeal is filed 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.

Thus, counting the period of time excluded from the "B delay" for the filing of a Notice of Appeal, from the date on which the Notice of Appeal is filed to 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 is proper. In this instance, the period consumed by appellate review is 168 days, beginning on December 29, 2009, the date of filing of the notice of appeal, and ending on June 14, 2010, the subsequent date of the mailing of a notice of allowance. Thus, the instant patent is entitled to an overall B delay is 444 (612 – 168) days.

CONCLUSION

For the above-stated reasons, a review of the petition and file wrapper of the above-identified patent reveals that the above-identified patent is not entitled to a patent term extension or adjustment of 684 days. Therefore, the petition to change the patent term adjustment indicated on the above-identified patent to 684 days is **DENIED**.

This decision may be viewed as final agency action. See, MPEP 1002.02(b).

Telephone inquiries specific to this matter should be directed to Attorney Advisor Alesia M. Brown at (571) 272-3205.

Anthony Knight
Director
Office of Petitions

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United States Patent and Trademark Office
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FISH & RICHARDSON P.C.
PO BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 7,820,677 : DECISION ON PETITION
Issued: October 26, 2010 :
Application No. 11/359,152 :
Filed: February 22, 2006 :
Dkt. No.: 13425-116002 :

This is a decision on the petition filed on November 22, 2011, under 37 CFR 1.181(a)(3) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by six hundred and eighty-four (684) days which is being treated as a request for reconsideration of that decision.

The instant petition is **DISMISSED**.

The above-identified application issued as U.S. Pat. No. 7,820,677 on October 26, 2010. The patent issued with a patent term adjustment of 517 days. On March 1, 2011, a decision on patentees' application for patent term adjustment under 37 CFR 1.705(d), filed December 27, 2010, was mailed. On May 2, 2011, patentees requested that the patent term adjustment be increased from 517 days to 684 days, or, alternatively, that a decision with respect to the patent term adjustment be deferred or held in abeyance until after a decision has been rendered in Japan Tobacco, Inc. v. Kappos, 1:10-cv-01023 (D.D.C. 2010). The petition filed May 2, 2011 was deemed timely filed within the meaning of 37 CFR 1.181(f). A final agency decision denying the requested relief was mailed on September 22, 2011. The decision mailed September 22, 2011 was a final agency action within the meaning of 5 USC §704 for purposes of seeking judicial review. See, MPEP 1002.02.

Petitioners herein again request that the patent term adjustment for the above-identified patent be increased from 517 days to 684 days or, alternatively, that a decision in this regard be deferred or delayed until after a final decision has been rendered in Japan Tobacco, Inc. v. Kappos. Supra.

Patentee's dispute the period of time excluded from B delay for appellate review. Patentee's argument has been considered, but not found persuasive. The period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See, 35 U.S.C. 154(b)(1)(B)(ii). An appeal to the Board of Patent Appeals and Interferences commences with the filing of a notice of appeal. See, 35 U.S.C. 134(a). Generally, an appeal to the Board of

Patent Appeals and Interferences ends with either 1) a Board decision, 2) the examiner reopening prosecution and issuing another Office action, or 3) the applicant filing a request to withdraw the appeal and reopen prosecution (e.g. the filing of a request for continued examination). In this instance the period consumed by appellate review is one hundred and sixty-eight (168) days, beginning on December 29, 2009, the date of filing of the notice of appeal and ending on June 14, 2010, the subsequent date of the mailing of a notice of allowance. Thus, B delay is 444 (612 – 168) 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*, 76 FR 81432 (December 28, 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 Attorney Advisor Alesia M. Brown at (571) 272-3205.

Anthony Knight
Director
Office of Petitions

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Leason Ellis LLP
One Barker Avenue
Fifth Floor
White Plains NY 10601-1526

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FEB 07 2012
OFFICE OF PETITIONS

In re Application of:
ELLIS, et al.
Application No.: 11/359,156
Filing Date: February 22, 2006
Attorney Docket No.: 0059/0450-US1

DECISION ON PETITION
TO MAKE SPECIAL UNDER
37 CFR 1.102(c)(1)

This is a decision on the petition to make special under 37 CFR 1.102(c)(1), filed February 2, 2012, to make the above-identified application special based on applicant's age as set forth in M.P.E.P. § 708.02, Section IV.

The petition is **GRANTED**.

A grantable petition to make an application special under 37 CFR 1.102(c)(1) and MPEP § 708.02, Section IV: Applicant's Age must be accompanied by evidence showing that at least one of the applicants is 65 years of age, or more, such as a birth certificate or a statement by applicant. Applicant may also submit 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

The instant petition includes a statement from a registered practitioner certifying that he is in possession of evidence that the applicant, Edward J. Ellis, is 65 years of age or older as required under MPEP § 708.02. Accordingly, the above-identified application has been accorded "special" status.

Telephone inquiries concerning this decision should be directed to Brian W. Brown at (571) 272-5338.

All other inquiries concerning either the examination or status of the application should be directed to the Technology Center.

Brian W. Brown
Petitions Examiner
Office of Petitions

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ALEXANDRIA, VA 22313-1450
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Paper No.

FULBRIGHT & JAWORSKI L.L.P.
600 CONGRESS AVE.
SUITE 2400
AUSTIN TX 78701

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SEP 14 2010

OFFICE OF PETITIONS

In re Patent No. 7,626,005	: DECISION ON REQUEST
Auclair et al.	: FOR
Issue Date: December 1, 2009	: RECONSIDERATION OF
Application No. 11/359,274	: PATENT TERM ADJUSTMENT
Filed: February 21, 2006	: and
Atty Docket No. BRKP:014US/	: NOTICE OF INTENT TO ISSUE
10602511	: 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 three hundred eighty-three (383) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by three hundred eighty-three (383) days is **GRANTED.**

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **three hundred eighty-three** (383) 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 : 7,626,005 B2

DATED : **December 1, 2009** **DRAFT**

INVENTOR(S) : Auclair 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 119 days

Delete the phrase "by 119 days" and insert – by 383 days--

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OCT 13 2010

OFFICE OF PETITIONS

LATHROP & GAGE LLP
4845 PEARL EAST CIRCLE
SUITE 201
BOULDER CO 80301

In re Application of	:	
Chang-Soo Han et al.	:	
Application No. 11/359,349	:	DECISION ON PETITION
Filed: February 22, 2006	:	
Attorney Docket No. 446130	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 27, 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 Notice to File Missing Parts of Non-Provisional Application (Notice), mailed March 23, 2006. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on May 24, 2006. A Notice of Abandonment was mailed November 29, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an oath and declaration and a surcharge fee of $65 (2) the petition fee of $810, and (3) a proper statement of unintentional delay. Accordingly the oath and declaration fee are 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.

This application is being referred to the Office of Patent Application Processing for appropriate action in the normal course of business on the reply received August 27, 2010. Inquires regarding the status of the application should be directed to 571-272-4000.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Gerald M. Kraai
2345 Grand Boulevard, Suite 2400
Kansas City, MO 64108

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POST OFFICE BOX 1404
ALEXANDRIA VA 22313-1404

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AUG 06 2010

OFFICE OF PETITIONS

In re Application of	:	
Juntaro Azuchi	:	
Application No. 11/359,391	:	RESPONSE TO PETITION
Filed: February 23, 2006	:	
Attorney Docket No. 1011350-000368	:	

This is a response to the renewed petition under 37 CFR 1.59(b), filed July 16, 2010, to expunge information from the above identified application.

The petition is dismissed.

Petitioner requests that the Request for Continued Examination (RCE), filed March 17, 2009, be expunged from the above identified application. The petition submits that this information was unintentionally submitted in the above identified application.

37 CFR 1.59 states in part:

> (a)(1) Information in an application will not be expunged, except as provided in paragraph (b) of this section or § 41.7(a) of this title.
> (2) Information forming part of the original disclosure (i.e., written specification including the claims, drawings, and any preliminary amendment specifically incorporated into an executed oath or declaration under §§ 1.63 and 1.175) will not be expunged from the application file.
> (b) An applicant may request that the Office expunge information, other than what is excluded by paragraph (a)(2) of this section, by filing a petition under this paragraph. Any petition to expunge information from an application must include the fee set forth in § 1.17(g) and establish to the satisfaction of the Director that the expungement of the information is appropriate in which case a notice granting the petition for expungement will be provided. [emphasis added]

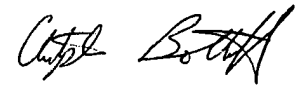
The standards for expunging information that is unintentionally submitted in an application, including the standards for establishing that the expungement of the information is appropriate, is discussed in MPEP section 724.05 II. This section states that a petition may be filed under 37 CFR 1.59(b), provided that:

(A) the Office can effect such return prior to the issuance of any patent on the application in issue;
(B) it is stated that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted;
(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;
(E) it is established to the satisfaction of the Director that the information to be returned is not material information under 37 CFR 1.56; and
(F) the petition fee as set forth in 37 CFR 1.17(g) is included.

Petitioner has not satisfied requirements B-D. In regard to item B, although the petition indicates that the information was unintentionally submitted and the RCE is not relevant to the present application, the record does not indicate that irreparable harm will be caused by the RCE's continued presence in the file regardless of its relevance. Petitioner should provide statements affirming items B-D in any renewed petition.

Also, item A above may not be possible upon a renewed petition since the issue fee has been paid in this application. Currently, this application is being processed for issuance and the filing of a petition does not stay issuance. See 37 CFR 1.181(f). In the event that petitioner desires to supply the missing items in a renewed petition, petitioner may wish to pursue deferral of the issuance under 37 CFR 1.314.

Telephone inquiries concerning this communication should be directed to the undersigned at (571) 272-6692.



Christopher Bottorff
Petitions Examiner
Office of Petitions

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MCGUIREWOODS, LLP
1750 TYSONS BLVD
SUITE 1800
MCLEAN VA 22102

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AUG 04 2010

OFFICE OF PETITIONS

In re Application of	:	
Guy Alan Buzzoni, et al.	:	
Application No. 11/359,438	:	DECISION GRANTING PETITION
Filed: February 23, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 2033440-5002US	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, August 2, 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 June 30, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to Technology Center AU February 23, 2006 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

Terri Johnson
Petitions Examiner
Office of Petitions

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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.*

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: R2180.0295	Patent Number: 7,668,336
Filing Date (or 371(b) or (f) Date): 02-23-2006	Issue Date: 02-23-2010
First Named Inventor: Masaki Ishii	
Title: EXTRACTING EMBEDDED INFORMATION FROM A DOCUMENT	

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-*WYETH* INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

**Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Signature	Date August 20, 2010
Name (Print/Typed) Thomas J. D'Amico	Registration Number 28,371

Note: *Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required in accordance with 37 CFR 1.33 and 11.18. Please see 37 CFR 1.4(d) for the form of the signature. If necessary, submit multiple forms for more than one signature, see below**.*

☑ *Total of 1 forms are submitted.

The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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DICKSTEIN SHAPIRO LLP
1825 EYE STREET NW
Washington, DC 20006-5403

Mail Date: 09/08/2010

Applicant	: Masaki Ishii	: DECISION ON REQUEST FOR
Patent Number	: 7668336	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/359,486	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 02/23/2006	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1037** 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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September 8, 2011

MARTIN D. MOYNIHAN d/b/a PRTSI, INC.
P.O. BOX 16446
ARLINGTON VA 22215

In re Application of	:	
Dror Harats et al.	:	**DECISION ON PETITION**
Application No. 11359513	:	
Filed: 02/23/2006	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. **31577**	:	***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 21, 2007.

The petition is **GRANTED**.

A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

1. The fee set forth under 37 C.F.R. 1.17(h),
2. Three (3) sets of the color drawings in question, or (1) set if filed via EFS, and
3. The specification contains appropriate language referring to the color drawings as the first paragraph in that portion of the specification relating to the brief description of the drawings.

The petition was accompanied by all of the required fees and drawings. The specification contains the appropriate language. Therefore, the petition is GRANTED.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

/Laura Feldman/
Quality Control Specialist
Office of Data Management
Publications Branch

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THE BILICKI LAW FIRM, PC
1285 NORTH MAIN STREET
JAMESTOWN, NY 14701

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AUG 1 2 2010

OFFICE OF PETITIONS

In re Application of
Alessandro De Matteis, et al.
Application No. 11/359,549
Filed: February 21, 2006
Attorney Docket No.: 088.022402

ON PETITION

This is a decision on the petition, filed December 17, 2009, requesting withdrawal of the holding of abandonment in the above-identified application under 37 CFR 1.181.

The petition is **GRANTED**.

The application was held abandoned for a failure to timely pay the issue fee on or before November 9, 2009, as required by the Notice of Allowance and Fee(s) Due, mailed August 7, 2009. A Notice of Abandonment was mailed on November 23, 2009. In response, on December 17, 2009, the present petition was filed wherein petitioner asserts that a reply was timely filed. To support this assertion, petitioner submitted a copy of a return postcard which acknowledges receipt by the U.S. Patent and Trademark Office (USPTO) on November 9, 2009 of: Fee Transmittals (3); Express Mailing Certificate (1); PC (1).

A review of the record confirms receipt of the issue fee transmittal using a Certificate of Mailing or Transmission dated November 9, 2009, as it is present in the application file. Accordingly, the holding of abandonment for failure to timely pay the issue fee is withdrawn and the application is restored to pending status.

The Notice of Abandonment mailed November 23, 2009 is hereby vacated.

The application is being referred to the Office of Data Management to be processed into a patent.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing as a patent should be directed to (571) 272-4200.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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MACMILLAN, SOBANSKI & TODD, LLC
ONE MARITIME PLAZA - FIFTH FLOOR
720 WATER STREET
TOLEDO OH 43604

MAILED
JUN 13 2011
OFFICE OF PETITIONS

In re Application of	:	
Milot, Danny R.	:	
Application No. 11/359,685	:	ON PETITION
Filed: February 22, 2006	:	
Attorney Docket No. 1-26740	:	

This is a decision on the petition under 37 CFR 1.137(b), filed April 7, 2011, which will be treated as a petition to withdraw of the holding of abandonment in the above-identified application.

The petition to withdraw the holding of abandonment is **GRANTED.**

The above-identified application was held abandoned for failure to timely reply to the Notice of Allowance, mailed January 5, 2011, which set a statutory period for reply of three (3) months. A reply was due on or before April 5, 2011. A Notice of Abandonment was mailed on May 31, 2011.

With the instant petition, petitioner also submitted the Issue Fee Transmittal with payment of the issue and publication fees. The transmittal contained a Certificate of Mailing dated April 5, 2011. Under 37 CFR 1.8, a person may state on certain papers directed to the Office (some exceptions are stated in 37 CFR 1.8), the date on which the paper will be deposited in the United States Postal Service, transmitted by facsimile or transmitted via the USPTO electronic filing system (EFS-Web). If the date stated is within the period for reply, the reply in most instances will be considered to be timely. This is true even if the paper does not actually reach the Office until after the end of the period for reply.

In view of the above, the issue and publication fees were timely paid. The holding of abandonment is hereby withdrawn and the application restored to pending status. The petition to revive under 37 CFR 1.137(b) is hereby dismissed as moot.

A petition to withdraw the holding of abandonment under the provisions of 37 CFR 1.181 does not require a fee. The $1620.00 petition fee will be credited to petitioner's deposit account as authorized.

This matter is being referred to the Office of Data Management for processing into a patent.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3206.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

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AUG 05 2011
OFFICE OF PETITIONS

In re Patent No. 7,983,801	:	
Issued: July 19, 2011	:	
Application No. 11/359,685	:	ON PETITION
Filed: February 22, 2006	:	
Attorney Docket No. 1-26740	:	

CORRECTED DECISION

This is a decision on the petitions under 37 C.F.R. § 1.137(b), filed April 7, 2011 and July 12, 2011, to revive the above-identified application. The petition decision issued June 13, 2011is hereby vacated.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the Issue Fee Transmittal with payment of the issue and publication fees, (2) the petition fee of $1620.00, and (3) a proper statement of unintentional delay.

Since the Certificate of Mailing on the Issue Fee Transmittal was dated April 5, 2011, the reply was considered to be timely and the original petition was properly treated under 37 CFR 1.181. There was no mention in the original petition that the date was incorrect. However, as petitioner states in the July 12, 2011 Notification of Improper refund and Authorization for Payment of Petition Fee, "The Fee Transmittal Form was unintentionally not amended to reflect that the Petition was filed via EFS on April 7, 2011."

The $1620.00 petition fee will be recharged to petitioner's deposit account as authorized.

The instant application matured into Patent No. 7,983,801 on July 19, 2011.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3206.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 08/02/11

TO SPE OF : ART UNIT: 2614 Attn: MATAR AHMAD (SPE)

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/359719 Patent No.: 7970118

CofC mailroom date: 07/28/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Note: Please check Claims 11 & 21

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.
- ☐ **XX Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: Approved in Part. Correction to claim 21 is not approved because it refers to the wrong column and it is missing the exact text to be deleted.

/Ahmad Matar/ **2614**
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

Patent No. : 7970118 B2
Application No.: 11/359719
Inventor(s) : James E. O'DELL, III
Issued : 06/28/2011
Attorney Docket Number: 10761.1700

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) 1.323.

Approved in Part, correction to claim 21 is not approved because it refers to the wrong Column and it is missing the exact text to be deleted.

In view of the foregoing, your request, in this matter, is hereby denied.

A certificate of correction will be issued for the remaining errors noted on your request.

Tasneem Siddiqui
For Mary Diggs (Supervisor)
Decisions & Certificates of Correction Branch
(703) 756-1593 or (703) 756-1814
Date: 08/02/2011

Address: John Mulcahy
Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P.
901 New York Avenue, N.W.
Washington, D.C. 20001-4413

ts

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 09/07/11

TO SPE OF : ART UNIT: 2614 Attn: MATAR AHMAD (SPE)

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/359719 Patent No.: 7970118

CofC mailroom date: 09/01/11

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

Note: Please check Claim 21
Should the amended claim be amended again or not

Tasneem Siddiqui
Certificates of Correction Branch
703-756-1814 & 703-756-1593

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☐ **Approved (XX)** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: Approved

/Ahmad F. Matar/ 2614
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

BRUNDIDGE & STANGER, P.C.
2318 MILL ROAD, SUITE 1020
ALEXANDRIA VA 22314

MAILED
SEP 01 2011
OFFICE OF PETITIONS

In re Application of	:	
POWLETTE	:	
Application No. 11/359,720	:	DECISION ON PETITION
Filed: February 22, 2006	:	UNDER 37 CFR 1.313(c)
Attorney Docket No. 1654-3.747BS	:	

This is a decision on the petition under 37 CFR 1.313(c), filed September 1, 2011, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on August 25, 2011, cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Petitioner is encouraged to note 37 CFR 1.4(c) when submitted papers to the USPTO.

Telephone inquiries should be directed to the undersigned at (571) 272-3208.

This application is being referred to Technology Center AU 2174 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed amendment.

/Karen Creasy/
Karen Creasy
Petitions Examiner
Office of Petitions

---

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

LADAS & PARRY LLP
1040 Avenue of the Americas
NEW YORK NY 10018-3738

MAILED
MAY 13 2011
OFFICE OF PETITIONS

In re Application of:	:	
Samir Dhawan	:	
Pat. Num.: 7,539,548	:	
Issue Date: 05/26/2009	:	
Application No. 11/359,764	:	ON PETITION
Filing or 371(c) Date: 02/22/2006	:	
Atty. Docket No. U 016162-8	:	

This is a decision on the Petition for Duplicate Letters Patent, filed March 30, 2011. The petition is properly treated under 37 C.F.R. § 1.182.

The petition is **GRANTED**.

The Office of Data Management is directed to issue a duplicate Letters Patent.

Questions concerning this decision may be directed to the undersigned at 571-232-3232. Inquiries regarding the issuance of a duplicate Letters Patent may be directed to Ollie Person, in the Office of Data Management at (703) 756-1555.

A copy of this decision is being faxed to the Office of Data Management for issuance of a duplicate Letters Patent.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

CC: Ollie Person (FAX 571-270-9764)
Kimberly Terrell (FAX 571-270-9958)

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

TRASKBRITT, P.C./ ALLIANT TECH SYSTEMS
P.O. BOX 2550
SALT LAKE CITY UT 84110

MAILED
OCT 13 2011
OFFICE OF PETITIONS

In re Patent No. 7,882,888 :
Issued: February 8, 2011 :
Application No. 11/359,766 : ON PETITION
Filed: February 23, 2006 :
Attorney Docket Number: 2507-8693.1US :
(22257-US-01)

This is a decision on the petition filed September 21, 2011 under 37 CFR 3.81(b)[1] to correct the assignee data on the Issue Fee Transmittal.

The petition is **GRANTED**.

Although the name of the correct name of the assignee was not included on the Issue Fee Transmittal, PTOL-85B, petitioner states that the assignee is s are **Alliant Techsystems Inc., Minneapolis, MN (US)**.

In view thereof, and since Office assignment records reflect that**Alliant Techsystems Inc., Minneapolis, MN (US)** is the assignee of record, the request complies with the provisions of 37 CFR 3.81(b) and it is therefore appropriate for a certificate of correction to issue.

The petition fee in the amount of $130.00 and the fee for the certificate of correction in the amount of $100 have been charged to deposit account no. 20-1469.

Inquiries concerning this decision should be directed to the undersigned at (571) 272-3212. Any questions concerning the issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (703) 305-8309.

This file is being referred to the Certificates of Correction Branch for issuance of a certificate of correction.

/Patricia Faison-Ball/
Senior Petitions Attorney
Office of Petitions

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[1] *See* Official Gazette of June 22, 2004.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 12/21/11

TO SPE OF : ART UNIT 1765

SUBJECT : Request for Certificate of Correction for Appl. No.: 11359972 Patent No.: 7619047

CofC mailroom date: 12/12/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580
[redacted]

Note: **Should the changes to claim 21 be approved?**

Lamonte Newsome

Certificates of Correction Branch

571-272-3421

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

☒ **Approved** — **All** changes apply.

☐ **Approved in Part** — Specify below which changes **do not** apply.

☐ **Denied** — State the reasons for denial below.

Comments: Change to claim 21 is approved

[signature] 1765

SPE **Art Unit**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 12/21/11

TO SPE OF : ART UNIT 1765

SUBJECT : Request for Certificate of Correction for Appl. No.: 11359972 Patent No.: 7619047

CofC mailroom date: 12/12/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580
[redacted]

Note: **Should the changes to claim 21 be approved?**

Lamonte Newsome

Certificates of Correction Branch

571-272-3421

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

☒ **Approved** — **All** changes apply.

☐ **Approved in Part** — Specify below which changes **do not** apply.

☐ **Denied** — State the reasons for denial below.

Comments: change to claim 21 is approved.

1765

SPE **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

THE FARRELL LAW FIRM, P.C.
290 BROADHOLLOW ROAD
SUITE 210E
MELVILLE NY 11747

MAILED

JUL 14 2011

OFFICE OF PETITIONS

In re Application of	:	
Yuriy Chernov et al.	:	
Application No. 11/360,006	:	DECISION ON PETITION
Filed: February 22, 2006	:	
Attorney Docket No. **2058-4**	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 05, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Restriction Requirement, mailed November 24, 2008, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on December 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 election, (2) the petition fee of $810, and (3) an adequate statement of unintentional delay. Accordingly, the reply to the restriction requirement of November 24, 2008 is accepted as having been unintentionally delayed.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results

in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at (571) 272-2783.

This application is being referred to Technology Center AU 3754 for appropriate action on the concurrently filed amendment.

(for)

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

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C
ONE FINANCIAL CENTER
BOSTON, MA 02111

MAILED

NOV 23 2010

OFFICE OF PETITIONS

In re Application of Samy Abdou :
Application No. 11/360,038 :
Filing Date: February 21, 2006 :
Attorney Docket No. 37685-510001US :

On Application For
Patent Term Adjustment

This is in response to the "Application for Patent Term Adjustment Under 37 C.F.R. §1.705(B)" filed June 23, 2010. Applicant submits the correct patent term adjustment to be indicated on the patent is five hundred fifteen (515) days, not two hundred ninety-six (296) 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 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.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MAILED

AUG 03 2010

OFFICE OF PETITIONS

PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK NJ 08933-7003

In re Application of	:	
Jain, et al.	:	
Application No. 11/360,084	:	ON REQUEST FOR
Filed: February 23, 2006	:	RECONSIDERATION OF
Attorney Docket Number: PRD2435USNP	:	PATENT TERM ADJUSTMENT

This is a decision on the petition under 37 CFR 1.705(b), filed January 21, 2010. Applicants believe that they should be accorded an additional PTA of 325 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 **seven hundred seven (707) days** (707 days of PTO delay, reduced by 0 days of Applicant delay).

The $200.00 fee set forth in 37 CFR 1.18(e) has been charged to Deposit Account No. 10-0750, as authorized.

The application is being forwarded to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to Petitions Attorney Cliff Congo at (571) 272-3207.

Anthony Knight
Director
Office of Petitions

---

[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
www.uspto.gov

GLENN PATENT GROUP
3475 EDISON WAY, SUITE L
MENLO PARK CA 94025

MAILED
JUL 08 2011
OFFICE OF PETITIONS

In re Application:	:	
Kannan et al.	:	
Application No. 11/360,145	:	ON PETITION
Filed: February 22, 2006	:	
Attorney Docket No. 247C0002	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed June 3, 2011.

On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This 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

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

BRET W. SMITH
6625 3RD ST. S
P.O. BOX 23465
RICHFIELD MN 55423

MAILED
DEC 02 2011
OFFICE OF PETITIONS

In re Application of	:	
Bret William Smith	:	
Application No. 11/360,281	:	ON PETITION
Filed: February 24, 2006	:	
Attorney Docket No.	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 14, 2011, 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 continuing application under 37 CFR 1.53(b); (2) the petition fee of $930; and (3) a proper statement of unintentional delay.

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuing application No. 13/373,382.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (571) 272-3210.

Irvin Dingle
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MAILED

DEC 09 2011

OFFICE OF PETITIONS

King & Spalding
1185 Avenue of the Americas
New York Ny 10036-4003

In re Patent No. 7,592,325 Jimenz et al. Issue Date: September 22, 2009 Application No. 11/360,305 Filed: February 22, 2006 Attorney Docket No. 14262-105003 Title: Methods and Compositions for the Treatment of Eye Disorders with increased Intraocular Pressure	DECISION UPON REMAND AND RECONSIDERATION OF PATENT TERM ADJUSTMENT AND NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION

This is a decision following remand from the District Court for the District of Columbia regarding the patent term adjustment indicated on the above-identified patent. The Court remanded this matter to the U.S. Patent and Trademark Office for recalculation of the patent term adjustment in accordance with the decision in Wyeth & Elan Pharma Int'l Ltd. v. Kappos, 591 F.3d 1364 (Fed. Cir. 2010).

The patent term adjustment indicated on the above-identified patent has been recalculated as directed by the Court. The term of the above-identified patent is extended or adjusted by Two Hundred and Seventy-One (271) 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 and Seventy-One (271) 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
Adjusted PTA Calculation

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,592,325

DATED : **September 22, 2009** **DRAFT**

INVENTOR(S) : Jimenz 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 96 days

Delete the phrase "by 96 days" and insert – by 271 days--

PTA/PTE Information | Patent Term Adjustment | Patent Term Extension

Application Number*: 11360305 Search Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application: 11360305

Application Filing Date	02/22/2006	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent	09/22/2009	Non-Overlapping USPTO Delays:	212
A Delays	175	PTO Manual Adjustment	175
B Delays	37	Applicant Delay (APPL)	116
C Delays	0	Total PTA (days)	271

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
126	12/06/2011		P028	Adjustment of PTA Calculation by PTO	175		0
113	09/22/2009		PTAC	Patent Issue Date Used in PTA Calculation			0
113.5	09/02/2009	02/22/2009	PTA36M	PTA 36 Months	37		0
112	08/28/2009		TCPB	Printer Rush- No mailing			0
110	08/25/2009		EML_NTR	Email Notification			0
109	08/21/2009		EFDC	Export to Final Data Capture			0
105	08/21/2009		MN271	Mail Response to 312 Amendment (PTO-271)			0
107	08/20/2009		D1935	Dispatch to FDC			0
106	08/20/2009		EML_NTR	Email Notification			0
102	08/20/2009		MM327	Mail Miscellaneous Communication to Applicant			0
108	08/18/2009		FIDC	Finished Initial Data Capture			0
101	08/17/2009		M327	Miscellaneous Communication to Applicant - No Action Count			0
104	08/07/2009		N271	Response to Amendment under Rule 312			0
103	08/07/2009		A.NA	Amendment after Notice of Allowance (Rule 312)		15	105
100	08/07/2009		PUBTC	Pubs Case Remand to TC			0
99	08/07/2009		A.NA	Amendment after Notice of Allowance (Rule 312)			105
98	08/07/2009		DRWF	Workflow - Drawings Finished			102
97	08/07/2009		PILS	Application Is Considered Ready for Issue			0
95	08/07/2009		QURF	Workflow - Query Request - Finish			0
93	08/07/2009		TCPB	Printer Rush- No mailing			0
92	08/07/2009		EML_NTR	Email Notification			0
90	08/07/2009		MM327-D	Mail PUB other miscellaneous communication to applicant			0
96	08/06/2009		LET.	Miscellaneous Incoming Letter		1	102
94	08/06/2009		TCPB	Printer Rush- No mailing			0
89	08/05/2009		M327-D	PUB Other miscellaneous communication to applicant			0
88	07/28/2009		QURI	Workflow - Query Request - Begin			0
86	07/24/2009		QURI	Workflow - Query Request - Begin			0
91	07/22/2009		PUBTC	Pubs Case Remand to TC			0
87	07/21/2009		N084	Issue Fee Payment Verified			0
85	07/21/2009		IFEE	Issue Fee Payment Received			0
84	07/21/2009		CRFT	Sequence Forwarded to Pubs on Tape			0
82	07/09/2009		R1021	Receipt Into Pubs			0
81	07/01/2009		EIDC	Export to Initial Data Capture			0
76	06/30/2009		MN/=.	Mail Notice of Allowance			0
75	06/26/2009		IREV	Issue Revision Completed			0
74	06/26/2009		DVER	Document Verification			0
73	06/26/2009		N/=.	Notice of Allowance Data Verification Completed			0
72	06/24/2009		EX.A	Examiner's Amendment Communication			0
71	06/24/2009		CNTA	Allowability Notice			0
70	06/09/2009		IDSC	Information Disclosure Statement considered			0
69	06/09/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
65	05/14/2009		FWDX	Date Forwarded to Examiner			0
66	04/29/2009		IDSC	Information Disclosure Statement considered			0
64	04/29/2009		A...	Response after Non-Final Action			0
63	04/29/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
61	02/06/2009		PST_CRD	Mail Post Card			0
60	01/29/2009		EML_NTF	Email Notification			0
59	01/29/2009		MCTNF	Mail Non-Final Rejection			0
58	01/23/2009		CTNF	Non-Final Rejection			0
57	11/21/2008		IDSC	Information Disclosure Statement considered			0
56	11/21/2008		IDSC	Information Disclosure Statement considered			0
54	11/21/2008		RCAP	Reference capture on IDS			0
53	11/21/2008	11/14/2008	M844	Information Disclosure Statement (IDS) Filed		7	49
52	11/21/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
51	11/21/2008		WIDS	Information Disclosure Statement (IDS) Filed			0

50	11/19/2008		FWDX	Date Forwarded to Examiner			0
55	11/14/2008		AF/D	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received			0
49	11/14/2008	10/14/2008	A...	Response after Non-Final Action		31	44
48	11/14/2008		XT/G	Request for Extension of Time - Granted			0
47	09/25/2008		RQPR	Request for Foreign Priority (Priority Papers May Be Included)			0
46	07/14/2008		ELC_RVW	Electronic Review			0
45	07/14/2008		EML_NTF	Email Notification			0
44	07/14/2008	06/20/2008	MCTNF	Mail Non-Final Rejection	24		37
43	06/07/2008		CTNF	Non-Final Rejection			0
38	03/27/2008		FWDX	Date Forwarded to Examiner			0
37	02/20/2008	12/20/2007	ELC.	Response to Election / Restriction Filed		62	26
36	02/20/2008		XT/G	Request for Extension of Time - Granted			0
35	02/19/2008		EML_NTR	Email Notification			0
34	02/19/2008		PA..	Change in Power of Attorney (May Include Associate POA)			0
33	02/12/2008		C.AD	Correspondence Address Change			0
32	10/06/2007		ELC_RVW	Electronic Review			0
31	10/05/2007		EML_NTF	Email Notification			0
30	10/04/2007		MM327	Mail Miscellaneous Communication to Applicant			0
29	09/28/2007		M327	Miscellaneous Communication to Applicant - No Action Count			0
28	09/22/2007		ELC_RVW	Electronic Review			0
27	09/21/2007		EML_NTF	Email Notification			0
26	09/20/2007	04/22/2007	MCTRS	Mail Restriction Requirement	151		-1
25	09/14/2007		CTRS	Restriction/Election Requirement			0
24	11/13/2006		TSSCOMP	IFW TSS Processing by Tech Center Complete			0
21	11/13/2006		DOCK	Case Docketed to Examiner in GAU			0
20	07/11/2006		WROIPE	Application Return from OIPE			0
19	07/11/2006		COMP	Application Is Now Complete			0
18	07/11/2006		ROIPE	Application Return TO OIPE			0
17	07/11/2006		C.AD	Correspondence Address Change			0
16	07/11/2006		OIPE	Application Dispatched from OIPE			0
15	07/11/2006		COMP	Application Is Now Complete			0
10	06/29/2006		CRFE	CRF Is Good Technically / Entered into Database			0
39	06/27/2006		IDSC	Information Disclosure Statement considered			0
23.7	06/27/2006		M844	Information Disclosure Statement (IDS) Filed			0
23	06/27/2006		WIDS	Information Disclosure Statement (IDS) Filed			0
22	06/23/2006		A.PE	Preliminary Amendment			0
14	06/23/2006		ADDFLFEE	Additional Application Filing Fees			0
13	06/23/2006		SEQLIST	A set of symbols and procedures, provided to the PTO on a set of computer listings, that describe in			0
12	06/23/2006		OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic			0
11	06/23/2006		CORRDRW	Applicant has submitted new drawings to correct Corrected Papers problems			0
9	03/24/2006		INCD	Notice Mailed--Application Incomplete--Filing Date Assigned			0
4	03/13/2006		L194	Cleared by OIPE CSR			0
3	03/13/2006		CLSS	CASE CLASSIFIED BY OIPE			0
2	03/05/2006		SCAN	IFW Scan & PACR Auto Security Review			0
1	02/22/2006		IEXX	Initial Exam Team nn			0

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OFFICE OF PETITIONS

In re Application of	:	
John M. Alvarez	:	
Application No. 11/360360	:	
Filing or 371(c) Date: 02/23/2006	:	ON PETITION
Attorney Docket Number:	:	
3258-PAT	:	

This is a decision on the Petition Under 37 CFR 1.137(b), filed December 5, 2011, to revive the above-identified application.

The petition is granted.

The above-identified application became abandoned for failure to timely and properly reply to the non-final Office action, mailed April 1, 2009. The Office action set a three (3) month period for reply from the mail date of the Office action. Extensions of time were available under 37 CFR 1.136(a). No complete and proper reply having been received, the application became abandoned on July 2, 2009. A Notice of Abandonment was mailed November 12, 2009.

Applicant files the present petition and includes an Amendment in response to the Office action. The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an Amendment is filed with the present petition; (2) the petition fee; and (3) the required statement of unintentional delay. Accordingly, the reply is accepted as having been unintentionally delayed.

This application is being referred to Technology Center Art Unit 3643 for processing of the Amendment filed with the petition in due course.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

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MERCHANT & GOULD (MICROSOFT)
P.O. BOX 2903
MINNEAPOLIS MN 55402-0903

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OFFICE OF PETITIONS

In re Application of	:	
Anthony S. Williams, et al.	:	
Application No. 11/360,457	:	DECISION GRANTING PETITION
Filed: February 23, 2006	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No.	:	
14917.0258USU3/311586.01		

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, September 7, 2011 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on August 12, 2011 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to Technology Center AU 2197 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

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[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

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BINGHAM MCCUTCHEN LLP
2020 K Street, N.W.
Intellectual Property Department
WASHINGTON DC 20006

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APR 25 2011
OFFICE OF PETITIONS

In re Application of	:	
Jianmin Li, et al.	:	
Application No. 11/360,460	:	DECISION ON PETITION
Filed: February 23, 2006	:	
Attorney Docket No. 7062692001	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 21, 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, July 7, 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 8, 2010. The Notice of Abandonment was mailed January 19, 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 $1,620, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to Technology Center AU 3735 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