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SHAY GLENN LLP
2755 CAMPUS DRIVE
SUITE 210
SAN MATEO CA 94403

MAILED

APR 27 2011

OFFICE OF PETITIONS

In re Application of	:	
LIN et al.	:	
Application No. 11/729,118	:	DECISION ON PETITION
Filed: March 28, 2007	:	UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. 10220-705.201	:	

This is a decision on the petition under 37 CFR 1.78(a)(6), filed April 4, 2011, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional application set forth in the concurrently filed amendment.

The petition is **GRANTED.**

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

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

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

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

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

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

Any 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.

The application is being forwarded to Technology Center AU 3761 for consideration by the examiner of the claim under 35 U.S.C. §119(e) for the benefit of priority to the prior-filed provisional application.

Christopher Bottorff
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
11/729,118	03/28/2007	3761	824	10220-705.201	21	3

CONFIRMATION NO. 5612

CORRECTED FILING RECEIPT

66854
SHAY GLENN LLP
2755 CAMPUS DRIVE
SUITE 210
SAN MATEO, CA 94403

OC000000047396459

Date Mailed: 04/28/2011

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

Applicant(s)

Bryant Lin, Palo Alto, CA;
Paul Wang, Saratoga, CA;
Joseph A. Knight, Palm Harbor, FL;
Stewart McCallum, Villanova, PA;
Bertha Chen, Menlo Park, PA;
Tatum Tarin, Redwood, CA;

Power of Attorney: The patent practitioners associated with Customer Number 66854

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/786,279 03/28/2006
and claims benefit of 60/796,049 05/01/2006

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 04/16/2007

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/729,118**

Projected Publication Date: Not Applicable

Non-Publication Request: No

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

Title

Devices and related methods for treating incontinence

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).

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

MAILED
JAN 25 2011
OFFICE OF PETITIONS

In re Application of :
Olsen, et al. :
Application No. 11/729,132 :
Filed: 27 March, 2007 :
Attorney Docket No.: 088245-6120 :

DECISION
ON PETITION

This is a decision on the petition under 37 C.F.R. §1.78(a)(3), filed 29 July, 2010, to accept an unintentionall delayed claim under 35 U.S.C. §120 for the benefit of priority to prior-filed application.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 C.F.R. §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 C.F.R. §1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 C.F.R. §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 C.F.R.§1.78(a)(2)(i) and §1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in 37 C.F.R. §1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 C.F.R. §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.

On deposit on 27 March, 2007, the instant application did not include an incorporation by reference of the Provisional Application No. 60/604,853, filed 25 August, 2004, and No. 60/695,946, filed 1 July, 2005. On original petition, Petitioner submitted an amendment which sought to do so. Such was not a proper amendment, and the petition was dismissed on 11 June, 2010. The deficiency was thereafter corrected.

Application No. 11/729,132

The petition complies with the requirements of the regulations at 37 C.F.R. §1.78(a)(3) as to reference, surcharge and statement.

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 and provisional applications satisfies the conditions of 37 C.F.R. §1.78(a)(3).

The petition is **granted**.

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

Petitioner is reminded 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.

This application is released to Technology Center 2878 for consideration of the amendment by the Examiner.

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

Chris Bottorff
Supervisory Petitions Examiner
Office of Petitions

Enclosure: 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
11/729,132	03/27/2007	2878	1115	088245-6120	42	2

CONFIRMATION NO. 6612

CORRECTED FILING RECEIPT

23524
FOLEY & LARDNER LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON, WI 53701-1497

OC000000045638606

Date Mailed: 01/24/2011

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

Applicant(s)

Richard Ian Olsen, Irvine, CA;
Darryl L. Sato, Irvine, CA;
Feng-Qing Sun, Irvine, CA;
James Gates, Irvine, CA;

Power of Attorney: The patent practitioners associated with Customer Number 23524

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/786,811 03/27/2006
and is a CIP of 11/212,803 08/25/2005 ABN
which claims benefit of 60/604,854 08/25/2004
and claims benefit of 60/695,946 07/01/2005

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: 04/24/2007

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/729,132**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Imager module optical focus and assembly method

Preliminary Class

250

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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LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

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set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

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MAILED
JAN 26 2012
OFFICE OF PETITIONS

In re Application of	:	
Olsen, et al.	:	
Application No. 11/729,132	:	ON APPLICATION FOR
Filed: March 27, 2007	:	PATENT TERM ADJUSTMENT
Atty Docket No. 088245-6120	:	

This is in response to the REQUEST FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b) filed January 4, 2012. Applicants submit that the correct patent term adjustment to be indicated on the patent is one thousand, one hundred and forty-six (1,146) days, not seven hundred fifty-three (753) 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, applicants are advised that applicants may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

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

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

---

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

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

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Senior Petitions Attorney
Office of Petitions

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MORRISON & FOERSTER LLP
755 PAGE MILL RD
PALO ALTO CA 94304-1018

MAILED

OCT 12 2010

OFFICE OF PETITIONS

In re Application of	:	
REYNOLDS, Eric C. et al.	:	
Application No. 11/729,218	:	DECISION ON PETITION
Filed: March 27, 2007	:	TO WITHDRAW
Attorney Docket No. **229752004301**	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed July 30, 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 Jie Zhou on behalf of all attorneys of record who are associated with customer No. 25226. All attorneys/agents associated have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the address indicated below.

There are no outstanding Office actions at this time.

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

Michelle R. Eason
Paralegal Specialist
Office of Petitions

cc: **CSL LIMITED**
THE UNIVERSITY OF MELBOURNE
45 POPLAR ROAD, PARKVILLE
VICTORIA, 3010 AUSTRALIA

cc: **THE UNIVERSITY OF MELBOURNE**
ROYAL PARADE, PARKVILLE
VICTORIA, 3052 AUSTRALIA

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.
11/729,267	03/27/2007	Thierry Guyon	Q122503	5084

23373 7590 08/03/2011
SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

EXAMINER
STOICA, ELLY GERALD

ART UNIT	PAPER NUMBER
1647	

NOTIFICATION DATE	DELIVERY MODE
08/03/2011	ELECTRONIC

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

AUG 0 3 2011

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

K&L Gates LLP
3580 Carmel Mountain Road
Suite 200
San Diego CA 92130

In re Application of:
McDonald et al.
Serial No.: 11/729,267
Filed: February 24, 2006
Attorney Docket No: **3800007.00006 / 601F**

: PETITION DECISION

This is in response to the petition filed on January 12, 2011 under 3 7 CFR 1.181 to correct the misclassification of submitted Information Disclosure Statements. Specifically, applicants request correction of the classification in PAIR of the Information Disclosure Statements submitted on November 9, 2007; July 28, 2008; May 28, 2009; and March 9, 2010 in connection with the above-referenced application and consideration by the Examiner of the documents and information contained therein.

Applicants argue the "Information Disclosure Statements were submitted in connection with the above-captioned application on November 9, 2007; July 28, 2008; May 28, 2009; and March 9, 2010. Each Information Disclosure Statement was prepared in accordance with 37 C.F.R 1.97 and 1.98. As required under 37 C.F.R 1.98, each Information Disclosure Statement contained 1) a list of all patents, publications, applications, or other information submitted for consideration by the Office, including a column that provides a space next to each document to be considered, for the examiner's initials and a heading that clearly indicates that the list is an Information Disclosure Statement; and 2) legible copies of all items listed. The items either were in English or a translation was provided. A copy of the misclassified Information Disclosure Statements filed on November 9, 2007; July 28, 2008; May 28, 2009; and March 9, 2010 is attached.

The submitted Information Disclosure Statement included a tabular Form PTO-1449, which was classified as an "IDS," and a written disclosure of information. In each instance, the written disclosure of information was misclassified in PAIR as a "Transmittal Letter" (November 9, 2007, "Transmittal Letter" of 4 pages; July 28, 2008, "Transmittal Letter" of 5 pages; May 28, 2009, "Transmittal Letter" of 5 pages; and March 9, 2010, "Transmittal Letter" of 3 pages). Consequently the information contained therein may not be considered or reviewed by the Examiner."

Applicants' argument has been accorded careful consideration and is persuasive. PAIR will be corrected to reflect the misclassification of the submitted Information Disclosure Statements of November 9, 2007; July 28, 2008; May 28, 2009; and March 9, 2010.

DECISION

The petition is **GRANTED.**

The examiner is instructed to consider the IDS of November 9, 2007; July 28, 2008; May 28, 2009; and March 9, 2010 which was misclassified in PAIR as a Transmittal Letter" (November 9, 2007, "Transmittal Letter" of 4 pages; July 28, 2008, "Transmittal Letter" of 5 pages; May 28, 2009, "Transmittal Letter" of 5 pages; and March 9, 2010, "Transmittal Letter" of 3 pages).

Should there be any questions about this decision please contact Marianne C. Seidel, by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 571-273-8300.

/MC Seidel/
Marianne C. Seidel, Quality Assurance Specialist
Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

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

LEE & HAYES, PLLC
601 W RIVERSIDE
SUITE 1400
SPOKANE, WA 99201

MAILED

MAR 14 2011

OFFICE OF PETITIONS

In re Application of	:	
COHEN, et al	:	
Application No. 11/729,313	:	DECISION ON PETITION
Filed: March 27, 2007	:	TO WITHDRAW
Attorney Docket No. QQ1-0159US	:	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.**

The request to withdraw from record cannot be approved because the request to change the correspondence address is not accompanied by a power of attorney nor is the correspondence address that of an assignee of the entire interest who has been properly made of record under 37 CFR 3.71 or the first named inventor.

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

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

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

cc: MARGARET ANDERSON
106 E. 6TH STREET, SUITE 900
AUSTIN TX 78701

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Commissioner for Patents
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P.O. Box 1450
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Paper No.

Tokyo Electron U.S. Holdings, Inc.
4350 West Chandler Blvd.
Suite 10/11
Chandler AZ 85226

MAILED

DEC 07 2010

OFFICE OF PETITIONS

In re Application of	:	
Bischoff et al.	:	
Application No. 11/729,498	:	DECISION ON PETITION
Filed: March 28, 2007	:	PURSUANT TO
Attorney Docket No.: TTI-171	:	37 C.F.R. § 1.137(B)
Title: TRAINING A MACHINE	:	
LEARNING SYSTEM TO DETERMINE	:	
PHOTORESIST PARAMETERS	:	

This is a decision on the petition pursuant to 37 C.F.R. § 1.137(b), filed September 16, 2010, to revive the above-identified application.

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

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed February 4, 2010, which set a shortened statutory period for reply of three months. No response was received, and no extensions of time under the provisions of 37 C.F.R. § 1.136(a) were requested. Accordingly, the above-identified application became abandoned on May 5, 2010. A notice of abandonment was mailed on September 14, 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 has submitted an amendment, the petition fee, and the proper statement of unintentional delay.

As such, the first three requirements of Rule 1.137(b) have been met. The fourth requirement of Rule 1.137(b) is not applicable, as a terminal disclaimer is not required.[1]

The Technology Center will be notified of this decision, and jurisdiction over this application is transferred to the Technology Center, so that the application may receive further processing. The Technology Center's support staff will notify the Examiner of this decision, so that the amendment that was received on September 16, 2010 can be processed in due course.

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

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

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

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

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RISSMAN HENDRICKS & OLIVERIO, LLP
100 CAMBRIDGE STREET
SUITE 2101
BOSTON MA 02114

MAILED

DEC 27 2010

OFFICE OF PETITIONS

In re Application of	:	
Bunyan et al.	:	
Application No. 11/729,500	:	DECISION ON PETITION
Filed: March 28, 2007	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. PKHC-P01-036	:	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed December 7, 2010, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to prior-filed nonprovisional Application No. 10/346,346, filed January 16, 2003, as set forth in the amendment filed concurrently with the instant petition.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application(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).

As such, as Application No. 10/346,364 was not in the original specification-as-filed, the incorporation by reference statement cannot apply to it. Accordingly, before the petition under 37 CFR 1.78(a)(3) can be granted, a substitute amendment[1] deleting the incorporation by reference statement or rewording it to only apply to Application No. 60/786,633, 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 the undersigned at (571) 272-3206.

Liana Walsh
Petitions Examiner
Office of Petitions

[1] *Note* 37 CFR 1.121

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RISSMAN HENDRICKS & OLIVERIO, LLP
100 CAMBRIDGE STREET
SUITE 2101
BOSTON MA 02114

MAILED

FEB 04 2011

OFFICE OF PETITIONS

In re Application of	:	
Bunyan et al.	:	
Application No. 11/729,500	:	DECISION GRANTING PETITION
Filed: March 28, 2007	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. PKHC-P01-036	:	

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed January 4, 2011, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to prior-filed nonprovisional Application No. 10/346,346, filed January 16, 2003, as set forth in the amendment and Application Data Sheet (ADS) 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 above-noted, prior-filed nonprovisional application has been included in an amendment to the first sentence of the specification following the title and an ADS, as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the 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 applications 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 applications. In order for the instant application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the 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 the undersigned at (571) 272-3282.

This matter is being referred to Technology Center Art Unit 1715 for appropriate action on the amendment filed January 4, 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
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/729,500	03/28/2007	1715	3130	PKHC-P01-036	44	7

CONFIRMATION NO. 6194

CORRECTED FILING RECEIPT

21127
RISSMAN HENDRICKS & OLIVERIO, LLP
100 Cambridge Street
Suite 2101
BOSTON, MA 02114

OC000000045686204

Date Mailed: 01/27/2011

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)

Michael H. Bunyan, Chelmsford, MA;
Phillip Blazdell, Oxforshire, UNITED KINGDOM;

Power of Attorney: None

Domestic Priority data as claimed by applicant

This application is a CIP of 10/346,346 01/16/2003 PAT 7,208,192
and claims benefit of 60/786,633 03/28/2006

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 04/25/2007

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/729,500**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Dispensable cured resin

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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CHADBOURNE & PARKE, LLP
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112

MAILED
DEC 01 2011
OFFICE OF PETITIONS

In re Application of
Christopher John Robert Thomas, et. al.
Application No. 11/729,514
Filed: March 28, 2007
Attorney Docket No. 17132-044US

DECISION ON PETITION

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

The application became abandoned for failure to file a timely reply to the Notice of Allowance and Fee(s) Due mailed August 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 $1,740 for payment of the issue fee and $300 for payment of the publication fee; (2) the petition fee of $1,860; and (3) a proper statement of unintentional delay. Therefore, the petition is **GRANTED**.

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

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

Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

April 19, 2011

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. BOX 2938
MINNEAPOLIS MN 55402

In re Application of	:	
Fei Wang, et al	:	**DECISION ON PETITION**
Application No. 11729554	:	
Filed: 03/29/2007	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. **303.A08US1**	:	***DRAWINGS***

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) March 29, 2007.

The petition is **GRANTED**.

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/729,554	03/29/2007	Fei Wang	303.A08US1	6473

7590 04/21/2011
SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. BOX 2938
MINNEAPOLIS, MN 55402

EXAMINER
FRASER, STEWART A

ART UNIT	PAPER NUMBER
1721	

NOTIFICATION DATE	DELIVERY MODE
04/21/2011	ELECTRONIC

ACKNOWLEDGEMENT OF REQUEST

Notice of Allowance/Allowability Mailed

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

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

FORM PTOM327-5 (Rev. 02/08)

Doc Code: PET.RELIEF
Document Description: Certification and Request for Disaster Relief

OPAP IAP11 APR 1 3 2011 PATENT & TRADEMARK OFFICE

04-15-11

PTO/SB/425 (03-11)

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): 11/729,592	Patent Number (if applicable):
First Named Inventor: Maung Han	Title of Invention: Hidden point detection and warning ...

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.

AUS 06015, ALPINE. 094 AUS

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 Yasuo Muramatsu	Date April 11, 2011
Name (Print/Typed) Yasuo Muramatsu	Practitioner Registration Number 38,684

***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 _____ forms are submitted.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MURAMATSU & ASSOCIATES
SUITE 310
114 PACIFICA
IRVINE CA 92618

MAILED
APR 26 2011
OFFICE OF PETITIONS

In re Application of	:	
Maung Han	:	
Application No. 11/729,592	:	DECISION ON PETITION
Filed: March 29, 2007	:	
Attorney Docket No. ALPINE.094AUS	:	

This is a decision on the request filed April 13, 2011, seeking relief under the provisions of an announcement by the Under Secretary and Director of the United States Patent and Trademark Office on March 17, 2011, http://www.uspto.gov/patents/announce/japan_relief_2011mar17.pdf, providing relief to inventors and patent owners in areas affected by the earthquake and resulting tsunami of March 11, 2011.

The request for relief is **GRANTED**.

In the above-identified application, an Office action was mailed on March 2, 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 571-272-7751. 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 3664 for re-mailing the Office action of March 2, 2011. The period for reply will run from the mailing date of the Office action.

/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

MURAMATSU & ASSOCIATES
Suite 310
114 Pacifica
Irvine CA 92618

SEP 01 2011

In re Application of
HAN, MAUNG
Application No. 11/729,596
Filed: March 29, 2007
Attorney Docket No.: ALPINE.092AUS

DECISION ON PETITION

This is a decision on the Petition To Withdraw Holding Of Abandonment received in the United States Patent and Trademark Office (USPTO) on July 29, 2011.

The petition is **GRANTED**.

The application was held abandoned for failure to timely pay the issue fee as required by the Notice of Allowance and Fee(s) Due mailed February 24, 2011, which set forth a three (3) month statutory period for reply. Accordingly, the Notice of Abandonment was mailed on June 10, 2011.

Petitioner states that the Applicants responded by timely paying the Issue Fee on May 24, 2011. In support of this assertion the petitioner has submitted documents, which include the following:

- Copy of Form PTOL-85B (FEE(S) TRANSMITTAL) signed by Yasuo Muramatsu
- A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all items listed thereon on the date stamped thereon by the USPTO

The petitioner has demonstrated that the Fee Transmittal was timely with Certificate of Mailing date of May 24, 2011.

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

Telephone inquires concerning this decision be directed to the undersigned in the Office of Patent Publication at 703-756-1547.

Kay D. Pinkney
Application Assistance Unit
Office of Data Management

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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HONEYWELL INTERNATIONAL INC.
PATENT SERVICES
101 COLUMBIA ROAD
P. O. BOX 2245
MORRISTOWN NJ 07962-2245

MAILED

SEP 13 2010

OFFICE OF PETITIONS

In re Application of	:	
Knowles C. Harry	:	
Application No. 11/729,659	:	DECISION ON PETITION
Filed: March 29, 2997	:	
Attorney Docket No. H28793	:	

This is a decision on the petition under 37 CFR 1.59(b), filed February 22, 2010, to expunge information from the above identified application.

The petition is **DISMISSED AS MOOT**.

Petitioner requests that a request submitted on January 23, 2009 to correct the misspelling of an inventor's name in connection with the above identified application be withdrawn. Petitioner indicated that the first name of inventor Mikhail Veksland was misspelled as Michael Veksland on the application documents filed March 29, 2007.

A review of the file indicates that the examiner in charge of this application has approved the deletion of the inventor incorrectly listed. Hence the petition is dismissed as moot.

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 communication should be directed to the undersigned at 571-272-0602.

Thurman K. Page
Petitions Examiner
Office of Petitions

cc: **THOMAS J. PERKOWSKI**
22 THORNDAL CIRCLE
DARIEN, CONNECTICUT

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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Nields, Lemack & Frame, LLC
176 E. Main Street
Suite #5
Westborough, MA 01581

MAILED

OCT 06 2010

OFFICE OF PETITIONS

In re Application of Kiyoshi Wakaizumi	:	
Application No. 11/729,714	:	Decision on Petition
Filing Date: March 29, 2007	:	Under 37 CFR 1.55(c)
Attorney Docket No. 424P073c/p	:	

This is a decision on the petition under 37 CFR 1.55(c), filed May 11, 2010, to accept an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d) for benefit of priority to the filing date of four foreign applications.

The petition is **DISMISSED**.

This application was filed after November 29, 2000, and did not include a reference to the foreign application, for which benefit is now sought, within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application. Since the claim for priority is submitted after the period specified in 37 CFR 1.55(a)(1)(i), this is an appropriate petition under the provisions of 37 CFR 1.55(c).

A petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority requires:

(1) The nonprovisional application claiming the benefit of an earlier filing date must be filed on or after November 29, 2000;
(2) the claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country, and the filing date, **and be included either in an oath or declaration (37 CFR 1.63(c)(2)) or in an Application Data Sheet (37 CFR 1.76(b)(6))**;
(3) the surcharge as set forth in 37 CFR 1.17(t);
(4) a statement that the entire delay between the date the claim was due under 37 CFR 1.55(a)(1) and the date the claim was filed was unintentional (the Director may require additional information where there is a question whether the delay was unintentional); and

(5) the above-identified nonprovisional application must be filed within 12 months of the filing date of the foreign application.

The petition fails to comply with item (2) above. In this regard, a review of the file record fails to disclose that the priority information was included in an oath or declaration or in an Application Data Sheet (ADS) in accordance with 37 CFR 1.76(b)(6). Unless provided in an ADS, 37 CFR 1.63(c)(2) requires that the oath or declaration must identify the foreign application for patent (or inventor's certificate) for which priority is claimed under 37 CFR 1.55, and any foreign application having a filing date before that of the application on which priority is claimed, by specifying the application number, country, day, month, and year of its filing. *Note* MPEP 201.14.

In view of the above, compliance with 37 CFR 1.63(c)(2) or 37 CFR 1.76(b)(6) must be satisfied if applicant desires to claim priority to the foreign application noted in the petition. Any future petition should include a cover letter and be entitled "Renewed Petition under 37 CFR 1.55(c)."

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

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

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

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

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Nields, Lemack & Frame, LLC
176 E. Main Street
Suite #5
Westborough, MA 01581

MAILED
JAN 12 2011
OFFICE OF PETITIONS

In re Application of Kiyoshi Wakaizumi :
Application No. 11/729,714 :
Filing Date: March 29, 2007 :
Attorney Docket No. 424P073c/p :

Decision Granting Petition
Under 37 CFR 1.55(c)

This is a decision on the renewed petition under 37 CFR 1.55(c), filed October 25, 2010, to accept an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d) for the benefit of priority to four foreign applications.

The petition is **GRANTED**.

This pending nonprovisional application was filed after November 29, 2000, and did not include a reference to the foreign application, for which benefit is now sought, within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application. Since the claim for priority is submitted after the period specified in 37 CFR 1.55(a)(1)(i), this is an appropriate petition under the provisions of 37 CFR 1.55(c).

A petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority requires:

(1) The nonprovisional application claiming the benefit of an earlier filing date must be filed on or after November 29, 2000;
(2) the claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country, and the filing date, and be included either in an oath or declaration (37 CFR 1.63(c)(2)) or in an Application Data Sheet (37 CFR 1.76(b)(6));
(3) the surcharge as set forth in 37 CFR 1.17(t);
(4) a statement that the entire delay between the date the claim was due under 37 CFR 1.55(a)(1) and the date the claim was filed was unintentional (the Director may require additional information where there is a question whether the delay was unintentional); and
(5) the above-identified nonprovisional application must be filed within 12 months of the filing date of the foreign application.

This application was filed on March 29, 2007, which is after November 29, 2000.

This application is a continuation-in-part of Application No. 10/989,688, which claims the benefit of priority of the four foreign applications at issue. Application No. 10/989,688 was filed within 12 months of the filing date of each of the foreign applications.

An application data sheet ("ADS") was filed October 25, 2009. The ADS identifies the foreign application for which priority is claimed by application number, country and filing date.

The required petition fee of $1,410 was previously received on May 11, 2010.

Petitioner has provided an adequate statement of unintentional delay.

In view of the prior facts, the the late claim for priority under 35 U.S.C. § 119(a)-(d) 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 1.55(c) should not be construed as meaning that this application is entitled to the benefit of the prior-filed application. In order for this application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 119(a)-(d) and 37 CFR 1.55(a)(1) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether this application is entitled to the benefit of the earlier filing date.

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

This application is being referred to Technology Center Art Unit 3652 for examination in due course and for consideration by the examiner of record of the foreign priority claim under 35 U.S.C. § 119(a)-(d).

Any inquiries directly pertaining to this matter may be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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
11/729,714	03/29/2007	3652	2090	424P073C/P	17	4

CONFIRMATION NO. 6400

CORRECTED FILING RECEIPT

42754
Nields, Lemack & Frame, LLC
176 E. Main Street
Suite #5
Westborough, MA 01581

OC000000045414041

Date Mailed: 01/12/2011

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

Applicant(s)

Kiyoshi Wakaizumi, Tokyo, JAPAN;

Power of Attorney: The patent practitioners associated with Customer Number 42754

Domestic Priority data as claimed by applicant

This application is a CIP of 10/989,688 11/16/2004 PAT 7,241,102

Foreign Applications

JAPAN 2003-407354 12/05/2003
JAPAN 2004-27926 02/04/2004
JAPAN 2004-27927 02/04/2004
JAPAN 2004-27928 02/04/2004

If Required, Foreign Filing License Granted: 04/18/2007

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/729,714**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

ROBOT

Preliminary Class

414

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

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

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

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	11729745
Filing Date	29-Mar-2007
First Named Inventor	David Goren
Art Unit	2887
Examiner Name	THIEN LE
Attorney Docket Number	SBL02632
Title	IMAGE ENHANCEMENT IN IMAGING SYSTEM

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:
(1) Petition fee;
(2) Reply and/or issue fee;
(3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995; and for all design applications;
(4) Statement that the entire delay was unintentional.

Petition fee
The petition fee under 37CFR 1.17(m) is attached.

☐ Applicant claims SMALL ENTITY status. See 37 CFR 1.27.

☐ Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

☐ Applicant(s) status remains as SMALL ENTITY.

☒ Applicant(s) status remains as other than SMALL ENTITY.

Issue Fee and Publication Fee :

Issue Fee and Publication Fee must accompany ePetition.

☒ Issue Fee Transmittal is attached

Drawing corrections and/ or other deficiencies.

- (●) Drawing corrections and/ or other deficiencies are not required
- ( ) I certify, in accordance with 37 CFR 1.4.(D)(4), that drawing corrections and/ or other deficiencies have previously been filed on
- ( ) Drawing corrections and/ or other deficiencies are attached.

☒ STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

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

- (●) An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application.
- ( ) An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity.
- ( ) A sole inventor
- ( ) A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors.
- ( ) A joint inventor; all of whom are signing this e-petition.
- ( ) The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71.

Signature	/Nongqiang Fan/
Name	Nong-Qiang Fan
Registration Number	50518

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Decision Date : October 5,2011

In re Application of :

David Goren

Application No : 11729745

Filed : 29-Mar-2007

Attorney Docket No : SBL02632

DECISION ON PETITION

UNDER CFR 1.137(b)

This is an electronic decision on the petition under 37 CFR 1.137(b), filed October 5,2011 , to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Allowance and Issue Fee(s) Due. The date of abandonment is the day after the expiration date of the period set for reply in the Notice.

The electronic petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of payment of the Issue Fee and the Publication Fee (if necessary); (2) the petition fee as set forth in 37 CFR 1.17 (m); (3) the drawing correction and/or other deficiencies (if necessary); and (4) the required statement of unintentional delay have been received. Accordingly, the Issue Fee payment is accepted as having been unintentionally delayed.

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

This application file is being directed to the Office of Data Management.

Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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.
11/730,161	03/29/2007	Arjuna Indraeswaran Rajasingham		5234

7590 02/23/2012
Arjuna Indraeswaran Rajasingham
6024 Bradley Boulevard
Bethesda, MD 20817

EXAMINER
MARINELLI, PATRICK

ART UNIT	PAPER NUMBER
2629	

MAIL DATE	DELIVERY MODE
02/23/2012	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Arjuna Indraeswaran Rajasingham
6024 Bradley Boulevard
Bethesda MD 20817

In re Application of:
RAJASINGHAM, ARJUNA INDRAESWARAN
Application Serial No.: 11/730,161
Filed: March 29, 2007
For: **VIRTUAL NAVIGATION SYSTEM FOR VIRTUAL AND REAL SPACES**

DECISION
ON PETITION

This is a decision on the petition requesting withdrawal of the final action, filed December 8, 2011 and February 3, 2012, pursuant to 37 CFR § 1.181.

Petitioner alleges that the examiner erred in holding the Office action mailed October 13, 2011 final and requests withdrawal of finality of the Office action. Petitioner argues that the new grounds of rejection was not necessitated by amendment.

A review of the file record reveals that a non-final Office action was mailed on February 28, 2011 rejecting claims 7, 10 and 11, as failing to comply with the enablement requirement under 35 USC 112, first paragraph; rejecting claims 2, 7, 10, and 11 as being indefinite under 35 USC 112 second paragraph; rejecting claims 1-5, 7, 9, 10 ,13, and 15 under 35 USC 102 as being anticipated by Biocca et al; rejecting claim 12 under 35 USC 102 as being anticipated by Yonezawa; rejecting claims 6 and 8 under 35 USC 103 as being unpatentable over Biocca in view of Tremblay; rejecting claim 11under 35 USC 103 as being unpatentable over Biocca in view of Torch; and rejecting claim 16 under 35 USC 103 as being unpatentable over Biocca in view of Rippy.

On July 28, 2011, applicant filed a response that included amendments to claims 1-11 and new claims 17-20.

On October 13, 2011, a final Office action was mailed rejecting claims 1-11, 13, and 15-20, as failing to comply with the written description requirement under 35 USC 112, first paragraph; rejecting claims 2,4, 6, 7, 13, and 15 as being vague and indefinite under 35 USC112, second paragraph; rejecting claim 12 under 35 USC 102 as being anticipated by Yonezawa; rejecting claims 1, 2, 6-8, 10, 13, and 17-20 are rejected under 35 U.S.C. 103 as being unpatentable over Hanson et al in view of Ortiz et al; rejecting claims 4 and 5 are rejected under 35 U.S.C. 103 as being unpatentable over Hanson, in view of Ortiz, and in further view of Maguire, Jr.; rejecting claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hanson, in view of Ortiz, in further view of Maguire, and in further view of Iinuma et al; rejecting claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hanson, in view of Ortiz, in further view of Torch; rejecting claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hanson, in view of Ortiz, in further view of Datta; and rejecting claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hasnon, in view of Ortiz, in further view of Datta, in further view of Rippy et al.

Petitioner argues that the amendment was not necessitated by amendment since the amendment narrows claim 1 by using consistent language including recited features of previously presented claim 10, the amendment to claim 9 wasn't substantive, and the features of claim 1 were previously presented. Claims 1 and 9 are rejected under 35 USC 112, first paragraph, as failing to comply with the written description requirement which states that claims as now presented are not supported by the original disclosure, hence the scope of claims as presented aren't the same as that that which were previously present. The amendment to claim 1 doesn't include all the limitations of claim 10 and intervening claim 2, hence the scope of the claims weren't previously presented. The amendment to claim 9 wasn't substantive, however the amendment to claim 1 from which it depends was substantive, hence the scope of claim 9 wasn't previously presented.

Accordingly, the petition to withdraw finality is **DENIED**.

The period for response set forth in the Advisory action mailed December 28, 2011 continues to run.

Tariq Hafiz, Director
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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FOLEY & LARDNER LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON WI 53701-1497

MAILED

NOV 28 2011

OFFICE OF PETITIONS

In re Application
Mikko Kalervo Vaananen
Application No. 11/730,209
Filed: March 30, 2007
Attorney Docket No. 088245-3013

: DECISION ON APPLICATION
: FOR PATENT TERM ADJUSTMENT

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FOR PATENT APPLICATION UNDER 37 C.F.R. §1.705(b) filed November 17, 2011. Applicant requests that the determination of patent term adjustment be corrected from 535 to 712 days. Applicant requests this correction in part on the basis that the Office will take in excess of three years to issue this patent and is considered in light of the recent court decision in light of the Court of Appeals for the Federal Circuit's decision in *Wyeth v. Kappos*, 2009-1120 (Fed. Cir. 1-7-2010).

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

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

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

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

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

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

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

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
www.uspto.gov

DATE: December 13, 2011
TO: Certificates of Correction Branch
FROM: Paul N. Dickson
SPE, Art Unit 3616
SUBJECT: REQUEST FOR CERTIFICATE OF CORRECTION

Please issue a Certificate of Correction in U. S. Letters Patent No. 7,681,687 as specified on the attached Certificate.

/Paul N Dickson/

Paul N. Dickson, SPE
Art Unit 3616

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE

Patent No. 7,681,687
Patented: March 23, 2010

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:

Martin R. Stander, Samuel K. Brown, and Ryan M. Moose

/Paul N Dickson/

Paul N. Dickson
Supervisory Patent Examiner
Art Unit 3616

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Alexandria, VA 22313-1450
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MAILED
MAY 19 2011
OFFICE OF PETITIONS

DUNCAN ELLIOTT
DEPARTMENT OF ELECTRICAL & COMPUTER ENGINEERING
UNIVERSITY OF ALBERTA
EDMONTON AB T6G 2V4 CA CANADA

In re Application of	:	
Kristopher C. Breen et al.	:	
Application No. 11/730,406	:	DECISION ON PETITION
Filed: April 02, 2007	:	
Attorney Docket No. **2006032942**	:	

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 **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 s to timely pay the issue and publication fees on or before June 07, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed March 05, 2010, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on June 08, 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) and (3).

As to item (1), the Issue and Publication fees required by the Notice of Allowance mailed March 05, 2010 has not been paid.

As to item (3), the statement of unintentional delay is presently not acceptable since it was not signed by all of the inventors. Therefor, as the petition is not signed by all the inventors and the record fails to disclose that petitioner herein (Duncan G. Elliott) was ever given a power of attorney to act on behalf of inventor Kristopher Breen, or that he is an assignee of the entire interest and has complied with the provision of 37 CFR 3.73(b), the petition is considered to not contain a proper statement of unintentional delay. See 37 CFR 1.33(b) which states:

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

(1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
(2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;
(3) An assignee as provided for under §3.71(b) of this chapter; or
(4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

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 Tredelle Jackson at (571) 272-2783.

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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DUNCAN ELLIOTT
DEPARTMENT OF ELECTRICAL & COMPUTER ENGINEERING
UNIVERSITY OF ALBERTA
EDMONTON AB T6G 2V4 CA CANADA

MAILED
AUG 08 2011
OFFICE OF PETITIONS

In re Application of	:	
Kristopher C. Breen et al.	:	
Application No. 11/730,406	:	DECISION ON PETITION
Filed: April 02, 2007	:	
Attorney Docket No. **2006032942**	:	

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed July 06, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before June 07, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed March 05, 2010. Accordingly, the date of abandonment of this application is June 08, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $755 and the publication fee of $300, (2) the petition fee of 810; and (3) a proper statement of unintentional delay. Accordingly, the Issue Fee 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 Office of Data Management for processing into a patent.

Ramesh Krishnamurthy

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11/30/10

TO SPE OF : ART UNIT 2854

SUBJECT : Request for Certificate of Correction for Appl. No.: 11730409 Patent No.: 7401989

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: _____

/Judy Nguyen/ — **SPE**

2854 — **Art Unit**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11/30/10

TO SPE OF : ART UNIT 2854

SUBJECT : Request for Certificate of Correction for Appl. No.: 11730409 Patent No.: 7401989

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Lamonte Newsome
Certificates of Correction Branch
571-272-3421

Thank You For Your Assistance

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

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

Comments: _____

/Judy Nguyen/ — **SPE**

2854 — **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Pearl Cohen Zedek Latzer, LLP
1500 Broadway
12th Floor
New York, NY 10036

MAILED
FEB 13 2012
OFFICE OF PETITIONS

In re Patent of Kritchman et al.	:	
Patent No. 7,369,915	:	
Issue Date: May 6, 2008	:	Letter
Application No. 11/730,443	:	
Filing Date: April 2, 2007	:	
Attorney Docket No. P4780-US2	:	

This is a notice regarding the request for acceptance of a fee deficiency submission under 37 CFR 1.28(c) filed January 23, 2012.

The deficiency payment of $640 is hereby accepted.

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

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED
MAR 04 2011
OFFICE OF PETITIONS

In re Application of :
GOLCZEWSKI et al. :
Application No. 11/730,557 :
Filed: 04/02/2007 :
Attorney Docket No. 3718280-00017 :

NOTICE

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

This application is being referred to Technology Center Art Unit 3715.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3211.

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED

MAR 01 2011

OFFICE OF PETITIONS

In re Application:
Royia Griffin
Application No. 11/730,567
Filed: April 2, 2007
Attorney Docket No. 3718280-00010

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed January 20, 2011. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

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

Your fee deficiency submission under 37 CFR 1.28 is hereby 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 Technology Center 3715.

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

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K&L GATES LLP
P.O. BOX 1135
CHICAGO IL 60690

MAILED
FEB 28 2011
OFFICE OF PETITIONS

In re Application:	:	
McAvoy et al.	:	
Application No. 11/730,568	:	ON PETITION
Filed: April 2, 2007	:	
Attorney Docket No. 3718280-00022	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed January 19, 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
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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ROSENBERG, KLEIN & LEE
3458 ELLICOTT CENTER DRIVE-SUITE 101
ELLICOTT CITY MD 21043

MAILED
NOV 18 2010
OFFICE OF PETITIONS

In re Application of	:	
Chiung-Ching Ku	:	
Application No. 11/730,594	:	NOTICE
Filed: April 03, 2007	:	
Attorney Docket No. **MR2707-208**	:	

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

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

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

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

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

/Tredelle D. Jackson/
Paralegal Specialist
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED
NOV 18 2011
OFFICE OF PETITIONS

McKinnons Patents Inc
200 North Service Road W
Unit #1, Suite #303
Oakville ON L6M2Y-1 CA CANADA

In re Application of :
Svetoslav S. BRATOVANOV et al. : ON PETITION
Application No. 11/730,770 :
Filed: April 4, 2007 :
Atty. Docket No.: P1034US00

This is a decision on the petition under 37 CFR 1.137(b), filed November 4, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Notice of Allowance and Fee(s) Due mailed August 3, 2011 (Notice), which set a statutory period for reply of three (3) months. The application became abandoned November 4, 2011. A Notice of Abandonment was mailed November 9, 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 mailed August 3, 2011 , (2) a petition fee of $1860, and (3) a statement of unintentional delay. The reply to the Notice is accepted as having been unintentionally delayed.

Telephone inquiries relating to this decision should be directed to Robert DeWitty, Petitions Attorney, Office of Petitions (571-272-8427).

The application will be referred to Office of Data Management for further processing.

Robert DeWitty
Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 032311

DATE : 3/23/11

TO SPE OF : ART UNIT 2824

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/730,789 Patent No. 7,663,948

CofC mailroom date 3/15/11

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Ernest C. White, LIE

Certificates of Correction Branch

703-756-1814

Thank You For Your Assistance

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

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

Comments: Approved. JHH 032311

RICHARD T. ELMS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800

/Richard Elms/ SPE AU 2824 3/23/11

SPE **Art Unit**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 032311

DATE : 3/23/11

TO SPE OF : ART UNIT 2824

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/730,789 Patent No. 7,663,948

CofC mailroom date 3/15/11

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Ernest C. White, LIE

Certificates of Correction Branch

703-756-1814

Thank You For Your Assistance

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

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

Comments: Approved. JHH 032311

/Richard Elms/ SPE AU 2824 3/23/11

SPE **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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INVENTION QUEBEC INC.
SUITE 202
8065, BOUL. VIAU
MONTREAL QC H1R 2T2 CA CANADA

MAILED

SEP 10 2010

OFFICE OF PETITIONS

ON PETITION

In re Application of	:	
Andre Lechasseur	:	
Application No. 11/730,934	:	
Filed: April 5, 2007	:	
Attorney Docket No. 9454-2	:	

This is a decision on the petition filed July 9, 2010 under 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to submit the Issue fee and Publication Fee in a timely manner in reply to the Notice of Allowance mailed March 5, 2010, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on June 6, 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 payment of the Issue fee and Publication Fee; (2) the petition fee; (3) the required statement of unintentional delay have been received. Accordingly, the issue fee is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3210.

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

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

CONRADO G. CASTRO
3514 WEST 157TH ST.
GARDENA, CA 90249

MAILED

OCT 01 2010

OFFICE OF PETITIONS

In re Application of	:	
Conrado G. CASTRO	:	
Application No. 11/731,031	:	ON PETITION
Filed: March 27, 2007	:	
Attorney Docket No.	:	

This is in response to the renewed petition filed November 25, 2009 and supplemented with a communication filed January 29, 2010, to revive the above-identified application. The communications are being treated as a petition to withdraw the holding of abandonment under 37 CFR §1.181.

The petition is **DENIED**.

This decision is an action on petitioner's request to withdraw the abandonment.
On February 25, 2008, the Office mailed a non-final Office action, which set a three month shortened statutory period to reply. Petitioner filed responses on March 21, 2008 and May 23, 2008, and supplemented the said responses on August 16, 2008, and October 20, 2008. However, the petitioner's initial responses dated March 21, 2008 and May 23, 2008 were deemed to be non-responsive for failure to address all issues raised by the examiner in the office action dated February 25, 2008. The Office on July 18, 2008 mailed a Notice of Non-Compliant Amendment, which gave petitioner one month or thirty (30) days to supply the omissions or corrections in order to avoid abandonment. Extensions of time were available under 37 CFR §1.136(a). No extension of time was requested. Petitioner responded to the July 18, 2008 Notice on August 16, 2008. Petitioner's August 16, 2008 response was deemed not fully responsive. The examiner on September 18, 2008 mailed a second Notice of Non-Compliant Amendment. Petitioner responded on October 20, 2008. Because the response was incomplete, the application became abandoned on August 19, 2008, for failure to submit a proper response to the February 25, 2008 Office action. On May 19, 2009, the Office mailed a Notice of Abandonment.

Petitioner in the renewed petition filed November 25, 2009 and supplemented January 29, 2010 request reconsideration of the decision mailed September 28, 2009. Petitioner urges that he

responded to the Office letters of July 18, 2008 on August 16, 2008 and replied to the Office letter of September 18, 2008 on October 20, 2008.

STATUTES, REGULATIONS AND EXAMINIING PROCEDURES

35 USC §133 provides that:

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Director in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Director that such delay was unavoidable.

37 CFR §1.135(b) provides that:

(b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.
(c) When reply by the applicant is a bona fide attempt to advance the application to final action, and is substantially a complete reply to the non-final Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, applicant may be given a new time period for reply under § 1.134 to supply the omission.

DISCUSSION OF PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

Petitioner relies upon the decision rendered September 28, 2009 as support for the statement in the renewed petition that responses to the Notice of Non-Compliant Amendment were in fact filed. Petitioner states that since he has responded to all the Notice of Non-Compliant Amendments the application should not have been abandoned. Specifically, in the decision dated September 28, 2009, at page two, paragraph one, under Discussion of Petition to Withdraw the Holding of Abandonment, it is stated "A review of the file indicates that petitioner did in fact respond to the Notice of Non-Compliant Amendments."

Here petitioner has failed to appreciate the distinction between a failure to respond, and a failure to properly respond. Additionally in the decision dated September 28, 2009, petitioner was advised that the response dated March 21, 2008 and the additional response of May 23, 2008 were incomplete.

On February 25, 2008 the Office mailed a non-final Office action, which set a three month shortened statutory period to reply. The response was due May 25, 2008. On May 23, 2008 a

reply was received. A review of this reply by the examiner indicated that the reply did not constitute a proper reply and a Notice of Non-Compliant Amendment was mailed July 18, 2008. The Notice indicated that 1) the claim status was not provided, 2) the amended paragraphs in the specification did not include markings, 3) an Abstract should be presented on a separate sheet and 4) the drawings were not properly identified as Replacement Sheets, and should contain markings indicating the changes made through the amendment. The action included a reference to rule 37 CFR §1.121, Manner of making amendments in applications. Petitioner was given one (1) month or thirty days from the mailing of the notice, whichever was longer, within which to supply the omission or corrections in order to avoid abandonment. Extensions of time were available under 37 CFR §1.136(a). Petitioner timely responded on August 16, 2008 and in a communication dated September 18, 2008, petitioner was notified that the response filed was non-responsive. The Notice indicated that 1) the implied claim status was not provided, 2) the annotations in the outstanding reply must indicate markings of all amendments to the claims, 3) amended paragraphs in the specification do not include markings and 4) the drawings are properly identified in the top margin as Replacement Sheets and should contain markings indicating the changes made through the amendment. No heading and no other information should be on the Replacement Sheet for the drawing.

The Notice of September 18, 2008, again gave one (1) month or thirty (30) days from the mailing of the Notice, whichever is longer, within which to supply the omissions or corrections in order to avoid abandonment. Extensions of time may be granted under 37 CFR §1.136(a). On October 20, 2008, petitioner replied and requested withdrawal of Notice and examination of the application. No comments were submitted with regard to the formal issues raised in the September 18, 2008. Since the response was not considered to be a bona fide attempt to respond, the application was held abandoned. Specifically, petitioner neither requested deferral of the formal requirements nor supplied the requested omissions. Once an inadvertent omission is brought to the attention of petitioner, the question of inadvertence no longer exists. The response of October 20, 2008 constitutes a deliberate omission of a necessary part of a complete reply. Where there has been a deliberate omission, the practice set forth in 37 CFR §1.135(c) of the examiner setting forth a new time period for petitioner to respond and complete the reply, would not be appropriate. Hence the abandonment of this application is deemed proper.

The prior decisions which refused to withdraw the holding of abandonment in this application pursuant to 37 C.F.R §1.181 has been reconsidered. For the above reasons, the holding of abandonment will not be withdrawn.

ALTERNATIVE VENUE

Petitioner is strongly encouraged to consider filing a petition under 37 CFR §1.137(b) to revive an unintentionally abandoned application. Delay in filing such a petition may be interpreted as intentional delay which would preclude this application from being revived. This means that petitioner's continued filing of letters requesting that the holding of abandonment be withdrawn will be treated as an act of intentional delay since a final agency action has been issued.

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

(1) The reply required to the outstanding Office action or notice, unless previously filed. In nonprovisional utility application abandoned for failure to respond to a non-final Office action, the required reply may be met by filing either (A) an argument or amendment under 37 CFR §1.111 or (B) a continuing application under 37 CFR § 1.53(b).

(2) The petition fee as set forth in 37 CFR §1.17(m), currently **$810.00 for a small entity**;[1]

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

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

This decision is a final action on petitioner's request to withdraw the abandonment.

Telephone inquiries related to this decision may be directed to Thurman K. Page at (571) 272-0602.

Anthony Knight
Director
Office of Petitions
United States Patent and Trademark Office

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

[1] Fee changes do occur. Please visit the following link for up to date fee information, www.uspto.gov/about/offices/cfo/finance/fees.jsp, or call 703-786-9199.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 08-17-11

TO SPE OF : ART UNIT 1624

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/731074 Patent No.: 7507737

CofC mailroom date: 08-11-11

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

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: _____

JAMES O. WILSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

SPE

1624

Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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

GLYNNTECH, INC.
6 MINNEAKONING ROAD
FLEMINGTON NJ 08822

MAILED
APR 25 2011
OFFICE OF PETITIONS

In re Application of
Mark R. Ziegenfuss :
Application No. 11/731,079 :
Filed: March 30, 2007 :
Attorney Docket Number: MRZ- 105A :

ON PETITION

This is a decision on the petition, filed March 31, 2011 under 37 CFR 1.137(b)[1], to revive the above identified application.

The petition is **GRANTED**.

While the issue fee was paid November 22, 2010, this application became abandoned January 31, 2011 for failure to file corrected drawings in response to the Notice of Allowability mailed on October 28, 2010. Accordingly, the Notice of Abandonment was mailed on February 10, 2011.

All other requirements of 37 CFR 1.137(b) having now been met, this matter is being referred to the Publishing Division to be processed into a patent.

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

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

[1]Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

UNITED STATES PATENT AND TRADEMARK OFFICE

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

KUTA INTELLECTUAL PROPERTY LAW, LLC
P.O. Box 380808
Cambridge, MA 02238

MAILED

JAN 18 2011

OFFICE OF PETITIONS

In re Application of	:	
Jonathan Stiebel	:	
Application No. 11/731,083	:	DECISION ON PETITION
Filed: March 30, 2007	:	TO WITHDRAW
Attorney Docket No. RDB-003-P	:	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 17, 2010.

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

A review of the file record indicates that the power of attorney to Kuta Intellectual Property Law, LLC has been revoked by the applicant of the patent application on January 5, 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 Terri Johnson at 571-272-2991.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

cc: **Jonathan Stiebel**
336 Western Ave. #1
Cambridge, MA 02139

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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PRAXAIR, INC.
LAW DEPARTMENT - M1 557
39 OLD RIDGEBURY ROAD
DANBURY CT 06810-5113

MAILED
FEB 01 2012
OFFICE OF PETITIONS

In re Application of :
Lo et al. :
Application No. 11/731,106 :
Filed: March 30, 2007 :
Attorney Docket No. 21535 :
For: BONDED SPUTTERING TARGET
AND METHODS OF MANUFACTURE

ON PETITION

This is a decision on the petition under 37 CFR 1.181, filed January 6, 2012, to withdraw the holding of abandonment of the above-identified application.

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

This application was held abandoned for failure to timely respond in a timely manner to the non-final Office action, mailed March 9, 2011, which set a three (3) month period for reply. A Notice of Abandonment was mailed on January 4, 2012.

Petitioners assert that a proper response was in fact timely received in the Office on August 9, 2011. In support, petitioners submit a copy of the petition for a two month extension of time with authorization to charge required fees, a reply and amendment, and a declaration pursuant to 37 CFR 1.132, along with a copy of an itemized transmittal letter listing the aforementioned documents. The itemized transmittal letter contains a proper certificate of facsimile transmission affixed thereto.

Under 37 C.F.R. § 1.8(a)(1) correspondence is considered timely if: (1) the correspondence is mailed or transmitted prior to expiration of the set period for response by being properly addressed to the Patent and Trademark Office as set out in 37 C.F.R. § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail or transmitted to the Patent and Trademark Office in accordance with 37 C.F.R. § 1.6(d); and (2) the correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

The itemized transmittal letter bears a proper certificate of facsimile transmission, dated August 9, 2011, in compliance with the requirements of 37 C.F.R. § 1.8(a)(1) as set forth above.

In addition, petitioners have submitted an auto-reply facsimile transmission from the Office, showing that the Office received a 17 page document on August 9, 2011. The first page of the transmission is reproduced on the auto-reply facsimile transmission and it is the aforementioned itemized transmittal letter.

It is apparent the August 9, 2011 facsimile transmission was received in the Office and later misplaced.

Therefore, the response to the March 9, 2011 non-final Office action was timely filed. Accordingly, the petition is **GRANTED**, the Notice of Abandonment is hereby vacated, and the holding of abandonment withdrawn.

Deposit account no. 16-2440 will be charged the $490.00 two month extension of time fee, which should have been charged on mailroom date August 9, 2011.

After the mailing of this decision, the application file will be forwarded to Technology Center A.U. 1735 for consideration of the amendment filed on certificate of facsimile transmission date August 9, 2011 and resubmitted on January 6, 2012.

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

LAURENCE C. BONAR
917 LOGAN ST
PORT TOWNSEND WA 98368-2337

MAILED

JAN 24 2011

OFFICE OF PETITIONS

In re Application of	:	
Christopher William Pawsey	:	
Application No. 11/731,109	:	DECISION ON PETITION
Filed: March 30, 2007	:	
Attorney Docket No. PY-01	:	

This is a decision on the petition under 37 CFR 1.182, filed, June 28, 2010, to change the name of inventor "William Christopher Pawsey" to – Christopher Williams Pawsey --.

The petition is **GRANTED**.

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

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

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

/Terri Johnson/
Terri Johnson
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
11/731,109	03/30/2007	3728	667	PY-01	22	2

CONFIRMATION NO. 6807

CORRECTED FILING RECEIPT

50285
LAURENCE C. BONAR
917 LOGAN ST
PORT TOWNSEND, WA 98368-2337

OC000000045524844

Date Mailed: 01/18/2011

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

Applicant(s)

Christopher William Pawsey, Surrey, CANADA;

Power of Attorney: The patent practitioners associated with Customer Number 50285

Domestic Priority data as claimed by applicant

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)
CANADA 2,541,596 03/31/2006

If Required, Foreign Filing License Granted: 04/18/2007

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/731,109**

Projected Publication Date: Not Applicable

Non-Publication Request: No

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

Title

SHOE TAGS

Preliminary Class

036

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

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/731,116	03/30/2007	Liyu Li	23-77226-01	6940

7590 01/19/2011
KLARQUIST SPARKMAN, LLP
121 SW SALMON STREET, SUITE 1600
ONE WORLD TRADE CENTER
PORTLAND, OR 97204

EXAMINER
DUONG, THANH P

ART UNIT	PAPER NUMBER
1797	

NOTIFICATION DATE	DELIVERY MODE
01/19/2011	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

January 14, 2011

KLARQUIST SPARKMAN, LLP
121 SW SALMON STREET, SUITE 1600
ONE WORLD TRADE CENTER
PORTLAND OR 97204

In re Application of	:	
Liyu Li, et al	:	**DECISION ON PETITION**
Application No. 11731116	:	
Filed: 03/30/2007	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. **23-77226-01**	:	***DRAWINGS***

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84 (a) (2), received in the United States Patent and Trademark Office (USPTO) March 30, 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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110711

DATE : July 11, 2011

TO SPE OF : ART UNIT 2819

SUBJECT : Request for Certificate of Correction on Patent No.: 7,583,103

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:

/SHAWKI ISMAIL/
Supervisory Patent Examiner.Art Unit 2819

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BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP
1279 OAKMEAD PARKWAY
SUNNYVALE, CA 94085-4040

MAILED
JUN 30 2011
OFFICE OF PETITIONS

In re Application of	:
Anil Villait, et al.	:
Application No. 11/731,135	: DECISION ON PETITION
Filed: March 30, 2007	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No.: 2717P131	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed June 14, 2011, 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 with the petition.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

> **(1)** the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) and (iii) of the prior-filed application(s), unless previously submitted;[1]
> **(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.

[1] Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS) 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 filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (*see* § 1.14).

The granting of the petition to accept the delayed benefit claim to the prior-filed application(s) under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the prior-filed application(s). In order for this application to be entitled to the benefit of the prior-filed application(s), 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(s) should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application(s) noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

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

This application is being forwarded to Technology Center Art Unit 2448 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed application.

Inquiries concerning this decision may be directed to the undersigned at (571) 272-3204. All other inquiries concerning the status of the application should be directed to the Technology Center.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

Attachment: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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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
11/731,135	03/30/2007	2448	2880	2717P131	55	3

CONFIRMATION NO. 8264

CORRECTED FILING RECEIPT

8791
BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP
1279 OAKMEAD PARKWAY
SUNNYVALE, CA 94085-4040

OC000000048457612

Date Mailed: 06/27/2011

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)

Anil Villait, Saratoga, CA;
Nick G. Suizo, San Jose, CA;
Govind raj Desur, Cupertino, CA;
Deepika Dwivedi, San Carlos, CA;

Power of Attorney: The patent practitioners associated with Customer Number 45220

Domestic Priority data as claimed by applicant

This application is a CIP of 11/147,143 06/07/2005

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: 04/19/2007

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/731,135**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Port management system

Preliminary Class

709

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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LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

MAILED

JUL 28 2011

OFFICE OF PETITIONS

In re Application of	:	
Ken Ota	:	
Application No. 11/731,169	:	DECISION ON PETITION
Filed: March 29, 2007	:	
Attorney Docket No. **09546.0040-00**	:	

This is a decision on the petition, filed May 18, 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 was held abandoned for failure to reply in a timely manner to the non-final Office action mailed October 1, 2010, which set a shortened statutory period for reply of three (3) months for reply. The Notice of Abandonment was mailed on April 28, 2011.

Petitioner asserts that the Office action dated October 1, 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 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 the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

(2) Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's

record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received.

(3) A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required. A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the **master docket report** showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question. See MPEP §711.03(c)(I)(A).

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.

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

This application is being referred to the Technology Center technical support staff of Art Unit 2625 for **re-mailing** the Office action of October 1, 2010. The period for reply will run from the mailing date of the Office action.

/Ramesh Krishnamurthy/
Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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GENENTECH, INC.
PATENT LAW DEPT. M/S 49
1 DNA WAY
SOUTH SAN FRANCISCO CA 94080-4990

MAILED
SEP 30 2010
OFFICE OF PETITIONS

In re Application of	:	
Michael Martin	:	
Application No. 11/731,183	:	DECISION ON PETITION
Filed: March 30, 2007	:	
Attorney Docket No. R0282B-REG	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 20, 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 November 18, 2009, is accepted as having been unintentionally delayed.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

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

This application is being referred to Technology Center AU 1626 for appropriate action by the Examiner in the normal course of business on the reply received July 20, 2010 and on April 1, 2010.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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P.O. BOX 889
BELMONT CA 94002-0889

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FEB 06 2012

OFFICE OF PETITIONS

In re Application
Mark Kay et al.
Application No. 11/731,198
Filed: March 30, 2007
Attorney Docket No.
58600--8242.US00

: DECISION ON APPLICATION
: FOR PATENT TERM ADJUSTMENT

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT filed January 18, 2012. Applicants request that the determination of patent term adjustment be corrected from 0 days to 18 days.

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

On October 19, 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 0 days. The instant application for patent term adjustment was timely filed[1]. Applicants dispute the reduction of 108 days of PTA for the filing of a response to the Restriction Requirement mailed November 7, 2008.

A review of the record reveals that on December 8, 2008 Applicants filed a response to the Restriction Requirement mailed November 7, 2008. Thereafter, a Notice of Non-Compliant Amendment was mailed February 26, 2009 to which Applicants filed a response on March 26, 2009. Applicants argue that the reduction in the amount of 108 as determined by the office is in error and that instead the reduction should be 47 days for the response filed March 26, 2009.

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

Pursuant to 37 CFR § 1.704(c), circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

---

[1] PALM records indicate that the Issue Fee was also received on January 18, 2012.

(7) Submission of a reply having an omission (§1.135(c)), in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed;

It is undisputed that a reply was filed on December 8, 2008 however, that reply had an omission and the omission was corrected on March 26, 2009, one hundred eight (108) days after the filing of the initial response on December 8, 2008. Therefore the reduction is proper.

In view thereof, it is concluded that the determination of patent term adjustment at the time of the mailing of the Notice of Allowance is 0 days.

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

In view thereof, the patent term adjustment at the time of mailing of the notice of allowance remains 0 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 of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

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

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. BOX 889
BELMONT CA 94002-0889

MAILED

MAR 12 2012

OFFICE OF PETITIONS

In re Patent No. 8,129,510
Issued: March 6, 2012
Application No. 11/731,198
Filed: March 30, 2007
Attorney Docket No.
58600--8242.US00

: DECISION ON APPLICATION
: FOR PATENT TERM ADJUSTMENT

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d) AFTER PATENT ISSUANCE, filed March 6, 2012. Applicants request that the determination of patent term adjustment be corrected from 0 days to 18 days.

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

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

The patent term adjustment indicated in the patent is properly reflected.

On renewed petition, patentee continues to maintain for the reasons set forth in the initial petition that the Office incorrectly calculated Applicant delay.

On March 6, 2012, the above-identified application matured into U.S. Patent No. 8,129,510 with a patent term adjustment of 0 days. Prior to issuance, patentees timely submitted an application for patent term adjustment (with required fee), under 37 CFR 1.705(b), disputing the reduction of 108 days of PTA for the filing of a response to the Restriction Requirement mailed November 7, 2008.

Patentees argument was considered but not found persuasive and thus the petition was dismissed in a decision mailed February 6, 2012.

Patentees renew their argument that "applicants' initial response was timely filed on December 8, 2008 (December 7, 2008 was a Sunday), but was considered non-compliant in the Office Action mailed February 26, 2009. Citing 37 C.F.R. §1.704(c), the Office errs in counting Applicants' delay beginning on the day after the

date the reply having an omission was filed (December 8, 2008) and ending on the date that the reply or other paper correcting the omission was filed, March26, 2009. Thus, the Office has recorded a debit of 108 days for this period. However, Applicants are entitled to a full three-months to respond before invoking a reduction in patent term. See 37 C.F.R. §1.704(b):

> (b)With respect to the grounds for adjustment set forth in §§ 1.702(a) through (e), and in particular the ~ound of adjustment set forth in § 1.702(b), an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph. (emphasis added).

Patentee argues further that "The three-month shortened statutory period for reply to the Requirement for Restriction expired on 7 February 2009, and thus, the period of Applicants' delay is to be calculated from the day after the expiry of the shortened statutory period for reply, 8 February 2009, until the date that the correction to the omission was filed on 26 March 2009. Thus, Applicants' delay resulted in a debit of 47 days."

A review of the record reveals that on December 8, 2008 Applicants filed a response to the Restriction Requirement mailed November 7, 2008. Thereafter, a Notice of Non-Compliant Amendment was mailed February 26, 2009 to which Applicants filed a response on March 26, 2009. Applicants argue that the reduction in the amount of 108 as determined by the office is in error and that instead the reduction should be 47 days for the response filed March 26, 2009.

As noted in the prior decision, pursuant to 37 CFR § 1.704(c), circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

> (7) Submission of a reply having an omission (§1.135(c)), in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days,

if any, beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed;

It is undisputed that a reply was filed on December 8, 2008, timely pursuant to 37 CFR 1.704(b), however, that reply had an omission and the omission was corrected on March 26, 2009, one hundred eight (108) days after the filing of the initial response on December 8, 2008. Therefore the reduction is proper.

In view thereof, it is concluded that the determination of patent term adjustment at the time of the mailing of the Notice of Allowance is 0 days.

No additional arguments have been presented for reconsideration. The decision of February 6, 2012 with respect to the correctness of the calculation of Applicant delay is affirmed.

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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BRYAN S. REDDING
PO BOX 1077
WESTFIELD, IN 46074

MAILED
NOV 18 2010
OFFICE OF PETITIONS

In re Application of	:	
Mike Barger	:	
Application No. 11/731,278	:	ON PETITION
Filed: March 30, 2007	:	
Attorney Docket No. None	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 25, 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 2, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on July 3, 2009. A Notice of Abandonment was mailed October 27, 2009.

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

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

This application is being referred to Technology Center 2612 for further examination on the merits

A. Kelley

Alicia Kelley
Petitions Examiner
Office of Petitions

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Bryan S. Redding
PO Box 1077
Westfield IN 46074

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OCT 06 2011

OFFICE OF PETITIONS

In re Application of	:	
Mike Barger	:	
Application No. 11/731,278	:	DECISION ON PETITION
Filed: March 30, 2007	:	
Attorney Docket No.	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 23, 2011, to revive the above-identified application.

The petition is **DISMISSED**.

The petition can not be granted at this time because the incorrect petition form was used (PTO/SB64a). Please submit a renewed petition using the correct petition form no. PTO/SB/64, a petition to revive an unintentionally abandoned application.

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

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

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

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

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

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

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	11731278
Filing Date	30-Mar-2007
First Named Inventor	Mike Barger
Art Unit	2612
Examiner Name	PHUNG NGUYEN
Attorney Docket Number	
Title	AIR CONDITIONER ANTI-THEFT

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:
(1) Petition fee;
(2) Reply and/or issue fee;
(3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995; and for all design applications;
(4) Statement that the entire delay was unintentional.

Petition fee
The petition fee under 37CFR 1.17(m) is attached.

☐ Applicant claims SMALL ENTITY status. See 37 CFR 1.27.

☐ Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

☒ Applicant(s) status remains as SMALL ENTITY.

☐ Applicant(s) status remains as other than SMALL ENTITY.

Issue Fee and Publication Fee :

Issue Fee and Publication Fee are not due.

☒ Issue Fee Transmittal is attached

Drawing corrections and/ or other deficiencies.

- (●) Drawing corrections and/ or other deficiencies are not required
- ( ) I certify, in accordance with 37 CFR 1.4.(D)(4), that drawing corrections and/ or other deficiencies have previously been filed on
- ( ) Drawing corrections and/ or other deficiencies are attached.

☒ STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

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

- (●) An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application.
- ( ) An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity.
- ( ) A sole inventor
- ( ) A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors.
- ( ) A joint inventor; all of whom are signing this e-petition.
- ( ) The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71.

Signature	/Bryan S. Redding/
Name	Bryan S. Redding
Registration Number	47889

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Decision Date : February 2, 2012

In re Application of :

Mike Barger

Application No : 11731278

Filed : 30-Mar-2007

Attorney Docket No :

DECISION ON PETITION

UNDER CFR 1.137(b)

This is an electronic decision on the petition under 37 CFR 1.137(b), filed February 2, 2012 , to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Allowance and Issue Fee(s) Due. The date of abandonment is the day after the expiration date of the period set for reply in the Notice.

The electronic petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of payment of the Issue Fee and the Publication Fee (if necessary); (2) the petition fee as set forth in 37 CFR 1.17 (m); (3) the drawing correction and/or other deficiencies (if necessary); and (4) the required statement of unintentional delay have been received. Accordingly, the Issue Fee payment is accepted as having been unintentionally delayed.

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

This application file is being directed to the Office of Data Management.

Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Decision Date : February 3, 2012

In re Application of :

Tyron Stading

Application No : 11731349

Filed : 30-Mar-2007

Attorney Docket No : 3025.002US1

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY/AGENTOF RECORD

This is an electronic decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed February 3, 2012

The request is **APPROVED.**

The request was signed by Paul J. Polansky (registration no. 33992) on behalf of all attorneys/agents associated with Customer Number 89320 . All attorneys/agents associated with Cusotmer Number 89320 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	Innography, Inc.
Name2	Tyron Jerrod Stading
Address 1	1221 S. MOPAC Expy.
Address 2	Suite 250
City	Austin
State	TX
Postal Code	78746
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	11731349
Filing Date	30-Mar-2007
First Named Inventor	Tyron Stading
Art Unit	2165
Examiner Name	CHRISTYANN PULLIAM
Attorney Docket Number	3025.002US1
Title	System and methods of query refinement

◉ Please withdraw me as attorney or agent for the above identified patent application and the practitioners of record associated with Customer Number: 89320

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	Innography, Inc. Tyron Jerrod Stading
Address	1221 S. MOPAC Expy. Suite 250
City	Austin
State	TX
Postal Code	78746
Country	US

I am authorized to sign on behalf of myself and all withdrawing practitioners.	
Signature	/paul j. polansky/
Name	Paul J. Polansky
Registration Number	33992

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Fellers, Snider, Blankenship,
Bailey & Tippens
Suite 1700
100 North Broadway
Oklahoma City OK 73102-8820

MAILED
SEP 20 2010
OFFICE OF PETITIONS

In re Application of :
Smith et al. :
Application No. 11/731,368 :
Filed: March 29, 2007 :
Attorney Docket No. STL13495 :
Title: MEASUREMENT OF TEST :
OBJECT WITH STACKED FEATURES :

ON APPLICATION FOR
PATENT TERM ADJUSTMENT

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN NOTICE OF ALLOWANCE (37 CFR § 1.705)" filed July 28, 2010. This petition is properly treated under 37 CFR 1.705(b). Applicants submit that the correct patent term adjustment to be indicated on the patent is seven hundred thirty-one (731) days, not six hundred forty-four (644) 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].

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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

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

---

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

OCT 12 2010

OFFICE OF PETITIONS

Mauriel Kapouytian & Treffert LLP
151 1st Avenue
#23
New York NY 10003

In re Application of	:	
HYDER, Adam et al.	:	
Application No. 11/731,369	:	DECISION ON PETITION
Filed: March 29, 2007	:	TO WITHDRAW
Attorney Docket No. **10033-2005700**	:	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 22, 2010.

The request is **NOT APPROVED**.

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

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office requires the practitioner(s) requesting withdrawal to certify that he, she, or they have: (1) given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any responses that may be due and the time frame within which the client must respond, pursuant 37 CFR 10.40(c).

The request cannot be approved because no change of address was 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 Tredelle Jackson 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

JACKSON WALKER LLP
112 E. PECAN
SUITE 2400
SAN ANTONIO TX 78205

MAILED
NOV 17 2011
OFFICE OF PETITIONS

In re Application of	:	
BYRON, et al	:	
Application No. 11/731,375	:	DECISION ON PETITION
Filed: March 30, 2007	:	
Docket No. P-130783(UTI)	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 27, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, April 11, 2011, which set a shortened statutory period for reply of **three (3) months**. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on July 12, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $930; and (3) and the required 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.

All other inquiries should be directed to the Technology Center at (571) 272-3600.

This application is being referred to Technology Center AU 3652 for appropriate action by the Examiner in the normal course of business.

/Diane Goodwyn/
Diane Goodwyn
Petitions Examiner
Office of Petitions

cc: THOMAS E. SISSON
202 E. HOUSTON STREET, SUITE 502
SAN ANTONIO, TX 78205

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	11731376
Filing Date	30-Mar-2007
First Named Inventor	Tyron Stading
Art Unit	2157
Examiner Name	ANTENEH GIRMA
Attorney Docket Number	3025.001US1
Title	System and methods of searching data sources

◉ Please withdraw me as attorney or agent for the above identified patent application and the practitioners of record associated with Customer Number: 89320

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	Innography, Inc. Tyron Jerrod Stading
Address	1221 S. MOPAC Expy. Suite 250
City	Austin
State	TX
Postal Code	78746
Country	US

I am authorized to sign on behalf of myself and all withdrawing practitioners.	
Signature	/paul j. polansky/
Name	Paul J. Polansky
Registration Number	33992

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Decision Date : February 3, 2012

In re Application of :

Tyron Stading

Application No : 11731376

Filed : 30-Mar-2007

Attorney Docket No : 3025.001US1

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY/AGENTOF RECORD

This is an electronic decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed February 3, 2012

The request is **APPROVED.**

The request was signed by Paul J. Polansky (registration no. 33992) on behalf of all attorneys/agents associated with Customer Number 89320 . All attorneys/agents associated with Cusotmer Number 89320 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	Innography, Inc.
Name2	Tyron Jerrod Stading
Address 1	1221 S. MOPAC Expy.
Address 2	Suite 250
City	Austin
State	TX
Postal Code	78746
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	11731377
Filing Date	30-Mar-2007
First Named Inventor	Tyron Stading
Art Unit	2165
Examiner Name	POLINA PEACH
Attorney Docket Number	3025.003US1
Title	System and method of goal-oriented searching

◉ Please withdraw me as attorney or agent for the above identified patent application and the practitioners of record associated with Customer Number: 89320

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	Innography, Inc. Tyron Jerrod Stading
Address	1221 S. MOPAC Expy. Suite 250
City	Austin
State	TX
Postal Code	78746
Country	US

I am authorized to sign on behalf of myself and all withdrawing practitioners.	
Signature	/paul j. polansky/
Name	Paul J. Polansky
Registration Number	33992

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Decision Date : February 3, 2012

In re Application of :

Tyron Stading

Application No : 11731377

Filed : 30-Mar-2007

Attorney Docket No : 3025.003US1

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY/AGENTOF RECORD

This is an electronic decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed February 3, 2012

The request is **APPROVED.**

The request was signed by Paul J. Polansky (registration no. 33992) on behalf of all attorneys/agents associated with Customer Number 89320 . All attorneys/agents associated with Cusotmer Number 89320 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	Innography, Inc.
Name2	Tyron Jerrod Stading
Address 1	1221 S. MOPAC Expy.
Address 2	Suite 250
City	Austin
State	TX
Postal Code	78746
Country	US

As a reminder, requester is required to inform the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71 of the electronically processed petition.

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

Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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POLANSKY & ASSOCIATES, P.L.L.C.
12117 FM 2244 3-160
AUSTIN, TX 78738

MAILED
FEB 10 2012
OFFICE OF PETITIONS

In re Application of	:	
STADING	:	
Application No. 11/731,377	:	DECISION ON PETITION
Filed: March 30, 2007	:	TO WITHDRAW
Attorney Docket No. 3025.003US1	:	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 6, 2012.

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

A review of the file record indicates that the power of attorney to Paul J. Polansky, has been previously withdrawn from record on February 3, 2012. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

/Diane Goodwyn/
Diane Goodwyn
Petitions Examiner
Office of Petitions

cc: INNOGRAPHY, INC.
1221 S. MOPAC EXPY., SUITE 250
AUSTIN, TX 78746

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	11731378
Filing Date	30-Mar-2007
First Named Inventor	Tyron Stading
Art Unit	2166
Examiner Name	USMAAN SAEED
Attorney Docket Number	3025.005US1
Title	System and method of presenting search results

◉ Please withdraw me as attorney or agent for the above identified patent application and the practitioners of record associated with Customer Number: 89320

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	Innography, Inc. Tyron Jerrod Stading
Address	1221 S. MOPAC Expy. Suite 250
City	Austin
State	TX
Postal Code	78746
Country	US

I am authorized to sign on behalf of myself and all withdrawing practitioners.	
Signature	/paul j. polansky/
Name	Paul J. Polansky
Registration Number	33992

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Decision Date : February 3, 2012

In re Application of :

Tyron Stading

Application No : 11731378

Filed : 30-Mar-2007

Attorney Docket No : 3025.005US1

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY/AGENTOF RECORD

This is an electronic decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed February 3, 2012

The request is **APPROVED.**

The request was signed by Paul J. Polansky (registration no. 33992) on behalf of all attorneys/agents associated with Customer Number 89320 . All attorneys/agents associated with Cusotmer Number 89320 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	Innography, Inc.
Name2	Tyron Jerrod Stading
Address 1	1221 S. MOPAC Expy.
Address 2	Suite 250
City	Austin
State	TX
Postal Code	78746
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

Approved
O.P.
1/24/2011

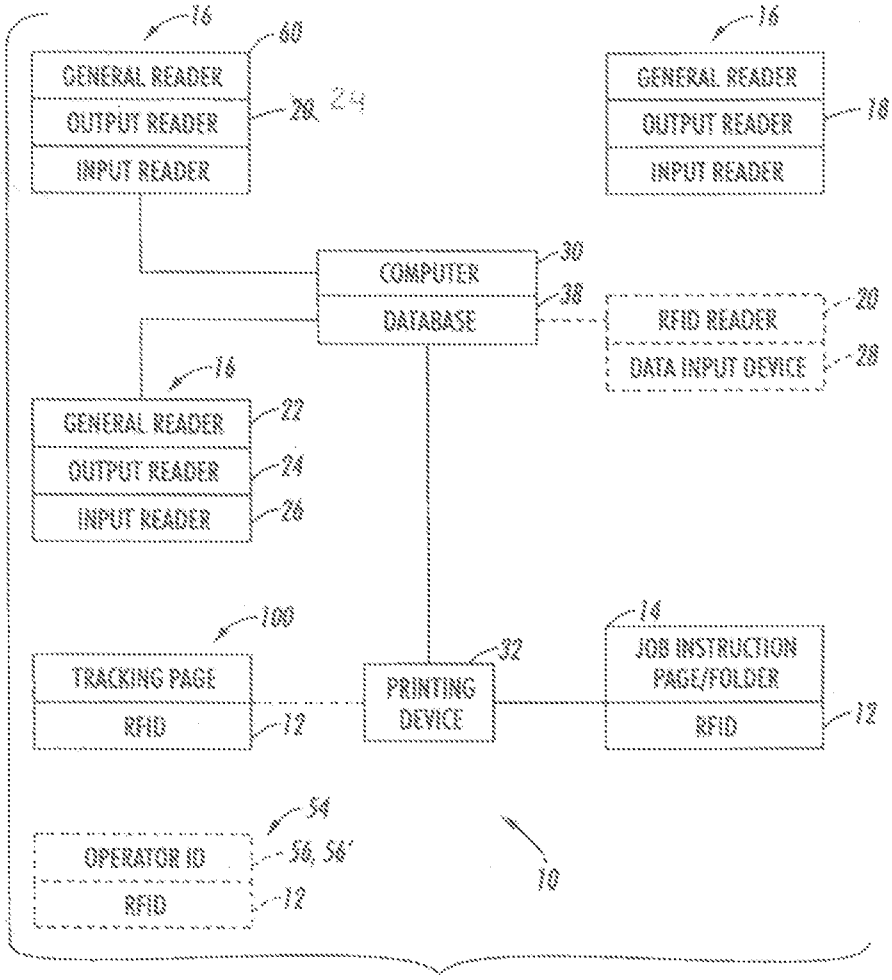

FIG. 1

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

Yudell Isidore Ng Russell PLLC
8911 N. Capital of Texas Hwy.,
Suite 2110
Austin TX 78759

MAILED
JAN 18 2012
OFFICE OF PETITIONS

In re Application of :
McQuade :
Application No. 11/731,453 : DECISION ON PETITION
Filed: March 30, 2007 :
Attorney Docket No. 000031-0002001US :

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

The petition is **DISMISSED.**

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

This above-identified application became abandoned for failure to timely file a reply to the non-final Office action mailed April 7, 2008. The non-final Office action set a three (3) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on July 8, 2008. A Notice of Abandonment was mailed on October 21, 2008.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either

the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. *See* MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item (3).

As to item (3), there are three periods to be considered during the evaluation of a petition under 37 CFR 1.137(b):

(1) the delay in reply that originally resulted in the abandonment;

(2) the delay in filing an initial petition pursuant to 37 CFR 1.137(b) to revive the application; and

(3) the delay in filing a grantable petition pursuant to 37 CFR 1.137(b) to revive the application.

Currently, the delay has not been shown to the satisfaction of the Director to be unintentional for periods (1) and (2).

<u>As to Period (1)</u>:

The patent statute at 35 U.S.C. § 41(a)(7) authorizes the Director to revive an "unintentionally abandoned application." The legislative history of Public Law 97-247 reveals that the purpose of 35 U.S.C. § 41(a)(7) is to permit the Office to have more discretion than in 35 U.S.C. §§ 133 or 151 to revive abandoned applications in appropriate circumstances, but places a limit on this discretion, stating that "[u]nder this section a petition accompanied by either a fee of $500 or a fee of $50 would not be granted where the abandonment or the failure to pay the fee for issuing the patent was intentional as opposed to being unintentional or unavoidable." [emphasis added]. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6-7 (1982), reprinted in 1982 U.S.C.C.A.N. 770-71. The revival of an intentionally abandoned application is antithetical to the meaning and intent of the statute and regulation.

35 U.S.C. § 41(a)(7) authorizes the Director to accept a petition "for the revival of an unintentionally abandoned application for a patent." As amended December 1, 1997, 37 CFR 1.137(b)(3) provides that a petition under 37 CFR 1.137(b) must be accompanied by a statement that the delay was unintentional, but provides that "[t]he Commissioner may require additional information where there is a question whether the delay was unintentional." Where, as here, there is a question whether the initial delay was unintentional, the petitioner must meet the burden of establishing that the delay was unintentional within the meaning of 35 U.S.C. § 41(a)(7) and 37 CFR 1.137(b). See In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989); 37

CFR 1.137(b). Here, in view of the inordinate delay (over three years) in resuming prosecution, there is a question whether the entire delay was unintentional. Petitioner should note that the issue is not whether some of the delay was unintentional by any party; rather, the issue is whether the entire delay has been shown to the satisfaction of the Director to be unintentional.

The question under 37 CFR 1.137(b) for period (1) is whether the delay on the part of the party having the right or authority to reply to avoid abandonment (or not reply) was unintentional. Accordingly, any renewed petition must clearly identify the party having the right to reply to avoid abandonment on July 8, 2008. That party, in turn must explain what effort(s) was made to further reply to the outstanding Office action and, further, why no reply was filed. If no effort was made to further reply, then that party must explain why the delay in this application does not result from a deliberate course of action (or inaction). Likewise, an explanation why this application became abandoned while it was under their control and what efforts attorney Young made to reply. Copies of any correspondence relating to the filing, or to not filing a further reply to the outstanding Office action are required from responsible person(s) and whoever else was involved with this application at the time of abandonment. Statements are required from any and all persons having firsthand knowledge of the circumstances surrounding the lack of a reply to the outstanding Office action.

As the courts have made clear, it is pointless for the USPTO to revive a long abandoned application without an adequate showing that the delay did not result from a deliberate course of action. See Lawman Armor v. Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633 (DC EMich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005); Lumenyte Int'l Corp. v. Cable Lite Corp., Nos. 96-1011, 96-1077, 1996 U.S. App. LEXIS 16400, 1996 WL 383927 (Fed. Cir. July 9, 1996) (unpublished) (patents held unenforceable due to a finding of inequitable conduct in submitting an inappropriate statement that the abandonment was unintentional).

<u>As to Period (2):</u>

Likewise, where the applicant deliberately chooses not to seek or persist in seeking the revival of an abandoned application, or where the applicant deliberately chooses to delay seeking the revival of an abandoned application, the resulting delay in seeking revival of the abandoned application cannot be considered as "unintentional" within the meaning of 37 CFR 1.137(b). *See* MPEP 711.03(c).

The language of both 35 U.S.C. § 41(a)(7) and 37 CFR 1.137(b) are clear and unambiguous, and, furthermore, without qualification. That is, the delay in filing the reply during prosecution, as well as in filing the petition seeking revival, must have been, without qualification, "unintentional" for the reply to now be accepted on petition. The Office requires that the entire delay be at least unintentional as a prerequisite to revival of an abandoned application to prevent abuse and injury to the public. *See* H.R. Rep. No. 542, 97th Cong., 2d Sess. 7 (1982), reprinted in 1982 U.S.C.C.A.N. 771 ("[i]n order to prevent abuse and injury to the public the Commissioner . . . could require applicants to act promptly after becoming aware of the abandonment"). The December 1997 change to 37 CFR 1.137 did not create any new right to overcome an intentional delay in seeking revival, or in renewing an attempt at seeking revival, of an abandoned application. *See* Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53160 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 87 (October 21, 1997), which clearly stated that any protracted delay (here, over 3 years) could trigger, as here, a request for additional information. As the courts have since made clear, a protracted delay in seeking revival, as here, requires a petitioner's detailed explanation seeking to excuse the delay as opposed to USPTO acceptance of a general allegation of unintentional delay. *See* Lawman Armor v. Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633, at 1637-8 (DC EMich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005) at *21-*23. Statements are required from any and all persons having firsthand knowledge of the circumstances surrounding the protracted delay, after the abandonment date, in seeking revival.

As noted in MPEP 711.03(c)(II), subsection D, in instances in which such petition was not filed within 1 year of the date of abandonment of the application, applicants should include:

> (A) the date that the applicant first became aware of the abandonment of the application; and
> (B) a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant.

In either instance, applicant's failure to carry the burden of proof to establish that the "entire" delay was "unavoidable" or "unintentional" may lead to the denial of a petition under 37 CFR 1.137(b), regardless of the circumstances that originally resulted in the abandonment of the application. *See also* New York University v. Autodesk, 2007 U.S. DIST LEXIS, U.S.District LEXIS 50832, *10 -*12 (S.D.N.Y. 2007)(protracted delay in seeking revival undercuts assertion of unintentional delay).

Any renewed petition may be addressed as follows:

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

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

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

Correspondence regarding this decision may also be filed through the electronic filing system of the USPTO.

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

Charlema Grant
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

Yudell Isidore Ng Russell PLLC
8911 N. Capital of Texas Hwy.,
Suite 2110
Austin TX 78759

MAILED
MAR 05 2012
OFFICE OF PETITIONS

In re Application of
McQuade
Application No. 11/731,453
Filed: March 30, 2007
Attorney Docket No. 000031-0002001US

DECISION ON PETITION

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed February 26, 2012, to revive the above-identified application.

The petition is **GRANTED**.

This above-identified application became abandoned for failure to timely file a reply to the non-final Office action mailed April 7, 2008. The non-final Office action set a three (3) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on July 8, 2008. A Notice of Abandonment was mailed on October 21, 2008. A petition filed under 37 CFR 1.137(b) was dismissed on January 17, 2012.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment (2) the petition fee of $930.00, and (3) a statement of unintentional delay.

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

This application is being referred to Technology Center AU 2829 for appropriate action by the Examiner in the normal course of business on the reply received

Charlema Grant
Attorney Advisor
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Alexandria, VA 22313-1450
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CATERPILLAR INC.
INTELLECTUAL PROPERTY DEPT.
AH 9510
100 N.E. ADAMS STREET
PEORIA, IL 61629-9510

MAILED
MAY 12 2011
OFFICE OF PETITIONS

In re Application of	:	
Christopher A. Kinney	:	
Application No. 11/731,459	:	ON PETITION
Filed: March 30, 2007	:	
Attorney Docket No.: 06-375	:	

This is a decision in response to the petition, filed March 10, 2011, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is not signed by a registered practitioner of record. However, in accordance with 37 CFR 1.34(a), the signature of Michael B. McNeil 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 petitioner; however, if petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. Unless otherwise directed, all future correspondence regarding this application file will be directed solely to the address of record.

The petition is **DISMISSED**.

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

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

It is noted that an amendment in response to the final Office action mailed August 19, 2010, was included with the petition filed on March 10, 2011; however, the amendment is considered non-responsive, since it did not place the application in condition for allowance. See the attached Advisory Action. The proposed reply required for consideration of a petition to revive this application must be a Notice of Appeal (and appeal fee required by 37 CFR 1.17(b)), an amendment that *prima facie* places the application in condition for allowance, or the filing of a submission under 37 CFR 114 (RCE) or a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2).

Further correspondence with respect to this matter should be delivered through one of the following mediums:

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

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

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

By Internet: EFS-Web[1]

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

Attachment: Advisory Action

cc: MICHAEL B. MCNEIL
511 S. MADISON STREET, P.O. BOX 2417
BLOOMINGTON, IN 47402

[1] www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

Advisory Action Before the Filing of an Appeal Brief	Application No. 11/731,459	Applicant(s) KINNEY, CHRISTOPHER A.	
	Examiner Adam C. Krupicka	Art Unit 1784	

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

THE REPLY FILED 10 March 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☒ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: *See Continuation Sheet*. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

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

REQUEST FOR RECONSIDERATION/OTHER

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

/Timothy M. Speer/
Primary Examiner, Art Unit 1784

Continuation of 3. NOTE: Applicants have amended claim 13 to require that the second component portion has a thermal fatigue strength greater than a thermal fatigue strength of the first component, which may raise issues of new matter, where support could not be readily found in the original disclosure. Additionally, this limitation was not previously presented and, accordingly, requires further consideration and/or search.

Continuation of 11. does NOT place the application in condition for allowance because: Applicants have amended the present claims and added new claim 22, presenting limitations which have not previously been considered and which require new search and consideration. Given the non-entry of the proposed amendment to the claims, applicants' remarks have not been found to be persuasive.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	
	)	
Kinney	)	Art Unit: 1794
	)	
Application No.: 11/731,459	)	Examiner: Krupicka, Adam C.
	)	
Filed: March 30, 2007	)	Confirmation No.: 8953
	)	
For: METHOD FOR CASTING A COMPONENT	)	Atty Docket No: 06-375

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

AMENDMENT AND RESPONSE TO OFFICE ACTION

Further to the Office Action of August 19, 2010, Applicant submits the following Amendment and Response, including each of the listed items beginning on a separate sheet:

1. List of Claims; and
2. Remarks.

DO NOT ENTER
/ACK/
04/27/2011

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PEORIA IL 61629-9510

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JUN 14 2011

OFFICE OF PETITIONS

In re Application of	:	
Christopher A. Kinney	:	
Application No. 11/731,459	:	ON PETITION
Filed: March 30, 2007	:	
Attorney Docket No.: 06-375	:	

This is a decision on the renewed petition under 37 CFR 1.137(b), filed May 20, 2011, to revive the above-identified application.

The petition is not signed by an attorney of record. However, in accordance with 37 CFR 1.34(a), the signature of Jonathan F. Yates appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that petitioner is authorized to represent the particular party on whose behalf he acts.

The petition 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 August 19, 2010, which set a shortened statutory period for reply of three (3) months. On March 10, 2011, the present petition was filed; however, the petition was dismissed in a decision mailed May 11, 2011. On May 20, 2011, the present petition was filed..

The renewed petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE), including the fee of $810 and the submission required by 37 CFR 1.114; (2) the petition fee of $1,6200; and (3) an adequate statement of unintentional delay[1].

[1] 37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. While 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.

This application is being referred to Technology Center AU 1784 for processing of the RCE in accordance with 37 CFR 1.114.

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

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

Doc Code: PET.AUTO **Document Description: Petition automatically granted by EFS-Web**	PTO/SB/83 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	**REQUEST FOR WITHDRAWAL AS ATTORNEY OR AGENT AND CHANGE OF CORRESPONDENCE ADDRESS**
Application Number	11731471
Filing Date	30-Mar-2007
First Named Inventor	Tyron Stading
Art Unit	2175
Examiner Name	THANH VU
Attorney Docket Number	3025.004US1
Title	SYSTEM AND METHOD OF PRESENTING SEARCH RESULTS

◉ Please withdraw me as attorney or agent for the above identified patent application and the practitioners of record associated with Customer Number: 89320

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	Innography, Inc. Tyron Jerrod Stading
Address	1221 S. MOPAC Expy. Suite 250
City	Austin
State	TX
Postal Code	78746
Country	US

I am authorized to sign on behalf of myself and all withdrawing practitioners.	
Signature	/paul j. polansky/
Name	Paul J. Polansky
Registration Number	33992

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Decision Date : February 3, 2012

In re Application of :

Tyron Stading

Application No : 11731471

Filed : 30-Mar-2007

Attorney Docket No : 3025.004US1

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY/AGENTOF RECORD

This is an electronic decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed February 3, 2012

The request is **APPROVED.**

The request was signed by Paul J. Polansky (registration no. 33992) on behalf of all attorneys/agents associated with Customer Number 89320 . All attorneys/agents associated with Cusotmer Number 89320 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	Innography, Inc.
Name2	Tyron Jerrod Stading
Address 1	1221 S. MOPAC Expy.
Address 2	Suite 250
City	Austin
State	TX
Postal Code	78746
Country	US

As a reminder, requester is required to inform the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71 of the electronically processed petition.

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

Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
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www.uspto.gov

Cesari & Reed, L.L.P.
P.O. Box 9669
Austin TX 78766

MAILED

APR 06 2012

OFFICE OF PETITIONS

In re Application of:	:	
Tyron Standing	:	
Application No. 11/731,471	:	ON PETITION
Filed: March 30, 2007	:	
Attorney Docket No. **3025.004US1**	:	

This is a decision on the petition filed March 7, 2012, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

Petitioner states that the correct assignee's name is "Innography, Inc.." 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.

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

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

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

The request was accompanied by a certificate of correction (and fee) as required by 3.81(b). Further, Office assignment records reflect that "Innography Inc." 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.

Telephone inquiries concerning this decision may be directed to the JoAnne Burke at (571) 272-4584. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

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

JoAnne Burke
Petitions Examiner
Office of Petitions

UNITED STATES 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
SEP 26 2011
OFFICE OF PETITIONS

In re Application of	:	
Raj Vasant	:	
Application No. 11/731,489	:	DECISION ON PETITION
Filed: March 29, 2007	:	TO WITHDRAW
Attorney Docket No. DMP 0012	:	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 16, 2011.

The request is **NOT APPROVED.**

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

Accordingly, the request to withdraw from record cannot be approved because a 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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 05102011

DATE : April 28, 2011

TO SPE OF : ART UNIT 12882

SUBJECT : Request for Certificate of Correction for Appl. No 11/731,612 .: 7680240 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 Johnson
Certificates of Correction Branch
571 272-0470

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: _____

/Edward J Glick/
SPE

GAU 2882
Art Unit

PALM INTRANET

Day : Tuesday
Date: 11/22/2011
Time: 11:05:02

Inventor Name Search

Enter the first few letters of the Inventor's Last Name.
Additionally, enter the first few letters of the Inventor's First name.

Last Name	First Name	
VIVENZIO	ROB	Search

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GOOGLE, INC.
C/O PARK, VAUGHAN & FLEMING LLP
2820 FIFTH STREET
DAVIS, CA 95618

MAILED
NOV 16 2010
OFFICE OF PETITIONS

In re Application of :
Michael Pinkerton et al :
Application No. 11/731,662 :
Filed: March 30, 2007 :
Attorney Docket No. GGL-1122-00-US

ON PETITION

This is a decision on the petition, filed November 12, 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 4, 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 2158 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed amendment.

/Irvin Dingle/
Irvin Dingle
Petitions Examiner
Office of Petitions

---

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

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PROCOPIO, CORY, HARGREAVES & SAVITCH LLP
525 B STREET
SUITE 2200
SAN DIEGO CA 92101

MAILED

AUG 30 2010

OFFICE OF PETITIONS

In re Application of	:	
Reza Majidi-Ahy et al.	:	
Application No. 11/731,732	:	DECISION ON PETITION
Filed: March 30, 2007	:	
Attorney Docket No. 112174-080UTL	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 2, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed September 4, 2008, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on December 5, 2008. A Notice of Abandonment was mailed on April 6, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1,620 and (3) a proper statement of unintentional delay. Accordingly, the amendment is accepted as being unintentionally delayed.

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

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

This application is being referred to Technology Center AU 2419 for appropriate action by the Examiner in the normal course of business on the reply received July 2, 2010.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

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P.O. Box 1450
Alexandria, VA 22313-1450
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LEE & HAYES, PLLC
601 W RIVERSIDE
SUITE 1400
SPOKANE, WA 99201

MAILED

MAR 21 2011

OFFICE OF PETITIONS

In re Application of
Alexander J. Cohen, et al.
Application No. 11/731,738
Filed: March 30, 2007
Attorney Docket No. QQ1-0087US

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 January 26, 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.

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, since the request to withdraw from record does not include an acceptable current correspondence address for future communications from the Office, the request cannot be granted at the present time.

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

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

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

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

cc: MARGARET ANDERSON
106 E. 6TH STREET
SUITE 900
AUSTIN, TX 78701

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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LEE & HAYES, PLLC
601 W RIVERSIDE
SUITE 1400
SPOKANE, WA 99201

MAILED
MAR 21 2011
OFFICE OF PETITIONS

In re Application of
Alexander J. Cohen, et al.
Application No. 11/731,795
Filed: March 30, 2007
Attorney Docket No. QQ1-0088US

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 January 26, 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.

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, since the request to withdraw from record does not include an acceptable current correspondence address for future communications from the Office, the request cannot be granted at the present time.

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

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

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

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

cc: MARGARET ANDERSON
106 E. 6TH STREET
SUITE 900
AUSTIN, TX 78701

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/18/11

TO SPE OF : ART UNIT 2878

SUBJECT : Request for Certificate of Correction for Appl. No.: 11731804 Patent No.: 7862185

CofC mailroom date: 03/11/11

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580
You can fax the Directors/SPE response to 571-270-9990

Lamonte Newsome

Certificates of Correction Branch

571-272-3421

Thank You For Your Assistance

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

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

Comments: _____

_____

_____

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Georgia M. Epps 2878

3/21/11

SPE Art Unit

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MAILED
MAY 20 2011
OFFICE OF PETITIONS

In re Application of	:	
Jamyuen Ko et al.	:	
Application No. 11/731,810	:	DECISION ON PETITION
Filed: March 30, 2007	:	
Attorney Docket No. P25508	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 11, 2011, to revive the above-identified application.

The petition is **DISMISSED**.

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

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Non-Provisional Application (Notice), mailed June 23, 2010. 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 August 24, 2010.

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

As to item (1), all of the requirements listed on the Notice to File Missing Parts mailed June 16, 2008 have not been met. There are additional fees due.

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

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

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

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

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

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

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United States Patent and Trademark Office
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MAILED
JUL 06 2011
OFFICE OF PETITIONS

In re Application of	:	
Jamyuen Ko et al.	:	
Application No. 11/731,810	:	DECISION ON PETITION
Filed: March 30, 2007	:	
Attorney Docket No. P25508	:	

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed June 23, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Non-Provisional Application (Notice), mailed June 23, 2010. 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 August 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 an oath and declaration, $130 surcharge fee, $330 basic filing fee, $540 search fee and $220 examination fee, (2) the petition fee of $1,620, and (3) a proper statement of unintentional delay. Accordingly the fees and oath and declaration are accepted as being unintentionally delayed.

Telephone inquiries 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 June 23, 2011.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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SEAN KAUFHOLD
P. O. BOX 89626
SIOUX FALLS SD 57109

MAILED
OCT 04 2011
OFFICE OF PETITIONS

In re Application of

Cambridge

Application No. 11/731,833

Filed: April 2, 2007

Attorney Docket No. **JCK110**

DECISION ON PETITION

This is a decision on the petition under 37 CFR §1.137(b), September 24, 2011, to revive the above-identified application.

The petition is **granted**.

This application became abandoned for failure to timely remit the issue fee of $755.00 as required by the Notice of Allowance and Issue Fee Due (the "Notice") mailed September 1, 2010. The Notice set forth a three (3) month statutory period for reply. No response was received within the allowable period. Accordingly, this application became abandoned on December 2, 2010. A Notice of Abandonment was mailed on December 17, 2010.

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

Form PTOL-85B, filed September 24, 2011, is noted and made of record.

The application is being directed to the Office of Data Management for further processing.

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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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EUGENE H. EICKHOLT
1119 CAROLINE STREET
FREDERICKSBURG VA 22401

MAILED

AUG 09 2010

OFFICE OF PETITIONS

In re Application of	:	
Thomas Ball	:	
Application No. 11/731838	:	DECISION
Filing or 371(c) Date: 04/02/2007	:	ON PETITION
Title of Invention: LIVE SPORT FISH PROTECTION	:	
SYSTEM	:	

This is a decision on the "Petition to Revive Application for Patent Abandoned Unavoidably Under 37 CFR 1.137(a), filed April 6, 2010.

This Petition is hereby **dismissed**.

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

Background

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowance and Issue Fee Due, mailed November 18, 2009. The Notice required the issue fe of $755.00, the publication fee of $300.00, and set a non-extendable three (3) month period for reply. No reply having been received, the application became abandoned on February 19, 2009. A Notice of Abandonment was mailed March 4, 2010.

The present petition

Applicant files the instant petition and asserts that the payment of the issue fee was unavoidable because of at the time the issue fee and publication fee were due, Petitioner was in the middle of financial distress. Petitioner notes that an attempt to contact this Office was unsuccessful because the Office's computers were down. Petitioner also notes that they had to release their attorney.

A Grantable Petition Under 37 CFR 1.137(a)

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (1) the required reply (unless previously filed), which may met by the filing of

a notice of appeal and the requisite fee; a continuing application; an amendment or request for reconsideration which *prima facie* places the application in condition for allowance, or a first or second submission under 37 CFR 1.129(a) if the application has been pending for at least two years as of June 8, 1995, taking into account any reference made in such application to any earlier filed application under 35 USC 120, 121 and 365(c); (**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(c).

Applicant lacks items (**1**) and (**3**) as set forth above.

Applicable Law, Rules and MPEP

As to item (**1**), Petitioner is advised that the Notice required the issue fee and the publication fee. Applicant has submitted the petition fee of $270.00, and an additional $407.50; however, the Notice requires $1,055.00. As such, before a petition to revive the application may be granted, the balance of the issue fee and publication fee are required.

As to item (**3**), Applicant must provide a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable. In order to determine whether the delay was unavoidable, the courts have adopted a "reasonably prudent person" standard. The courts have provided that:

> [t]he 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 critical phrase 'unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable' has remained unchanged since first enacted in 1861." Smith v. Mossinghoff,

671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (D.C. Cir. 1982). The standard for "unavoidable" delay for reinstating a patent is the same as the unavoidable standard for reviving an application. See Ray v. Lehman, 55 F.3d 606, 608-609, 34 U.S.P.Q.2d (BNA) 1786, 1787 (Fed. Cir. 1995) (citing In re patent No. 4,409,763, 7 U.S.P.Q.2d (BNA) 1798, 1800 (Comm'r Pat. 1990; Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (D.C. Cir. 1982). The court in In re Mattullath, accepted the standard which had been proposed by Commissioner Hall which "requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business." In re Mattullath, 38 App. D.C. 497, 514-515 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)). However, "The question of whether an applicant's delay in prosecuting an application was unavoidable [will] be decided on a case-by-case basis, taking all of the facts and circumstances into account."[1] Nonawareness of the content of, or a misunderstanding of, PTO statutes, PTO rules, the MPEP, or Official Gazette notices, does not constitute unavoidable delay.[2]

The statute requires a "showing" by petitioner. Therefore, petitioner has the burden of proof. The decision will be based solely on the written, administrative record in existence. It is not enough that the delay was unavoidable; petitioner must prove that the delay was unavoidable. A petition will not be granted if petitioner provides insufficient evidence to "show" that the delay was unavoidable.

Applicant is further advised that the Patent and Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and applicant is bound by the consequences of those actions or inactions. Link v. Wabash, 370 U.S. 626, 633-34 (1962); Huston v. Ladner, 973 F.2d 1564, 1567, 23 USPQ2d 1910, 1913 (Fed. Cir. 1992); see also Haines v. Quigg, 673 F. Supp. 314, 317, 5 USPQ2d 1130, 1132 (D.N. Ind. 1987).

Specifically, petitioner's delay caused by the actions or inactions of his voluntarily chosen representative does not constitute unavoidable delay within the meaning of 35 USC 133 or 37 CFR 1.137(a). Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (D. Ind. 1987); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (Comm'r Pat. 1891). In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913).

Analysis

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[1] Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (1982).

[2] See Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (Fed. Cir. 1982) (citing Potter v. Dann, 201 U.S.P.Q. (BNA) 574 (D. D.C. 1978) for the proposition that counsel's nonawareness of PTO rules does not constitute "unavoidable" delay)); Vincent v. Mossinghoff, 1985 U.S. Dist. LEXIS 23119, 13, 230 U.S.P.Q. (BNA) 621 (D. D.C. 1985) (Plaintiffs, through their counsel's actions, **or their own**, must be held responsible for having noted the MPEP section and Official Gazette notices expressly stating that the certified mailing procedures outlined in 37 CFR 1.8(a) do not apply to continuation applications.) (Emphasis added).

Petitioner asserts financial inability as the cause of unavoidable delay, however, Petitioner has not provided any evidence outside of his own declaration to demonstrate his financial status during the period of delay. A showing of "unavoidable" delay based upon financial difficulty must establish that the responsible party (i.e., an individual or the company) lacked the financial resources to pay the issue fee and publication fee for the above-identified application in a timely manner. To establish that the responsible party did not have the financial resources to pay the issue fee during the relevant period, petitioner should provide a month by month accounting of the responsible party's income, profits, credits, and asserts, as well as monthly obligations, expenses and bills (such as rent, mortgage, insurance, medical costs, utilities, etc.). Petitioner should also explain how much disposable income or profits the responsible party had on a monthly basis, which could have been used to pay the issue fee in a timely manner. The petitioner must provide the Office with copies of any documents that could confirm the responsible party's financial difficulty during the entire period from February 18, 2010, until the date of the filing of a grantable petition.

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.

Alternate venue

Applicant is strongly urged to file a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in was "unavoidable." An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required fee (currently $810.00).

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

Finally, 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: Director for Patents
PO Box 1450
Alexandria, VA 22313-1450

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

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

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

/DLW/

Derek L. Woods
Attorney
Office of Petitions

Enclosure: Petition For Revival for an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b)

CC: MR. THOMAS BELL
2845 BETHANY CHURCH ROAD
BUMPASS, VA 23024

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED

FEB 03 2011

OFFICE OF PETITIONS

EUGENE H. EICKHOLT
1119 CAROLINE STREET
FREDERICKSBURG VA 22401

In re Application of	:	
Thomas Ball	:	
Application No. 11/731838	:	DECISION
Filing or 371(c) Date: 04/02/2007	:	ON PETITION
Title of Invention: LIVE SPORT FISH PROTECTION	:	
SYSTEM	:	

This is a decision on the "Petition to Revive Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b)," filed October 7, 2010, and re-filed October 12, 2010.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowance and Issue Fee Due, mailed November 18, 2009. The Notice required the issue fee of $755.00, the publication fee of $300.00, and set a non-extendable three (3) month period for reply. No reply having been received, the application became abandoned on February 19, 2009. A Notice of Abandonment was mailed March 4, 2010.

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

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

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 the Office of Data Management for processing into a patent.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

Enclosures: Change of Address Form *Application*
Change of Address Form *Patent*

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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

MAILED
OCT 01 2010
OFFICE OF PETITIONS

In re Application of :
Taira Ohara :
Application No. 11/731,844 :
Filed: March 29, 2007 :
Attorney Docket No. 109650-67895

ON PETITION

This is a decision on the petition, filed September 30, 2010 under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on August 31, 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 2624 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

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

MAILED
MAY 20 2011
OFFICE OF PETITIONS

In re Application of	:	
Sahud, Andrew Graham	:	
Application No. 11/731,846	:	ON PETITION
Filed: April 2, 2007	:	
Attorney Docket No. AHS-27	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed April 7, 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 the Issue Fee Transmittal with payment of the issue and publication fees, (2) the petition fee of $810.00, and (3) a proper statement of unintentional delay.

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

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

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Decision Date : July 8,2011

In re Application of :

Anna Ericsson

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11731950

Filed : 02-Apr-2007

Attorney Docket No : 8149.US.O1

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed July 8,2011 , to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

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

Petitioner is advised that the issue fee paid 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 1626 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	11731950
Filing Date	02-Apr-2007
First Named Inventor	Anna Ericsson
Art Unit	1626
Examiner Name	KAMAL SAEED
Attorney Docket Number	8149.US.O1
Title	INDAZOLE COMPOUNDS

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	/Susan Steele/
Name	Susan Steele
Registration Number	64739

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY OF COMMERCE AND
COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. Box 1450
Alexandria, VA 22313-1450

February 9, 2012

Patent No.: 7,825,644 B1
Applicant : Ling
Issued : November 2, 2010
For : **SYSTEM AND METHOD FOR PROVIDING A PULSATING CURRENT OUTPUT HAVING ULTRA FAST RISE AND FALL TIMES**
Atty Docket No.: **P06757**

Re: Request for Certificate of Correction

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

Respecting the alleged error in changing the inventor name.The inventor's name is printed in accordance with the Declaration submitted at the time of filing the application. Therefore, no correction is in order here under Rule 1.323.

However, your attention is directed to C.F.R. 1.324, wherein a request is being made to change, add or delete inventor(s), after issuance of the patent. If petition is granted, application will be forwarded for correction of Office records to reflect the inventorship as corrected and to the Certificate of Correction Branch for issuance of certificate of correction.

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

A petition under C.F.R. 1.324 should include:

A. the processing fee set forth in 37 CFR 1.20(b) (currently $130);
B. a statement from each person being added as an inventor that the inventorship occurred without any deceptive intention on his or her part, a statement from the current inventors agreeing to the change of inventorship of stating that they have no disagreement in regard to the requested change, and a statement from all assignees of the current inventors agreeing to the change of inventorship in the patent.

Further correspondence concerning this matter should be filed and directed to Supervisory Patent Examiner of Technology Center 2838, Monica Lewis, at the U.S. Patent and Trademark Office.

Antonio Johnson
For Mary F. Diggs
Decisions & Certificates
of Correction Branch
(571)272-0483

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

1-19-2012

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY OF COMMERCE AND
COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

Patent No : 7,745,443 B2
Application No: 11/731,978
Issued : June 29, 2010
Inventor : Klingler, et. al.

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 provision of Rule 1.322 or 1.323.

Respecting the alleged error, on the title page item (62), is an editing change made in aaccordance with the style of the Invention Patent manual. Therefore, no correction(s) is in orderhere under United states Codes (U.S.C.) 254 or 255 the Code of Federal Regualation (C.F.R.) R 1.322 or R 1.323.

In view of the foregoing, the change will read as followings;
02012590

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

A certificate will issue to correct the remaining error noted in your request.

Further correspondence concerning this matter should be filed and directed to the Decisions and Certificates of Correctopm Branch. Any response must be filed within a four week period.

Eva James
For Mary Diggs
Decisins & Certificates
Of Correction Branch
571-272-3422 or 703-756-1580

Karen L. Elbing
Clark & elbing
101 Federal Street
Boston, MA 02110

ej

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

OPPENHEIMER WOLFF & DONNELLY LLP
45 SOUTH SEVENTH STREET, SUITE 3300
MINNEAPOLIS MN 55402

MAILED
MAR 21 2011
OFFICE OF PETITIONS

In re Application of
Shen
Application No. 11/732,021
Filed: April 2, 2007
Atty. Dkt. No.: 22582-3008

: DECISION ON PETITION

This decision is in response to the petition under 37 CFR 1.137(b), filed February 11, 2011.

The petition is **GRANTED**.

The application became abandoned October 17, 2009 for failure to timely submit a proper reply to the non-final Office action mailed July 16, 2009. The non-final Office action set a three month shortened statutory period of time for reply. Notice of Abandonment was mailed March 25, 2010.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 C.F.R. § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee set forth in 37 C.F.R. § 1.20(d)) required pursuant to 37 C.F.R. § 1.137(c).

The 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 2425 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

November 1, 2010

Gerald E. Hespos
Hespos & Porco LLP
110 West 40th Street
Suite 2501
New York, NY 10018

Patent No.	: 7,787,125 B2
Ser. No.	: 11/732,093
Inventor(s)	: Christina Tatarczyk, et al.
Issued	: August 31, 2010
Docket No.	: T00035
Title	: **APPARATUS FOR MEASURING A SPECTRAL DISTRIBUTION OF A PRINTED PRODUCT PRODUCED WITH A PRINTING DEVICE**

Re: Request for Certificate of Correction

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

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

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

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

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

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

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

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

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

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

vt

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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HESPOS & PORCO LLP
110 West 40th Street
Suite 2501
NEW YORK NY 10018

MAILED
FEB 22 2011
OFFICE OF PETITIONS

In re Patent No. 7,787,125 :
Issue Date: August 31, 2010 :
Application No. 11/732,093 : ON PETITION
Filed: April 2, 2007 :
Attorney Docket No. T00035 :

This is a decision on the petition filed November 18, 2010, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is GRANTED.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3205. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

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

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

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

UNITED STATES 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 : July 12,2011

In re Application of :

Masami Kumei

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11732216

Filed : 03-Apr-2007

Attorney Docket No : 07208/LH

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed July 12,2011 , 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 2811 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	11732216
Filing Date	03-Apr-2007
First Named Inventor	Masami Kumei
Art Unit	2811
Examiner Name	HUNG VU
Attorney Docket Number	07208/LH
Title	LIGHT EMITTING DEVICE WITH A POROUS ALUMINA REFLECTOR MADE OF AGGREGATION OF ALUMINA PARTICLES

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	/Leonard Holtz/
Name	Leonard Holtz
Registration Number	22974

UNITED STATES PATENT AND TRADEMARK OFFICE

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

NIXON PEABODY, LLP
401 9TH STREET, NW
SUITE 900
WASHINGTON, DC 20004-2128

MAILED

OCT 01 2010

OFFICE OF PETITIONS

In re Application of
KEPPLER, Bernhard
Application No. 11/732,225
Filed: April 04, 2007
Attorney Docket No. **1381-0003**

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 03, 2010.

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

A review of the file record indicates that the power of attorney to NIXON PEABODY, LLP has been revoked by the applicant of the patent application on August 24, 2010. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

/Tredelle D. Jackson
Paralegal Specialist
Office of Petitions

cc: **MICHAUD-Kinney Group LLP**
306 INDUSTRIAL PARK ROAD
SUITE 206
MIDDLETOWN CT 06457

UNITED STATES PATENT AND TRADEMARK OFFICE

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

JASPER W. DPCLREU
BRINKS HOFER GILSON & LIONE
NBC TOWERS, SUITE 3600
P.O. BOX 10395
CHICAGO IL 60610

MAILED
NOV 09 2010
OFFICE OF PETITIONS

In re Application of	:	
Peter R. Hudetz	:	
Application No. 11/732,266	:	DECISION ON PETITION
Filed: April 02, 2007	:	TO WITHDRAW
Attorney Docket No. **12287/14**	:	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 14, 2010 and re-submitted on October 18, 2010.

The request is not approved because it is moot.

Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

/Tredelle D. Jackson/
Paralegal Specialist
Office of Petitions

cc: **DAVID R. BROWN**
SPRINGER BROWN - BANKRUPTCY ATTORNEY & TRUSTEES
400 S. COUNTY FARM ROAD - SUITE 330
WHEATON IL 60187

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.
11/732,316	04/03/2007	Scott Norman Kelly	64335A US	9831

25212 7590 08/20/2010
DOW AGROSCIENCES LLC
9330 ZIONSVILLE RD
INDIANAPOLIS, IN 46268

EXAMINER
FOX, DAVID T

ART UNIT	PAPER NUMBER
1638	

MAIL DATE	DELIVERY MODE
08/20/2010	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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Alexandria, VA 22313-1450
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DOW AGROSCIENCES LLC
9330 ZIONSVILLE RD
INDIANAPOLIS IN 46268

AUG 2 0 2010

In re Application of:
Kelly et al.
Serial No.: 11/732,316
Filed: April 3, 2007
Attorney Docket No.: **64335A US**

: PETITION DECISION

This is in response to the petition under 37 CFR § 1.59(b), filed July 26, 2010, to expunge information from the above identified application. This application has not been allowed.

Petitioner requests that the Declaration under 37 CFR 1.132 submitted on July 26, 2010 be expunged from the record. Petitioner states either: (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR § 1.17(g) has been paid.

This is an examined application which is currently under non-final rejection. As such the information provided has been reviewed, in part, but proceedings in the application have not been terminated. As stated in M.P.E.P. 724, upon allowance or other action closing prosecution in an application, petition may be made for return of Proprietary information. The information cannot be expunged at this time.

The petition is **DISMISSED**. Petitioner may resubmit the petition subsequent to a Notice of Allowability or *ex parte Quayle* action being mailed in the application. No additional petition fee will be required at that time.

Should there be any questions about this decision please contact Marianne C. Seidel by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 571-273-8300.

Marianne C. Seidel
Quality Assurance Specialist
Technology Center 1600

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.
11/732,316	04/03/2007	Scott Norman Kelly	64335A US	9831

25212 7590 06/09/2011
DOW AGROSCIENCES LLC
9330 ZIONSVILLE RD
INDIANAPOLIS, IN 46268

EXAMINER
FOX, DAVID T

ART UNIT	PAPER NUMBER
1638	

NOTIFICATION DATE	DELIVERY MODE
06/09/2011	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):

fagdock@dow.com

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JUN 0 9 2011

DOW AGROSCIENCES LLC
9330 ZIONSVILLE RD
INDIANAPOLIS IN 46268

In re Application of:	:
Kelly et al.	: PETITION DECISION
Serial No.: 11/732,316	:
Filed: April 3, 2007	:
Attorney Docket No.: **64335A US**	

This is in response to the renewed petition under 37 CFR § 1.59(b), filed May 24, 2011, to expunge information from the above identified application. This application has been allowed.

Petitioner requests that the Declaration under 37 CFR 1.132 submitted to the Patent Office on July 26, 2010 be expunged from the record. Petitioner states either: (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR § 1.17(g) has been paid.

The reasons set forth in this petition establishes to the satisfaction of the Director that expungement of the information is appropriate. The file entry for this document has been closed and as such the document is no longer publicly available, which is the IFW equivalent to removal of a paper document from a paper file wrapper.

Therefore, petitioner's petition is GRANTED.

Should there be any questions about this decision please contact Marianne C. Seidel by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 571-273-8300.

/MC Seidel/
Marianne C. Seidel, Quality Assurance Specialist
Technology Center 1600

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Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/732,369	04/03/2007	Anthony Joseph Maves	63754A US	1733

25212 7590 09/21/2010
DOW AGROSCIENCES LLC
9330 ZIONSVILLE RD
INDIANAPOLIS, IN 46268

EXAMINER
KRUSE, DAVID H

ART UNIT	PAPER NUMBER
1638	

MAIL DATE	DELIVERY MODE
09/21/2010	PAPER

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

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

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DOW AGROSCIENCES LLC
9330 ZIONSVILLE RD
INDIANAPOLIS IN 46268

SEP 2 1 2010

In re Application of:
Anthony J. Maves
Serial No.: 11/732,369
Filed: April 3, 2007
Attorney Docket No.: **63754A US**

: PETITION DECISION

This is in response to the petition under 37 CFR § 1.59(b), filed September 13, 2010, to expunge information from the above identified application. This application has been allowed.

Petitioner requests that the Declaration filed under 37 CFR 1.132 submitted to the Patent Office on September 3, 2009 be expunged from the record. Petitioner states either: (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR § 1.17(g) has been paid.

The reasons set forth in this petition establishes to the satisfaction of the Director that expungement of the information is appropriate. The file entry for this document has been closed and as such the document is no longer publicly available, which is the IFW equivalent to removal of a paper document from a paper file wrapper.

Therefore, petitioner's petition is GRANTED.

Should there be any questions about this decision please contact Marianne C. Seidel by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 571-273-8300.

Marianne C. Seidel
Quality Assurance Specialist
Technology Center 1600

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

MAILED

AUG 04 2010

OFFICE OF PETITIONS

In re Application of	:	
Takatoshi Nakamura, et al.	:	
Application No. 11/732,416	:	DECISION GRANTING PETITION
Filed: April 3, 2007	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. S1459.70327US00	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed August 3, 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 12, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 2173 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

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

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

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IPSOLON LLP
111 SW COLUMBIA
SUITE 710
PORTLAND OR 97201

MAILED

SEP 03 2010

OFFICE OF PETITIONS

In re Application of
Bruce KAUFMAN, et al
Application No. 11/732,487
Filed: April 2, 2007
Attorney Docket No. 1428-001/MMM

DECISION ON PETITION

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed June 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 Notice to File Missing Parts of Nonprovisional Application (Notice), mailed April 26, 2007. The Notice set a period for reply of **two (2) months** from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on June 27, 2007. A Notice of Abandonment was mailed on January 2, 2008.

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

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

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

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

/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
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SHENG TAI TSAO
2979 HEIDO DRIVE
SAN JOSE CA 95132

MAILED

DEC 10 2010

OFFICE OF PETITIONS

In re Application of	:	
Sheng Tai TSAO	:	
Application No. 11/732,496	:	DECISION ON PETITION
Filed: April 2, 2007	:	TO WITHDRAW
Attorney Docket No. 000030-0004US	:	FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent under 37 C.F.R. § 1.36(b) filed November 19, 2010.

The request is **NOT APPROVED**.

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.

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

All future communications from the Office will continue to be directed to the above-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 Goodwyn/
Diane Goodwyn
Petitions Examiner
Office of Petitions

Cc: JAMES M. WU
84 W. SANTA CLARA STREET,
SUITE 820
SAN JOSE CA 95113

UNITED STATES PATENT AND TRADEMARK OFFICE

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KOPPEL, PATRICK, HEYBL & DAWSON
2815 TOWNSGATE ROAD
SUITE 215
WESTLAKE VILLAGE, CA 91361-5827

MAILED

AUG 04 2010

OFFICE OF PETITIONS

In re Application of
Ashay Chitnis, et al.
Application No. 11/732,559
Filed: April 3, 2007
Attorney Docket No. P0649US-7

: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(3)

This is a decision on the petition under 37 CFR 1.78(a)(3), filed June 25, 2010, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed with the petition.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

All of the above requirements having been satisfied, the late claim for priority under 35 U.S.C. § 120 is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the prior-filed applications. In order for this application to be entitled to the

benefit of the prior-filed applications, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

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

Any inquiries concerning this decision may be directed to April M. Wise at (571) 272-1642. 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 2895 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.

/dab/
David Bucci
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/732,559	04/03/2007	2895	2200	P0649US-7	33	4

CONFIRMATION NO. 3396

CORRECTED FILING RECEIPT

23935
KOPPEL, PATRICK, HEYBL & DAWSON
2815 Townsgate Road
SUITE 215
Westlake Village, CA 91361-5827

OC000000042884232

Date Mailed: 08/03/2010

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)

Ashay Chitnis, Goleta, CA;
James Ibbetson, Santa Barbara, CA;

Power of Attorney: The patent practitioners associated with Customer Number 23935

Domestic Priority data as claimed by applicant

This application is a CIP of 11/171,893 06/30/2005 PAT 7,329,905
which claims benefit of 60/584,187 06/30/2004

Foreign Applications

If Required, Foreign Filing License Granted: 08/03/2010

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/732,559**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Dielectric wafer level bonding with conductive feed-throughs for electrical connection and thermal management

Preliminary Class

257

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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July 28, 2011

David G. Dolezal
Freescale Semiconductor, Inc.
Law Department
7700 West Parmer Lane PL02
Austin, TX 78729

Patent No: 7,829,997 B2
Application No: 11/732,594
Applicant: Kevin J. Hess, et al.
Issued: November 9, 2010
Title: **INTERCONNECT FOR CHIP LEVEL POWER DISTRIBUTION**

Request for Certificate of Correction:

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

It is the practice to exclude words such as "A", "IMPROVED", "IMPROVEMENT IN", "NEW" or "NOVEL" as the first word in the title of the invention. Therefore, no correction is in order under Rule 1.322 or 1.323.

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

Further correspondence concerning this matter should be directed to Decisions and Certificate of Correction Branch.

/Virginia Tolbert/
Virginia Tolbert
For Mary Diggs, Supervisor
Decisions and Certificate of Correction
(571) 272-0460

vt

UNITED STATES PATENT AND TRADEMARK OFFICE

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RICHARD D. MULTER
2529 14TH AVENUE CT
GREELEY, CO 80631

MAILED

FEB 01 2012

OFFICE OF PETITIONS

In re Application of	:	
Steven C, Sims, et al.	:	
Application No. 11/732,701	:	DECISION ON PETITION
Filed: April 3, 2007	:	TO WITHDRAW
Attorney Docket No. 2053-101B	:	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 13, 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 request was signed by Richard D. Multer on behalf of all attorneys of record who are associated with customer No. 32149. All attorneys/agents associated with the Customer Number 32149 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: STEVEN C. SIMS
50 W. ROSE NYE WAY
SHELTON, WA 98584

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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
11/732,701	04/03/2007	Steven C. Sims	2053-101B

CONFIRMATION NO. 1435

POWER OF ATTORNEY NOTICE

32149
Richard D. Multer
2529 14th Avenue Ct
Greeley, CO 80631

OC000000052300791

Date Mailed: 01/31/2012

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 01/13/2012.

- 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.

/amwise/

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

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BARBARA B. COURTNEY ATTORNEY AT LAW
P.O. BOX 9847
SAN JOSE CA 95157

MAILED

MAR 22 2011

OFFICE OF PETITIONS

In re Application of	:	
Joseph Macri et al.	:	
Application No. 11/732,783	:	DECISION ON PETITION
Filed: April 03, 2007	:	
Attorney Docket No. **ATEC.P020**	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 05, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before August 20, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed May 20, 2010. Accordingly, the date of abandonment of this application is August 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 the publication fee of $300, (2) the petition fee of $1610; and (3) a proper statement of unintentional delay. Accordingly, the Issue Fee 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.

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

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

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

cc: **BARBARA B. COURTNEY**
716 UNIVERSITY AVENUE
SUITE 216
LO GATOS CA 95032

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Joseph F. O'Connell
15 Sylvia Street
Lexington, MA 02421

MAILED

SEP 19 2011

OFFICE OF PETITIONS

In re Application of :
Joseph Francis O'Connell :
Application No. 11/732,812 : ON PETITION
Filed: April 5, 2007 :
Attorney Docket No. N/A :

This is a decision on the renewed petitions filed May 23, 2011 and June 16, 2011, to revive the above-identified application.

The application became abandoned for failure to file a reply to the Notice of Non-Compliant Amendment (37 CFR 1.121) (Notice) mailed July 1, 2010. A Notice of Abandonment was mailed on February 17, 2011.

The petition is **dismissed**.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional[1]; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). The instant petition lacks item (1) above.

The Notice mailed July 1, 2010, required petitioner to make amendments to the drawings, as required by 37 CFR 1.121 and to provide a complete listing of the claims. Since petitioner failed to file a complete response to the Notice mailed July 1, 2010, this application was properly held abandoned[2].

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[1] 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).

[2] Petitioner should note that filing the required the missing item(s) should not be construed as meaning that the petition will be granted under the provisions of 37 CFR 1.137(b).

With respect to the drawings, petitioner should note that the drawings filed on February 16, 2010, should be resubmitted and properly labeled, as provided in 37 CFR 1.121(d) and 37 CFR 1.84. If the drawings are replacement sheets, then "Replacement Sheet" should be listed in the top margin of each drawing page. Any replacement sheet of drawings shall include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is amended. If the drawings are new, meaning a new figure has been added, then "New Sheet" should be listed in the top margin of each drawing sheet. All changes to the drawings shall be explained, in detail, in either the drawing amendment or remarks section of the amendment paper.

With respect to the claims, petitioner must provide a complete listing of all the claims. As provided in 37 CFR 1.121(c)(1), amendments to a claim must be made by rewriting the entire claim with all changes (e.g., additions and deletions) as indicated in this subsection, except when the claim is being canceled. Each amendment document that includes a change to an existing claim, cancellation of an existing claim or addition of a new claim, must include a complete listing of all claims ever presented, including the text of all pending and withdrawn claims, in the application. The claim listing, including the text of the claims, in the amendment document will serve to replace all prior versions of the claims, in the application. In the claim listing, the status of every claim must be indicated after its claim number by using one of the following identifiers in a parenthetical expression: (Original), (Currently amended), (Canceled), (Withdrawn), (Previously presented), (New), and (Not entered).

Additionally, petitioner must provide the proper petition form that would clarify what ground the petition is being filed under. A review of the record shows that petitioner submitted the $810 unintentional petition fee on May 23, 2011. However, the petitions filed on May 23, 2011 and June 16, 2011, contains the first page of a petition under 37 CFR 1.137(b); While the remainder of the petition consists of a petition under 37 CFR 1.137(a).

Petitioner should note that the Office determined, in a decision mailed on December 17, 2009, that petitioner failed to meet the burden of proof under the unavoidable standards of 37 CFR 1.137(a)[3]. Therefore, petitioner was encouraged to file a petition and fee for an application abandoned unintentionally under 37 CFR 1.137(b). A form for complying with the requirements under 37 CFR 1.137(b) is enclosed for petitioner's convenience. No further petition fee is required[4].

Further, in a communication filed on April 11, 2011, petitioner states "I WAS ADVISED BY PATENT OFFICE PERSONAL TO MAKE A PAYMENT OF $810 DOLLARS & I WOULD RECEIVE A $270 DOLLAR REFUND. (NO REFUND WAS SUBMITTED) REQUESTED REFUND 5/20/10 PLEASE EXAM, YOUR COMPUTER RECORDS ON THE OVER PAYMENT."

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[3] The evidence presented was insufficient to establish that the entire delay was unavoidable.

[4] The Office is in receipt of the $810 petition fee submitted on May 23, 2011.

With regards to the refund, a $270 petition fee is a requirement of 37 CFR 1.137(a) and since the fee was required to consider the merits of the unavoidable petition under 37 CFR 1.137(a), filed on August 27, 2009, this fee is not refundable. It should further be noted that the $270 unavoidable fee cannot be applied towards a petition for unintentional abandonment under 37 CFR 1.137(b) under any circumstance.

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) is permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

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

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

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

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

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

Andrea Smith
Petitions Examiner
Office of Petitions

Enclosure: Petition for Revival of an Application Abandoned Unintentionally under 37 CFR 1.137(b) – (Form PTO/SB/64)

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K&L GATES LLP
210 SIXTH AVENUE
PITTSBURGH PA 15222-2613

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JAN 03 2011

OFFICE OF PETITIONS

In re Application of
Allan W. Buck
Application No. 11/732,843
Filed: April 5, 2007
Attorney Docket No. 060238/CP.0053.US02

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 31, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the nonfinal Office action mailed November 27, 2009, 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.

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

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

This application is being referred to the Technology Center AU 1781 for appropriate action by the Examiner in the normal course of business.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

Cc:

MARK W. ROBERTS
ARCHER DANIELS MIDLAND COMPANY
4666 FARIES PARKWAY
DECATUR, IL 62526

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SEP 27 2010

RALPH E. JOCKE
WALKER & JOCKE
231 SOUTH BROADWAY
MEDINA, OH 44256

In re Application of	:	
Drummond et al.	:	DECISION ON PETITION
Application No. 11/732,861	:	UNDER 37 CFR §1.181
Filed: April 5, 2007	:	
For: AUTOMATED BANKING MACHINE	:	
SYSTEM USING INTERNET ADDRESS	:	
CUSTOMER INPUT	:	

This is a decision on applicant's petition under 37 CFR 1.181 filed August 16, 2010 requesting withdrawal of the finality of the Office action mailed June 18, 2010.

The petition is **GRANTED.**

The record reflects that on December 18, 2009 a non-final Office action was mailed rejecting claims 1-23 under 35 U.S.C. 102. On March 12, 2010 Applicant filed a response amending claims 1, and 12, and cancelling claims 7, 12, and 14. On June 18, 2010 a final Office action was mailed rejecting claims 1-6, 8-11, 13 and 15-23 under 35 U.S.C. 103.

In the petition filed August 16, 2010 to withdraw the finality of the Office action mailed June 18, 2010, applicant argues that the amendment of March 12, 2010 does not necessitate a new ground of rejection to claims 16-20 because these claims were never amended.

MPEP 706.07(a) sets forth that the second or any subsequent action on the merits shall be made final except where the examiner introduces a new ground of rejection that is neither necessitated by applicants' amendment 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).

A review of the record indicates, with regard to the propriety of the finality of the office action mailed June 18, 2010, the new grounds of rejection of claims 16-20 were not necessitated by the March 12, 2010 amendment.

The finality of the June 18, 2010 action is hereby withdrawn. The application will be returned to the examiner for consideration of the response filed August 16, 2010.

Any questions concerning this petition should be directed to Supervisory Patent Examiner James Kramer at 571-272-6783.

Wynn Coggins, Director
Patent Technology Center 3600
Telephone No.: (571) 272-5350

jk/lm: 9/15/10

LM

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SHREEN K. DANAMRAJ
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PREMIER PLACE, STE. 1450
5910 NORTH CENTRAL EXPRESSWAY
DALLAS TX 75206

MAILED

OCT 06 2010

OFFICE OF PETITIONS

In re Patent No. 7,673,264	:	
Issued: March 2, 2010	:	
Application No. 11/732,900	:	ON PETITION
Filed: April 5, 2007	:	
Attorney Docket No. 1263-0028US	:	

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

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

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

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

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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McCarter & English, LLP /
Abbott Laboratories Ltd.
265 Franklin Street
Boston MA 02110

MAILED
NOV 19 2010
OFFICE OF PETITIONS

In re Application of	:	
Wan et al.	:	
Application No. 11/732,918	:	ON APPLICATION FOR
Filed: April 4, 2007	:	PATENT TERM ADJUSTMENT
Atty Docket No. 117813-18503	:	

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705(B), filed September 15, 2010. Applicants submit that the patent term adjustment to be indicated on the patent is three hundred thirty (330) days, not eighty (80) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction partly on the basis that the Office will take in excess of three years to issue this patent.

In addition, applicants disclose that after applicants filed a reply on May 24, 2010 to a final Office action, that applicants submitted a supplemental reply or paper in the form of an Information Disclosure Statement (IDS) on June 4, 2010. Thus, applicants assert that a period of reduction of 11 days for applicant delay should be entered in connection with the filing of the IDS on June 4, 2010 pursuant to 37 CFR 1.704(c)(8).

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

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentees are entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). 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 is premature. Accordingly, it is appropriate to dismiss as premature such a request.

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

To the extent that applicants otherwise request correction of the initial determination of patent term adjustment (PTA), the application for patent term adjustment is **GRANTED to the extent indicated herein.**

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 sixty-nine (69) days. A

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

copy of the updated PAIR screen, showing the determination, is enclosed.

On June 15, 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 80 days.

In the present petition applicants disclose that after applicants filed a reply on May 24, 2010 to a final Office action, that applicants submitted a supplemental reply or paper in the form of an Information Disclosure Statement (IDS) on June 4, 2010. The record does not support a conclusion that the examiner expressly requested the filing of the IDS. Further, a review of the IDS, filed June 4, 2010, reveals that applicants did not include a statement under 37 CFR 1.704(d).[2]

Thus, applicants failed to engage in reasonable efforts to conclude prosecution of the application. The patent term adjustment should have been reduced by 11 days pursuant to 37 CFR 1.704(c)(8), counting the number of days beginning on the day after the date the initial reply was filed, May 25, 2010, and ending on the date that the IDS was filed, June 4, 2010. Accordingly, a period of reduction of 11 days will be entered.

This brings Applicant delay to 27 days, as indicated by applicants.

In view thereof, the determination of patent term adjustment at the time of mailing of the Notice of Allowance is **69 days** (96 days of Office delay - 27 (16 + 11) days of Applicant delay).

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[2] Pursuant to 37 CFR § 1.704(d):

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

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 adjusted PAIR calculation

Patent eBusiness

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- Supplemental Resources & Support

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11/732,918 ANTIBODY PURIFICATION

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Patent Term Adjustment

Filing or 371(c) Date:	04-04-2007	Overlapping Days Between {A and B} or {A and C}:	0
Issue Date of Patent:	-	Non-Overlapping USPTO Delays:	96
A Delays:	96	PTO Manual Adjustments:	-11
B Delays:	0	Applicant Delays:	16
C Delays:	0	Total PTA Adjustments:	69

Patent Term Adjustment History **Explanation Of Calculations**

Number	Date	Contents Description	PTO (Days)	APPL (Days)	Start
63	11-19-2010	Adjustment of PTA Calculation by PTO		11	0
53	06-15-2010	Mail Notice of Allowance			0
52	06-12-2010	Notice of Allowance Data Verification Completed			0
51	06-04-2010	Examiner Interview Summary Record (PTOL - 413)			0
50	06-12-2010	Notice of Allowability			0
48	06-04-2010	Information Disclosure Statement considered			0
47	06-04-2010	Information Disclosure Statement (IDS) Filed			0
46	05-25-2010	Date Forwarded to Examiner			0
45	05-24-2010	Amendment after Final Rejection		2	44
44	02-22-2010	Mail Final Rejection (PTOL - 326)	56		38
43	02-17-2010	Change in Power of Attorney (May Include Associate POA)			0
42	02-16-2010	Final Rejection			0
41	02-16-2010	Correspondence Address Change			0
40	08-28-2009	Information Disclosure Statement considered			0
39	11-21-2009	Date Forwarded to Examiner			0
38	08-28-2009	Response after Non-Final Action			0
37	08-28-2009	Reference capture on IDS			0
36	08-28-2009	Information Disclosure Statement (IDS) Filed			0
35	08-28-2009	Information Disclosure Statement (IDS) Filed			0
34	08-15-2008	Reference capture on IDS			0
33	08-15-2008	Information Disclosure Statement (IDS) Filed		14	23
32	05-28-2009	Mail Non-Final Rejection	13		29
31	05-26-2009	Non-Final Rejection			0

30	03-13-2009	Date Forwarded to Examiner		0
29	01-15-2009	Response after Non-Final Action		0
28	10-15-2008	Mail Non-Final Rejection		0
27	10-14-2008	Non-Final Rejection		0
26	08-15-2008	Information Disclosure Statement considered		0
25	08-15-2008	Information Disclosure Statement (IDS) Filed		0
24	08-05-2008	Date Forwarded to Examiner		0
23	08-01-2008	Response to Election / Restriction Filed		0
22	07-01-2008	Mail Restriction Requirement	27	-1
21	06-25-2008	Requirement for Restriction / Election		0
20	12-20-2007	PG-Pub Issue Notification		0
19	10-17-2007	Case Docketed to Examiner in GAU		0
18	09-26-2007	IFW TSS Processing by Tech Center Complete		0
17	09-20-2007	Application Dispatched from OIPE		0
16	09-13-2007	Sent to Classification Contractor		0
15	09-06-2007	Receipt of all Acknowledgement Letters		0
14	09-06-2007	Receipt of Acknowledgment Letter		0
13	08-03-2007	Waiting LR clearance		0
12	08-03-2007	Application Is Now Complete		0
11	07-23-2007	Additional Application Filing Fees		0
10	07-23-2007	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic		0
9	05-21-2007	Notice Mailed--Application Incomplete--Filing Date Assigned		0
8	04-26-2007	Agency Referral Letter Mailed		0
7	04-19-2007	Error(s) in CRF Corrected by STIC		0
6	04-18-2007	Referred by L&R for Third-Level Security Review. Agency Referral Letter Generated		0
5	04-16-2007	Referred to Level 2 (LARS) by OIPE CSR		0
4	04-16-2007	CASE CLASSIFIED BY OIPE		0
3	04-14-2007	IFW Scan & PACR Auto Security Review		0
2	04-04-2007	CRF Disk Has Been Received by Preexam / Group / PCT		0
1	04-06-2007	Initial Exam Team nn		0

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- *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.*

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C/O Foley & Lardner LLP
Verex Plaza, 150 East Gilman Street
Madison WI 53703-1481

MAILED
SEP 26 2011
OFFICE OF PETITIONS

In re Application of :
DeLuca, et al. :
Application No. 11/732,924 : ON APPLICATION FOR
Filed: April 5, 2007 : PATENT TERM ADJUSTMENT
Atty Docket No. **032026-1173** :

This is in response to the "Request for Reconsideration of Patent Term Adjustment for Patent Application under 37 CFR 1.705(b)" filed September 21, 2011. Applicant submits that the patent term adjustment is two hundred and sixty-four (264) days, not ninety (90) 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 and overlap considerations.

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 September 27, 2010.

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

MAILED
APR 22 2011
OFFICE OF PETITIONS

In re Application of :
Taylor et al. :
Application No. 11/732,950 : ON PETITION
Filed: April 4, 2007 :
Attorney Docket No. AMD-060115S :
For: INDUCTANCE MITIGATION THROUGH SWITCHING DENSITY ANALYSIS

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

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely submit a reply within three (3) months of the mailing of the April 30, 2010 non-final Office action. No response being received and no extensions of time being obtained under the provisions of 37 CFR 1.136(a), this application became abandoned on July 31, 2010. A Notice of Abandonment was mailed on February 10, 2011.

Applicants have submitted an amendment in reply to the April 30, 2010 non-final Office action, an acceptable statement of the unintentional nature of the delay in responding to the April 30, 2010 non-final Office action, and the $1,620.00 petition fee.

All of the requirements under 37 CFR 1.137(b) being met, the petition is granted.

It is noted that a former attorney of record filed a petition under 37 CFR 1.137(b) on March 25, 2011, as well. A courtesy copy of this decision is being mailed to her.

After the mailing of this decision, the application will be returned to Technology Center AU 2825 for consideration of the amendment filed on March 25, 2011.

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

CC: BARBARA B. COURTNEY
718 UNIVERSITY AVENUE, SUITE 216
LOS GATOS, CA 95033

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED

SEP 27 2010

OFFICE OF PETITIONS

In re Application :
Behzad, et al. :
Application No. 11/733,047 : PATENT TERM ADJUSTMENT
Filing or 371(c) Date: April 9, 2007 :
Dkt. No.: 18179US02 :

This is in response to the application for patent term adjustment under 37 CFR 1.705(b), filed September 14, 2010.

Applicant submits that the correct patent term adjustment to be indicated on the patent is 780 days, not 517 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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MAR 14 2011
OFFICE OF PETITIONS

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

In re Patent No. 7,840,198 :
Issued: November 23, 2010 : DECISION ON PATENT TERM
Application No. 11/733,047 :
Filed: April 9, 2007 :
Atty. Dkt. No.: 18179US02 :

This is a decision on the application for patent term adjustment filed January 18, 2011 requesting that the patent term adjustment be increased from 654 days to 745 days.

The request for reconsideration of the patent term adjustment (PTA) pursuant to 37 CFR 1.705(d) is **DISMISSED**.

The above-identified application matured into U.S. Pat. No. 7,840,198 on November 23, 2010. The patent issued with a patent term adjustment of 654 days. The instant application for patent term adjustment was timely filed in accordance with 37 CFR 1.705(d). Patentee contests the period of reduction of 91 days accorded pursuant to 37 CFR 1.704(c)(10) and assert that based on petitioners' interpretation of law and rules, the correct period of adjustment is zero days.

Petitioner's arguments have been carefully considered, but are not persuasive. The period of reduction pursuant to 37 CFR 1.704(c)(10) was properly calculated at 91 days.

35 USC 154(b)(2)(C) states:

(i) The period of adjustment of the term of a patent under paragraph (1) shall be reduced by a period equal to the period of time during which the applicant failed to engage in reasonable efforts to conclude prosecution of the application.

(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.

(iii) The Director shall prescribe regulations establishing the circumstances that constitute a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application.

The provisions of 35 U.S.C. 154(b)(2)(C) are implemented at 37 CFR 1.704 and specifies certain circumstances as constituting a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application.

37 CFR 1.704(c)(10) states:

> 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;

Applicants filed replacement drawings on August 25, 2010. The patent issued November 23, 2010, 91 days later. As the Office did not mail an Office action or notice or other paper in response to the replacement drawings, 37 CFR 1.704(c)(10)(ii) is the provision of law properly used to determine the reduction of patent term. 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.

Accordingly, in the instant matter, and in compliance with the provisions of law and rules set forth above, the period of reduction under § 1.704(c)(10) began on August 25, 2010, the date that the post allowance submission was filed, and ended November 23, 2010, the date that the patent issued, said period totalling 91 days.

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

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

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

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

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MAILED
AUG 30 2011
OFFICE OF PETITIONS

DIGIMARC CORPORATION
9405 SW GEMINI DRIVE
BEAVERTON OR 97008

In re Patent No. 8,005,746	:	DECISION ON REQUEST FOR
WILLIAM Y. CONWELL	:	RECONSIDERATION OF
Issue Date: August 23, 2011	:	PATENT TERM ADJUSTMENT
Application No. 11/733,094	:	
Filed: April 9, 2007	:	
Attorney Docket No. P1301	:	

This is a decision on the petition filed on August 24, 2011, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by five hundred seventy (570) days.

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

In the present petition, patentee acknowledges 167 days of A delay, 37 days of overlap, and 61 day of applicant delay. However, patentee disputes the 332 days of B delay. Patentee's argument has been considered, but not found persuasive.

37 CFR 1.703(b) indicates that the period of adjustment under 37 CFR 1.702(b) ("over three year period") is the number of days, if any, in the period beginning on the day after the date that is three years after the actual filing date of the application and ending on the date a patent was issued. 35 U.S.C. 154(b)(1)(B).

In this instance, the "over three year period" is 501 days, beginning on April 10, 2010, the day after the date that is three years after the filing date of the application and ending on August 23, 2011, the date the patent issued.

However, 37 CFR 1.703(b) also sets forth the limitations on patent term adjustment specified in 35 U.S.C. 154(b)(1)(B)(i) and (ii). Specifically, the period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). An appeal to the Board of Patent Appeals and Interferences commences with the filing of a notice of appeal. See 35 U.S.C. 134(a). Generally, an appeal to the Board of Patent Appeals and Interferences ends with either 1) a Board decision, 2) the examiner reopening prosecution and issuing another Office action, or 3) the applicant filing a request to withdraw the appeal and reopen prosecution (e.g. the filing of a request for continued examination).

In this instance the first period consumed by appellate review is 125 days, beginning on July 7, 2010, the date of filing of the notice of appeal and ending on November 8, 2010, the subsequent date of the mailing of the non-final Office action. The second period consumed by appellate review is 44 days, beginning on May 17, 2011, the date of filing of the notice of appeal and ending on June 29, 2011, the subsequent date of the mailing of the Notice of Allowance. The total period consumed by appellate review is 169 (125 + 44) days. Thus, B delay is 332 (501 - 169) 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 the payment of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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COOLEY LLP
ATTN: PATENT GROUP
SUITE 1100
777 – 6TH STREET, NW
WASHINGTON, DC 20001

MAILED

JAN 18 2011

OFFICE OF PETITIONS

In re Application of	:	
Brian Chess et al	:	
Application No. 11/733,169	:	DECISION ON PETITION
Filed: April 9, 2007	:	TO WITHDRAW
Attorney Docket No. FOSO-001/05US 304358-2015	:	FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed December 6, 2010.

The request is **APPROVED**.

The request was signed by William S. Galliani on behalf of the practitioners of record associated with Customer Number 23419.

Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to assignee Fortify Software, Inc at the address indicated below.

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

Irvin Dingle
Petitions Examiner
Office of Petitions

cc: Fortify Software, Inc
2730 Sand Hill Road
Menlo Park, CA 94025

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
11/733,169	04/09/2007	Brian CHESS	FOSO-001/05US 304358-2015

CONFIRMATION NO. 7706

POWER OF ATTORNEY NOTICE

OC000000045508110

23419
COOLEY LLP
ATTN: Patent Group
Suite 1100
777 - 6th Street, NW
Washington, DC 20001

Date Mailed: 01/18/2011

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 12/06/2010.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/idingle/

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/733,169	04/09/2007	Brian CHESS	FOSO-001/05US 304358-2015

CONFIRMATION NO. 7706

Fortify Software Inc.
2730 Sand Hill Road
Menlo Park, CA 94025

POA ACCEPTANCE LETTER

OC000000045508154

Date Mailed: 01/18/2011

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 12/06/2010.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

/idingle/

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

UNITED STATES PATENT AND TRADEMARK OFFICE
COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. Box 1450
Alexandria, VA 22313-1450

September 7, 2011

Patent No.: 7,561,651 B1
Applicant : Chris Karabatsos
Issued : July 14, 2009
For : **SYNCHRONIZATION OF A DATA OUTPUT SIGNAL TO A CLOCK INPUT**
Docket No. : **088245-5287**

Re: Request for Certificate of Correction

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

Respecting the alleged errors on the title page of patent at Item (60) Related U.S. Application Data and at Column 1, lines 6-17 in the specification. The changes in the Related U. S. Application data are disapproved. The errors are not on behalf of the USPTO, but by Applicant incorrectly claiming priority to the two provisionals in question directly from child application instead of from parent application in first paragraph of specification, as well as from ADS being incorrectly filled out. There being no fault on the part of the Patent and Trademark Office, it has no authority to issue a certificate of correction under the provision of 1.322.

In view of the foregoing, the correction is hereby denied.
However, further consideration will be given these matters, upon receipt of a request for certificate of correction under the provisions of 1.323, accompanied by the appropriate fee which is presently $100.

Further correspondence concerning this matter should be filed and directed to Decisions and Certificates of Correction Branch.

Antonio Johnson
(571)272-0483
For Mary F. Diggs, Supervisor
Decisions & Certificates of Correction Branch
(703) 756-1580

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : August 18, 2011

TO SPE OF : ART UNIT 2611 SPE

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/733,254 Patent No.: 7,561,651 B1

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
Randolph Square Building
2800 South Randolph Street
Arlington, VA 22206

Should the Related U.S. Application Data on the title page of patent and and Column 1, lines 6-17 be amended as requested by applicant? See COCIN dated 8-5-2011

Antonio Johnson

Certificates of Correction Branch

(571)272-0483 Fax – (571)270-9846

Thank You For Your Assistance

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

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

Comments: Corrections have been denied. Error not made by USPTO, but by Applicant incorrectly claiming priority to the two provisionals in question directly from child application instead of from parent application in first paragraph of specification, as well as from ADS being incorrectly filled out.

_____ SPE [signature] Art Unit 2611

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : October 14, 2011

TO SPE OF : ART UNIT 2611 SPE

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/733,254 Patent No.: 7,561,651 B1

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
Randolph Square Building
2800 South Randolph Street
Arlington, VA 22206

Should the Related U.S. Application Data on the title page of patent and and Column 1, lines 6-17 be amended as requested by applicant? See COCIN dated 10-5-2011

Antonio Johnson

Certificates of Correction Branch

(571)272-0483 Fax – (571)270-9846

Thank You For Your Assistance

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

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

Comments: All corrections have been approved.

_____ **SPE_/Shuwang Liu/** ____ **Art Unit** 2611

UNITED STATES PATENT AND TRADEMARK OFFICE

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Andrus, Sceales, Starke & Sawall, LLP
100 East Wisconsin Avenue
Suite 1100
Milwaukee WI 53202-4178

MAILED

JAN 12 2011

OFFICE OF PETITIONS

In re Application of
Jaron M. Acker, et al.
Application No. 11/733,438
Filed: April 10, 2007
Attorney Docket No. 15673-1 (5024-00479)

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

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, January 11, 2011 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on December 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 Terri Johnson at (571) 272-2991.

This application is being referred to Technology Center AU 2891 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

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

MAILED
NOV 15 2010
OFFICE OF PETITIONS

In re Application of :
Sarma et al. :
Application No. 11/733,475 :
Filed: April 10, 2007 :
Attorney Dkt. No. 1974-P03607US3 :

ON PETITION

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**.

This application became abandoned for failure to timely submit a reply to the non-final Office action mailed on February 2, 2010. The Notice set an extendable three-month reply period of May 2, 2010. Accordingly, this application became abandoned on May 3, 2010. A Notice of Abandonment was mailed on May 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 a continuing application under 37 CFR 1.53(b); (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 informal submission seeking an extension of time was filed August 4, 2010 subsequent to the maximum extendable period for reply (August 2. 2010) this application is ineligible for any extension of time.

Petitioners' argument that a petition for extension of time to respond to the Office action was constructively filed in accordance with 37 CFR 1.136(a)(3) is not persuasive. A continuing application filed under 37 CFR 1.53(b) is a new application which is assigned a new application number and filing date and is maintained separately from the file of the prior application. The filing of a continuing application is not a paper directed or placed in the file of the prior application and is not a "reply" to the last Office action in the prior application. Thus, a petition for an extension of time and the fee set forth in 37 CFR 1.17 are required to be filed as a separate paper in the prior application. Any petition for an extension of time directed to the prior application must be accompanied by its own certificate of mailing under 37 CFR 1.8 (if mailed by first class mail) or under 37 CFR 1.10 (if mailed by Express Mail), if the benefits of those rules are desired.

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuing application No. 12/848,672.

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

Charlema Grant
Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 11/21/11

TO SPE OF : ART UNIT 1624

SUBJECT : Request for Certificate of Correction for Appl. No.: 11733476 Patent No.: 7622461

CofC mailroom date: 11/17/11

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Note: **Should the changes be made?**

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: _____

_____

_____

_____

_____

1624

SPE **Art Unit**

JAMES O. WILSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

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MERCK
PATENT DEPARTMENT (K-6-1, 1990)
2000 GALLOPING HILL ROAD
KENILWORTH NJ 07033-0530

MAILED
SEP 10 2010
OFFICE OF PETITIONS

In re Application of	:	
Velazquez, et al.	:	
Application No. 11/733,479	:	ON APPLICATION FOR
Filed: April 10, 2007	:	PATENT TERM ADJUSTMENT
Docket No. IN06135-01US02	:	

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b), filed June 30, 2010. Applicants submit that the correct patent term adjustment to be indicated on the patent is five hundred fifty-seven (557) days[1], not three hundred seventy-two (372) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

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

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

[1] This calculation is based on a projected issuance date of October 12, 2010.

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

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicants must timely file an application for patent term adjustment prior to the payment of the issue fee[2].

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b). This fee is required and will not be refunded.

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 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

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[2] 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.

address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

The 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

CC: JULIE M. LAKE
MERK & CO., INC.
P.O. BOX 2000
RAHWAY, NJ 07065-0907

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/733,553	04/10/2007	Robert P. Morris	1475/US	8388

49277 7590 02/04/2011
SCENERA RESEARCH, LLC
5400 Trinity Road
Suite 303
Raleigh, NC 27607

EXAMINER
YANG, I CHAN

ART UNIT	PAPER NUMBER
2178	

MAIL DATE	DELIVERY MODE
02/04/2011	PAPER

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

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

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

In re Application of:
MORRIS, Robert
Application No. 11/733,553
Filed: April 10, 2007
For: **METHODS, SYSTEMS, AND COMPUTER PROGRAM PRODUCTS FOR ASSOCIATING USER-PROVIDED ANNOTATION DATA WITH MARKUP CONTENT OF A RESOURCE**

DECISION ON PETITION UNDER 37 C.F.R. § 1.103(a)

This is a decision on the petition for suspension of prosecution under 37 CFR § 1.103(a) filed on January 25, 2011.

The petition is **GRANTED**.

Pursuant to applicant's requests filed on January 25, 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 Eddie C. Lee whose telephone number is (571) 272-1732.

Vincent Trans
Quality Assurance Specialist, TC 2100
571-272-3613

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/733,553	04/10/2007	Robert P. Morris	I475/US	8388

49277 7590 06/02/2011
SCENERA RESEARCH, LLC
5400 Trinity Road
Suite 303
Raleigh, NC 27607

EXAMINER
YANG, I CHAN

ART UNIT	PAPER NUMBER
2178	

MAIL DATE	DELIVERY MODE
06/02/2011	PAPER

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

In re Application of:
MORRIS, Robert
Application No. 11/733,553
Filed: April 10, 2007
For: **METHODS, SYSTEMS, AND COMPUTER PROGRAM PRODUCTS FOR ASSOCIATING USER-PROVIDED ANNOTATION DATA WITH MARKUP CONTENT OF A RESOURCE**

DECISION ON PETITION UNDER 37 C.F.R. § 1.103(a)

This is a decision on the petition for suspension of prosecution under 37 CFR § 1.103(a) filed on May 9, 2011.

The petition is **GRANTED**.

Pursuant to applicant's requests filed on May 9, 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 Eddie C. Lee whose telephone number is (571) 272-1732.

/Eddie C. Lee/

Quality Assurance Specialist, TC 2100

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/733,553	04/10/2007	Robert P. Morris	1475/US	8388

49277 7590 12/22/2011
SCENERA RESEARCH, LLC
5400 Trinity Road
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EXAMINER
STORK, KYLE R

ART UNIT	PAPER NUMBER
2178	

MAIL DATE	DELIVERY MODE
12/22/2011	PAPER

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

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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.: 11/733,553 Filed: April 10, 2007 For: METHODS, SYSTEMS, AND COMPUTER PROGRAM PRODUCTS FOR ASSOCIATING USER-PROVIDED ANNOTATION DATA WITH MARKUP	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 21 December 2011.

The petition is **GRANTED**.

Pursuant to applicant's requests filed on 21 December 2011, action by the Office is suspended on this application under 37 CFR § 1.103(a) for a period of ***three (3) months from the mailing date of this letter***. At the end of this period, applicant is required to notify the examiner and request continuance of prosecution or a further suspension. See MPEP § 709.

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

Any inquiry concerning this decision should be directed to the undersigned whose telephone number is (571) 272-3613.

/Vincent N. Trans/
Vincent N. Trans, QAS
Technology Center 2100
Computer Architecture and Software

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/733,553	04/10/2007	Robert P. Morris	1475/US	8388

49277 7590 03/29/2012
SCENERA RESEARCH, LLC
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EXAMINER
STORK, KYLE R

ART UNIT	PAPER NUMBER
2178	

MAIL DATE	DELIVERY MODE
03/29/2012	PAPER

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

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

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Theodosios Thomas
SCENERA RESEARCH, LLC
5400 Trinity Road
Suite 303
Raleigh, North Carolina 27607

In re Application of:
Robert P. MORRIS
Appl. No.: 11/733,553
Filed: April 10, 2007
For: METHODS, SYSTEMS, AND COMPUTER PROGRAM PRODUCTS FOR ASSOCIATING USER-PROVIDED ANNOTATION DATA WITH MARKUP

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 March 2012.

The petition is **GRANTED**.

Pursuant to applicant's requests filed on 28 March 2012, action by the Office is suspended on this application under 37 CFR § 1.103(a) for a period of ***three (3) months from the mailing date of this letter***. At the end of this period, applicant is required to notify the examiner and request continuance of prosecution or a further suspension. See MPEP § 709.

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

Any inquiry concerning this decision should be directed to the undersigned whose telephone number is (571) 272-3613.

/Vincent N. Trans/
Vincent N. Trans, QAS
Technology Center 2100
Computer Architecture and Software

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SLATER & MATSIL, L.L.P.
17950 PRESTON ROAD, SUITE 1000
DALLAS, TX 75252

MAILED

AUG 05 2010

OFFICE OF PETITIONS

In re Application of	:	
Otremba et al.	:	DECISION ON PETITION
Application No. 11/733,679	:	TO WITHDRAW
Filed: April 10, 2007	:	FROM RECORD
Attorney Docket No. QM000058	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed June 17, 2010.

The request is **DISMISSED** as involving a moot issue.

A review of the file record indicates that the power of attorney to 68038 was revoked by the Assignee of the patent application on July 13, 2010. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

Telephone inquires concerning this decision should be directed to the undersigned at 571-272-3206. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

Liana Walsh
Petitions Examiner
Office of Petitions

cc: JOHN S. ECONOMOU
202 MAMARONECK AVE., THIRD FLOOR
WHITE PLAINS NY 10601

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

In re Patent of Nandy et al.	:
Patent No. 8,027,983	: DECISION ON REQUEST FOR
Issue Date: September 27, 2011	: RECONSIDERATION OF
Application No. 11/733,713	: PATENT TERM ADJUSTMENT
Filed: April 10, 2007	:
Attorney Docket No. 16113-	:
531001/GP1184-00-US	:

This is a decision on the petition filed on November 28, 2011, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by eight hundred seventy-two (872) days.

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

BACKGROUND

On September 27, 2011, the above-identified application matured into U.S. Patent No. 8,027,983, with a revised patent term adjustment of 747 days. On Monday, November 28, 2011, patentees timely submitted this request for reconsideration of patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 872. Patentees maintain that the Office incorrectly calculated Office delay pursuant to 37 CFR 1.702(b). Patentees contend that the Office erred in subtracting from the "B delay" a period of time that was not "consumed by continued examination of the application." Specifically, Patentees argue that (after the filing of the request for continued examination) the Office mailed a Notice of Allowance on May 25, 2011, thereby closing examination of the application on that date. Thus, Patentees argue no continued examination took place during the 126 day period from May 25,

2011 (the mailing date of the Notice of Allowance) until September 27, 2011 (the date the patent was issued). As such, Patentees maintain that the "B delay" should include the 126 days and be increased from 89 to 215 days. Patentees conclude that the correct patent term adjustment is 872 days (the sum of 658 days of "A delay" and 215 days of "B delay" minus 1 overlapping day, minus 0 days of Applicant delay).

RELEVANT STATUTE AND REGULATIONS

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

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

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

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

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:
(1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);
(2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);

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

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

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

OPINION

Patentees' arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 0 days based on the application having been filed under 35 U.S.C. 111(a) on April 10, 2007 and the patent not having issued as of the day after the three year date, April 11, 2010, and a request for continued examination under 132(b) having been filed on July 9, 2010. In other words, the 126 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

---

[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.

period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

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

Patentees' argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides

for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

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

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

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

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F.Supp.2d 138

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

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

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

(ii), including any time consumed by the filing of a request for continued examination.

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

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such

information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[3] permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

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

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

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

In this instance, a request for continued examination was filed on July 9, 2010, and the patent issued by virtue of that request on September 27, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on May 25, 2011 and ending on September 27, 2011 is not included in calculating Office delay.

CONCLUSION

In view thereof, it is concluded that the patent term adjustment of 747 days indicated on the patent is correct.

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/733,763	04/11/2007	Wei-Chih Chen	NAUP0873USA	8757

27765 7590 05/06/2011
NORTH AMERICA INTELLECTUAL PROPERTY CORPORATION
P.O. BOX 506
MERRIFIELD, VA 22116

EXAMINER
NGUYEN, KHIEM D

ART UNIT	PAPER NUMBER
2823	

NOTIFICATION DATE	DELIVERY MODE
05/06/2011	ELECTRONIC

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

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

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

Patent.admin.uspto.Rcv@naipo.com
mis.ap.uspto@naipo.com

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NORTH AMERICA INTELLECTUAL PROPERTY CORPORATION
P.O. BOX 506
MERRIFIELD, VA 22116

In re Application of Wei-Chih Chen et al.	:	
Appl. No.: 11/733,763	:	DECISION ON PETITION
Filed: April 11, 2007	:	UNDER 37 C.F.R. § 1.59
Attorney Docket No.: NAUP0873USA	:	
For: MULTI CAP LAYER AND MANUFACTURING	:	
METHOD THEREOF	:	
	:	

This is a response to the petition under 37 CFR 1.59(b), filed April 4, 2011, to expunge information from the above identified application.

The decision on the petition will be held in abeyance until allowance of the application or mailing of an *Ex parte* Quayle action or a Notice of Abandonment, at which time the petition will be decided.

Petitioner asserts that the invention disclosure document submitted in a sixth Supplementary Information Disclosure Statement, filed April 4, 2011, in accordance with MPEP § 724.02 is trade secret material, and requests that it be expunged from the record. Petitioner states that the information is trade secret material of the assignee that has not been made public and is being submitted by the applicant and commits to retain the document for the period of any patent that is issued from the above application. The petition fee set forth in 37 CFR 1.17(g) has been paid.

The decision on the petition is held in abeyance because prosecution on the merits has not completed. Accordingly, it is not appropriate to make a final determination of whether or not the material requested to be expunged is "material," with "materiality" being defined as any information which the examiner considers as being important to a determination of patentability of the claims. Thus, the decision on the petition to expunge must be held in abeyance at this time.

During prosecution on the merits, the examiner will determine whether or not the identified document is considered to be "material." If the information is not considered by the examiner to be material, the information will be removed from the official file.

Any inquiry regarding this decision should be directed to Hien H. Phan, Quality Assurance Specialist, at (571) 272-1606.

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

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/733,763	04/11/2007	Wei-Chih Chen	NAUP0873USA	8757

27765 7590 11/08/2011
NORTH AMERICA INTELLECTUAL PROPERTY CORPORATION
P.O. BOX 506
MERRIFIELD, VA 22116

EXAMINER
NGUYEN, KHIEM D

ART UNIT	PAPER NUMBER
2823	

NOTIFICATION DATE	DELIVERY MODE
11/08/2011	ELECTRONIC

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

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

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

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NORTH AMERICA INTELLECTUAL PROPERTY CORPORATION
P.O. BOX 506
MERRIFIELD, VA 22116

In re Application of Wei-Chih Chen et al.	:	
Appl. No.: 11/733,763	:	DECISION ON PETITION
Filed: April 11, 2007	:	UNDER 37 C.F.R. § 1.59
Attorney Docket No.: NAUP0873USA	:	
For: MULTI CAP LAYER AND MANUFACTURING	:	
METHOD THEREOF	:	

This is a response to the petition under 37 CFR 1.59(b), filed April 4, 2011, to expunge information from the above identified application.

The petition is GRANTED.

Petitioner was held in abeyance in a decision mailed May 6, 2011. The application has now been allowed and the petition is being reconsidered for final disposition.

Petitioner asserts that the invention disclosure document submitted in a sixth Supplementary Information Disclosure Statement, filed April 4, 2011, in accordance with MPEP § 724.02 is trade secret material, and requests that it be expunged from the record. Petitioner states that the information is trade secret material of the assignee that has not been made public and is being submitted by the applicant and commits to retain the document for the period of any patent that is issued from the above application. The petition fee set forth in 37 CFR 1.17(g) has been paid.

The information in question has been determined by the examiner and 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 information filed April 14, 2011 has been removed from the official file record. Note that in the contents of the Image File Wrapper, there is still an entry "Artifact" dated June 12, 2007, however, the information is no longer included therein.

Any inquiry regarding this decision should be directed to Hien H. Phan, Quality Assurance Specialist, at (571) 272-1606.

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

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BROUSE MCDOWELL LPA
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AKRON OH 44311

MAILED

AUG 09 2010

OFFICE OF PETITIONS

In re Application of

LADANYI, Donald J.
Application No. 11/733,908
Filed: April 11, 2007
Attorney Docket No. **22750.45318**

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed July 08, 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 John Skeriotis on behalf of all attorneys of record who are associated with customer No. 26781. All attorneys/agents associated with the Customer Number 26781 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 inventor Donald Ladanyi at the address indicated below.

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

/Tredelle D. Jackson/
Paralegal Specialist
Office of Petitions

cc: **DONALD J. LADANYI**
24582 CHAPPARAL
WESTLAKE OH 44145

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	11733958
Filing Date	11-Apr-2007
First Named Inventor	Gen SASAKI
Art Unit	2622
Examiner Name	DWIGHT ALEX TEJANO
Attorney Docket Number	306977US2
Title	IMAGE PROCESSING APPARATUS

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	/Jonathan W. Parthum/
Name	Jonathan W. Parthum
Registration Number	64082

UNITED STATES 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 17,2011

In re Application of :

Gen SASAKI

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11733958

Filed : 11-Apr-2007

Attorney Docket No : 306977US2

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed June 17,2011 , to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

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

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

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

This application file is being referred to Technology Center AU 2622 for processing of the request for continuing examination under 37 CFR 1.114 .

Office of Petitions

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WELSH FLAXMAN & GITLER LLC
2000 DUKE STREET, SUITE 100
ALEXANDRIA VA 22314

MAILED
DEC 08 2011
OFFICE OF PETITIONS

In re Application of :
Campbell et al. :
Application No. 11/733,972 : ON PETITION
Filed: April 11, 2007 :
Attorney Docket No. 10766-001 :

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed November 4, 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 the Issue Fee Transmittal with payment of the issue and publication fees, (2) the petition fee of $930.00, and (3) a proper statement of unintentional delay.

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

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

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

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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TOM SOUMAS
SATCOM SYSTEMS, INC.
2333 NORTH VALLEY STREET
BURBANK CA 91505

MAILED

SEP 24 2010

OFFICE OF PETITIONS

In re Application of :
Augustin, :
Application No. 11/734,002 : ON PETITION
Filed: April 11, 2007 :
Attorney Docket No. **5450-001 US**

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

The petition is **GRANTED**.

The above-identified application became abandoned for failure to file a timely and proper response to the non-final Office action mailed December 12, 2008, which set a shortened statutory period for reply of three months from its mailing date. Extensions of the time for response were available pursuant to 37 CFR 1.136. The application became abandoned on March 13, 2009. A Notice of Abandonment was mailed September 4, 2010.

The amendment filed September 1, 2010, is noted.

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

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

The application is being forwarded to Technology Center 2800, GAU 2821 for further processing.

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

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Cc:
Neil G. J. Mothew
Baker & McKenzie LLP
2001 Ross Avenue #2300
Dallas, TX 75201

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POLSINELLI SHUGHART PC
700 W. 47TH STREET
SUITE 1000
KANSAS CITY MO 64112-1802

MAILED
MAR 15 2011
OFFICE OF PETITIONS

In re Application of	:
Buchbinder et al.	:
Application No. 11/734,037	: DECISION ON PETITION
Filed: April 11, 2007	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 051498-113424	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed January 31, 2011, 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 with the petition.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition does not satisfy item (1) above.

The reference to add the prior-filed application, Application No. 11/071,973, in the first sentence of the specification on page one following the title is not acceptable as drafted since it improperly incorporates by reference the prior-filed application. An incorporation by reference statement added after an application's filing date is not effective because no new matter can be added to an application after its filing date (*see* 35 U.S.C. § 132(a)). If an incorporation by reference statement is included in an amendment to the specification to add a benefit claim under 35 U.S.C. § 120 after the filing date of the application, the amendment would not be proper. When a benefit claim under 35 U.S.C. § 120 is submitted after the filing of an application, the

reference to the prior application cannot include an incorporation by reference statement of the prior application. *See* Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980). *Note* MPEP §§ 201.06(c) and 608.04(b).

In addition, Examiner Hollm has indicated that the proposed amendment to claim priority to Application No. 11/071,973 raises new issues that would require further consideration and/or search. Since a final Office action was mailed on November 18, 2010, 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), an Application Data Sheet or an amendment (complying with the provisions of 37 CFR 1.121 and 37 CFR 1.76(b)(5)) to correct the above matter, and a RCE and required fee 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
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
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

POLSINELLI SHUGHART PC
700 W. 47TH STREET
SUITE 1000
KANSAS CITY MO 64112-1802

MAILED
APR 25 2011
OFFICE OF PETITIONS

In re Application of	:
Buchbinder et al.	:
Application No. 11/734,037	: DECISION ON PETITION
Filed: April 11, 2007	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 051498-113424	:

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed April 14, 2011, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to Application No. 11/071,973, the prior-filed nonprovisional application set forth in the amendment filed with the petition.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

All of the above requirements having been satisfied, the late claim for priority under 35 U.S.C. § 120 is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the prior-filed application. In order for this application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be

construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

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

Any inquiries concerning this decision 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 3734 for consideration by the examiner of applicants' entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed application.

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
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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
11/734,037	04/11/2007	3734	675	051498-113424	30	3

CONFIRMATION NO. 9243

CORRECTED FILING RECEIPT

27148
POLSINELLI SHUGHART PC
700 W. 47TH STREET
SUITE 1000
KANSAS CITY, MO 64112-1802

OC000000047277707

Date Mailed: 04/21/2011

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

Applicant(s)

Dale Buchbinder, Baltimore, MD;
Paul Koven, St. Louis, MO, Deceased;
Joan Koven, St. Louis, MO, Legal Representative;

Power of Attorney: The patent practitioners associated with Customer Number 27148

Domestic Priority data as claimed by applicant

This application is a CIP of 11/071,973 03/04/2005 ABN

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 04/26/2007

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/734,037**

Projected Publication Date: Not Applicable

Non-Publication Request: No

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

Title

Valvulotome

Preliminary Class

606

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

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

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

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Pepper Hamilton LLP
400 Berwyn Park
899 Cassatt Road
Berwyn PA 19312

MAILED
SEP 03 2010
OFFICE OF PETITIONS

In re Application of	:	
Gregory A. Bailey et al.	:	
Application No. 11/734,110	:	DECISION ON PETITION
Filed: April 11, 2007	:	
Attorney Docket No. 136000.00101	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 2, 2010, to revive the above-identified application.

The petition is **DISMISSED**.

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

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed July 31, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on November 1, 2009. A Notice of Abandonment was mailed on February 19, 2010.

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

As to item (3) the statement of unintentional delay is presently not acceptable since the petition was not properly signed. The petition was not signed by all of the inventors.

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.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See* In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $555 extension of time fee submitted with the petition on July 2, 2010 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

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

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

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

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

/Kimberly Inabinet/
Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: John Paul Williams
237 Lancaster Avenue, Suite 254
Devon, PA 19333

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Pepper Hamilton LLP
400 Berwyn Park
899 Cassatt Road
Berwyn PA 19312

MAILED

NOV 04 2010

OFFICE OF PETITIONS

In re Application of :
Gregory A. Bailey et al. :
Application No. 11/734,110 : DECISION ON PETITION
Filed: April 11, 2007 :
Attorney Docket No. 136000.00101 :

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed September 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 non-final Office action mailed July 31, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on November 1, 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 an amendment, (2) the petition fee of $810 and (3) a proper statement of unintentional delay. Accordingly, the amendment is accepted as being unintentionally delayed.

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

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

This application is being referred to Technology Center AU 3629 for appropriate action by the Examiner in the normal course of business on the reply received July 2, 2010.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Michael A. Patane
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103-2799

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SCANBUY INC
54 WEST 39TH STREET
FOURTH FLOOR
NEW YORK NY 10018

MAILED
MAY 13 2011
OFFICE OF PETITIONS

In re Application of :
Hannes Martin Kruppa :
Application No. 11/734,173 : ON PETITION
Filed: April 11, 2007 :
Attorney Docket No. :
0290836.00144US1

This is a decision on the petition to revive under 37 CFR 1.137(b), filed April 11, 2011.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The above-identified application became abandoned for failure to timely file a reply in response to the non-final Office action mailed August 3, 2010. This Office action set a shortened statutory period for reply of three (3) months. No reply having been received, the application became abandoned on November 4, 2010. The Office mailed a Notice of Abandonment on February 18, 2011.

With the instant petition, applicant made the proper statement of unintentional delay, paid the petition fee, and filed the required reply in the form of an Amendment.

The application is being forwarded to Group Art Unit 2624 for consideration of the Amendment, filed April 11, 2011 .

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

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED

FEB 22 2012

OFFICE OF PETITIONS

SCANBUY, INC.
54 WEST 39TH STREET
FOURTH FLOOR
NEW YORK, NY 10018

In re Application of
Hannes Martin Kruppa
Application No. 11/734,173
Filed: April 11, 2007
Attorney Docket No.: None

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b) to revive the above-identified application, filed January 20, 2012.

The petition is not signed by a registered patent attorney or patent agent of record. However, in accordance with 37 CFR 1.34, the signature of Mr. Peter W. Balk 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. Balk desires to receive correspondence regarding this file, the appropriate power of attorney documents must be submitted. A courtesy copy of this decision is being mailed the petitioner herein; however, all future correspondence regarding this application file will be directed solely to the above-noted correspondence address of record.

The petition is **GRANTED**.

The application became abandoned for failure to timely pay the issue and publication fees on or before November 22, 2011, as required by the Notice of Allowance and Fee(s) Due, mailed August 22, 2011, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on November 23, 2011. A Notice of Abandonment was subsequently mailed on January 6, 2012. On January 20, 2012, 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 $870 issue fee and $300 publication fee; (2) the petition fee of $930; and (3) an adequate statement of unintentional delay[1].

The application is being referred to the Office of Data Management to be processed into a patent.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing as a patent should be directed to (571) 272-4200.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: PETER W. BALK
WILMER CUTLER PICKERING HALE AND DORR LLP
399 PARK AVENUE
NEW YORK, NY 10022

[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 or agent 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.

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

MAILED
SEP 27 2010
OFFICE OF PETITIONS

In re Application of Deepak D. Sherlekar, et al. Application No. 11/734,202 Filed: April 11, 2007 Attorney Docket No. 026518-0021PDV	: : : : :	DECISION ON PETITION UNDER 37 CFR 1.78(a)(6)

This is a decision on the renewed petition under 37 CFR 1.78(a)(6), filed August 31, 2010, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional application set forth in the concurrently filed amendment.

The petition is **GRANTED**.

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

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

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

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

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

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

Any inquiries concerning this decision may be directed to April M. Wise at (571) 272-1642. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

The application is being forwarded to Technology Center AU 2825 for consideration by the examiner of the claim under 35 U.S.C. §119(e) for the benefit of priority to the prior-filed provisional application.

/dab/
David Bucci
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/734,202	04/11/2007	2825	1000	026518-0021PDV	15	3

CONFIRMATION NO. 9586

CORRECTED FILING RECEIPT

34284
Rutan & Tucker, LLP.
611 ANTON BLVD
SUITE 1400
COSTA MESA, CA 92626

OC000000043696652

Date Mailed: 09/24/2010

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)

Deepak D. Sherlekar, Cupertino, CA;
Gene Sluss, Pleasanton, CA;
Tushar Gheewale, Los Altos, CA;

Power of Attorney: The patent practitioners associated with Customer Number 34284

Domestic Priority data as claimed by applicant

This application is a DIV of 10/779,194 02/13/2004 PAT 7,219,324
which claims benefit of 60/475,248 06/02/2003

Foreign Applications

If Required, Foreign Filing License Granted: 04/26/2007

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/734,202**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

VARIOUS METHODS AND APPARATUSES TO ROUTE MULTIPLE POWER RAILS TO A CELL

Preliminary Class

716

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

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JEROME D. JACKSON (JACKSON PATENT LAW OFFICE)
211 N. UNION STREET, SUITE 100
ALEXANDRIA VA 22314

MAILED

JAN 24 2011

OFFICE OF PETITIONS

In re Application of	:	
Joseph R. Randazza et al.	:	
Application No. 11/734,216	:	DECISION ON PETITION
Filed: April 11, 2007	:	TO WITHDRAW
Attorney Docket No. 167.012-U	:	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 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 Jerome D. Jackson on behalf of all attorneys/agents associated with customer number 38245. All attorneys/agents associated with customer number 38245 have been withdrawn.

The correspondence address has been changed and is copied below.

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

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Joseph R. Randazza
National Payment Card
4171 W. Hillsboro Blvd, Suite 5
Coconut Creek, FL 33073

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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
11/734,216	04/11/2007	JOSEPH R. RANDAZZA	167.012-U

CONFIRMATION NO. 9611

POWER OF ATTORNEY NOTICE

38245
JEROME D. JACKSON (JACKSON PATENT LAW OFFICE)
211 N. UNION STREET, SUITE 100
ALEXANDRIA, VA 22314

OC000000045515050

Date Mailed: 01/18/2011

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 12/17/2010.

- 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.

/kainabinet/

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

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OFFICE OF PETITIONS

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

In re Application of	:	
Joseph R. Randazza, et al.	:	
Application No. 11/734,216	:	ON PETITION
Filed: April 11, 2007	:	
Attorney Docket No.: 12180001A	:	

This is a decision on the petition under 37 CFR 1.137(b), filed April 4, 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.

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

It is noted that the petition indicates that "the proposed reply that the Examiner received 3/23/2011;" however, no proposed reply was found. Accordingly, the petition must be dismissed for a failure to reply to the non-final office action of September 23, 2010.

Extensions of time under 37 CFR 1.136 are available only if asked for prior to or with the response. In no case, however, may an applicant respond later than the maximum time period set by statute. Accordingly, if the question of abandonment arises when the provisions of 37 CFR

1.136 can no longer be used, then the application is abandoned when the unextended time for response has expired. Since, no extension of time fees are due on a petition for revival, the $555 extension fee included with this petition is being refunded to counsel's deposit account.

Further correspondence with respect to this matter should be delivered through one of the following mediums:

By mail:	Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450
By hand:	Customer Service Window Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(571) 273-8300 ATTN: Office of Petitions
By Internet:	EFS-Web[1]

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

[1] www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

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

MAILED

JUN 13 2011

OFFICE OF PETITIONS

In re Application of
Joseph R. Randazza, et al.
Application No. 11/734,216
Filed: April 11, 2007
Attorney Docket No.: 12180001A

ON PETITION

This is a decision in response to the renewed petition, filed May 16, 2011, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

The application became abandoned for a failure to reply in a timely manner to a non-final Office action mailed September 23, 2010. A Notice of Abandonment was mailed on March 28, 2011. On April 4, 2011, a petition under the provisions of 37 CFR 1.137(b) was filed; however, the petition was dismissed in a decision mailed May 12, 2011. On May 16, 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 an amendment; (2) the petition fee of $810; and (3) an adequate statement of unintentional delay.

The application is being referred to Technology Center AU 2876 for appropriate action by the Examiner in the normal course of business on the reply received May 16, 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

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JAN 24 2012
OFFICE OF PETITIONS

Ramirez & Smith
P.O. Box 341179
Austin, TX 78734

In re Application of Timothy W. Deller	:	
Application No. 11/734,245	:	Decision on Petition
Filing Date: April 11, 2007	:	
Attorney Docket No. GE.0017	:	

This is a decision on the petition under 37 CFR 1.137(b) filed December 9, 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 final Office action issued November 15, 2010, which set a shortened statutory period for reply of three (3) months. An extension of time under the provisions of 37 CFR 1.136(a) was not obtained. Accordingly, the above-identified application became abandoned on February 16, 2011. A Notice of Abandonment was issued June 16, 2011.

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

(1) The reply required to the outstanding Office action or notice, unless previously filed,
(2) The petition fee, and
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.[1]

The petition satisfies the requirements of 37 CFR 1.137(b) in so far as petitioner has supplied (1) a reply in the form of RCE and amendment, (2) the required petition fee of $1,860, and (3) the required statement of unintentional delay. Therefore, the petition is granted and the application is revived.

[1] A terminal disclaimer is also necessary if the application is a design application or if the application was filed on or before June 8, 1995.

Technology Center Art Unit 2624 will be informed of the instant decision and the application will be further examined in due course.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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FlashPoint Technology and Withrow & Terranova
100 Regency Forest Drive
Suite 160
Cary NC 27518

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OFFICE OF PETITIONS

In re Application of	:	
James Evans, et al.	:	
Application No. 11/734,468	:	DECISION GRANTING PETITION
Filed: April 12, 2007	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 1104-335	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, September 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 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 2476 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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FOX ROTHSCHILD LLP
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LAWRENCEVILLE NJ 08648

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JUN 27 2011

OFFICE OF PETITIONS

In re Application of:
SHAHBODAGHI, MAHMOUD
Serial No.: 11/734,523
Filed: April 12, 2007
Attorney Docket No.: 80945-1

DECISION ON PETITION

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 reply in a timely manner to the non-final Office action mailed, December 10, 2008, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on March 11, 2009.

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 $810.00; and (3) a statement of unintentional delay. Accordingly, the reply to the Office action of December 10, 2008 is accepted as having been unintentionally delayed.

This application has been abandoned for an extended period of time. The U.S. Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting the statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." *See* Changes to Patent Practice and Procedure, 62 Fed. Reg., at 53160 and 53178; 1203 Off. Gaz. Pat. Office, at 88 and 103 (responses to comments 64 and 109) (applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the U.S. Patent and Trademark Office).

This application is being referred to Technology Center AU 3692 for processing of the amendment and for appropriate action by the Examiner in the normal course of business in accordance with 37 CFR 1.114.

Any questions concerning this matter may be directed to Jose' G Dees at (571) 272-1569.

Christopher Bottorff
Petitions Examiner
Office of Petitions

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2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE CA 92614

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OFFICE OF PETITIONS

In re Patent No. 8,076,306	
Monia et al.	DECISION ON REQUEST FOR
Issue Date: December 13, 2011	RECONSIDERATION OF
Application No. 11/734,562	PATENT TERM ADJUSTMENT
Filed: April 12, 2007	
Attorney Docket No. BIOL0082US	

This is a decision on the petition filed on February 13, 2012, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by seven hundred eighty-one (781) days, or in the alternative, five hundred twenty-two (522) days.

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

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

BACKGROUND

On December 13, 2011, the above-identified application matured into U.S. Patent No. 8,076,306, with a revised patent term adjustment of 396 days. On February 13, 2012, patentee timely submitted this request for reconsideration of patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 781 days, or in the alternative, 522 days.

Patentee maintains that the Office incorrectly calculated Office delay pursuant to 37 CFR 1.702(b). Patentee presents two alternative arguments.

First, patentee argues that the plain language of 35 U.S.C. § 154(b)(1)(B) defines a "trigger" which establishes when "B" delay applies, and when determining whether the "trigger" condition is met, that is, whether the Office issued a patent within 3 years, the statute provides that one does not count any time consumed by an RCE. In this instance, the patent issued from an application filed on April 12, 2007. Patentee argues that as the first RCE was filed on April 23, 2010, after the 3-year period ending on April 12, 2010, the time consumed by RCE during that 3-year period is zero days. The patent issued on December 13, 2011. Because the Office failed to issue the patent within three years, excluding time consumed by RCE, the "trigger" condition is satisfied. Therefore, patentee maintains that the "B" delay is 599 days for failure to issue a patent within three years of the application filing date (for the period beginning on April 13, 2010 and ending on December 13, 2011). (It is noted, however, that the period beginning on April 12, 2010 and ending on December 13, 2011 is 610 days). Considering overlap of 204 days (for the period of A delay from August 23, 2010 to March 15, 2011), patentee maintains entitlement to an entry of 395 days for "B" delay. Patentee maintains that the correct PTA is 781 days, which is 841 days of non-overlapping Office delay minus 60 days of applicant delay.

Alternatively, patentee contends that the Office erred in subtracting from the "B delay" a period of time that was not "consumed by continued examination of the application." Specifically, Patentee argues that (after the filing of the request for continued examination on April 23, 2010) the Office mailed a Notice of Allowance on August 9, 2011, thereby closing examination of the application on that date. Thus, Patentees argue no continued examination took place during the 126 day period from August 10, 2011 (the day after the mailing date of the Notice of Allowance) until December 13, 2011 (the date the patent was issued). As such, Patentee maintains that the "B delay" should include the 126 days and be increased from 10 to 136 days. Patentee maintains the correct PTA is 522 days, which is 582 days of non-overlapping Office delay minus 60 days of applicant delay.

RELEVANT STATUTE AND REGULATIONS

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

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

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

(ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or 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" as 10 days pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) based on the application being filed under 35 U.S.C. 111(a) on April 12, 2007, and the patent not having issued as of the day after the three year date, April 13, 2010, and a request for continued examination under 132(b) having been filed on April 23, 2010. In other words, the entire 600-day period from the date of filing of the request for continued examination to the date of issuance of the patent 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

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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.

continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Further, counting the period of time excluded from the three-year period for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56365, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

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

First, "Subject to the limitations of paragraph (2)," meaning that the limitations of paragraph 2 apply to this paragraph's extension of patent term. That is, the day-to-day extension of

patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

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

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

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be

considered. As stated in Wyeth v. Dudas, 2008 U.S. Dist. LEXIS 76063 (D.D.C., September 30, 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants extensions of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent. Thus, not including "any time consumed by" means not including in "that 3-year period" any days it takes to prosecute the application as specified in clauses (i)-(ii). The "any" signifies that the days taken up are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. The "time consumed by" refers to the days taken up with 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, 4) appellate review or 5) any delay in processing requested by applicant, except as permitted by paragraph (3)(C), which allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days taken up with or any time consumed by clauses (i)-(iii), including filing of a request for continued examination.

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

The "time consumed by" or taken up with the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35

U.S.C. 132(b) was enacted under the same title, the American Inventors Protection Act of 1999, as 35 U.S.C. 154(b).

By nature, the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground

within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed.

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request.

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

In this instance, a request for continued examination was filed on April 23, 2010, and the patent issued by virtue of that request on December 13, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on April 23, 2010 and ending on December 13, 2011 is not included in calculating Office delay.

CONCLUSION

In view thereof, the patent term adjustment in the above-identified patent remains 396 days.

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

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : April 5, 2011

TO SPE OF : ART UNIT 3774 SPE David J. Isabella

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/734,681 Patent No.: 7,837,734 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 "biasing" be changed to "resisting" in claim 20 as requested by applicant?

See COCIN dated 03-24-2011

Antonio Johnson

Certificates of Correction Branch

(571)272-0483 Fax – (571)270-9846

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: _____

_____

_____

_____ SPE D. Isabella Art Unit 3774

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : **10/11/11**

TO SPE OF : ART UNIT: **2626 Attn: WOZNIAK JAMES S (SPE)**

SUBJECT : Request for Certificate of Correction for Appl. No.: **11/734824** Patent No.: **8010350**

CofC mailroom date: 09/28/2011

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Note: Please check Claims 8, 19 & 27
Should the amended claims be amended again or not

Tasneem Siddiqui
Certificates of Correction Branch
703-756-1814 & 703-756-1593

Thank You For Your Assistance

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

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

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

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

Comments: All changes are supported from the claims submitted 06/14/2011. The changes to claim 8, is typographical error. Changes to claims 19 and 27 is the fault of the office as the formula on claims 19 and 27 were not properly transferred.

/James S. Wozniak/ 2626

SPE **Art Unit**

Patent 8,010,350 OK TO ENTER: /P.S./ (10/12/2011) **PATENT**

OK TO ENTER: /P.S./ (10/12/2011)

IN UNITED STATES PATENT AND TRADEMARK OFFICE

Patent No.:	8,010,350	Docket No:	A05.00040001
Issue Date:	August 30, 2011	Patentee:	Robert W. Zopf
Title	DECIMATED BISECTIONAL PITCH REFINEMENT		

REQUEST FOR CERTIFICATION OF CORRECTION

Attn: Certificate of Correction Branch
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

It is requested that a Certificate of Correction be issued to correct printing errors appearing in the above-identified United States patent.

Pursuant to 1.20(a), the Examiner is authorized to charge the Certificate of Correction fee of $100.00 to the credit card and any overage or underpayment can be credited or charged to Deposit Account No. 50-5182.

Issuance of the Certificate of Correction would neither expand nor contract the scope of the claims as properly allowed, and re-examination is not required.

Respectfully submitted,

Customer Number: 68365

Date September 28, 2011

By /Bryan S. Wade, #58,228/
Bryan S. Wade
Reg. No. 58,228

Fiala & Weaver, P.L.L.C.
3936 McKinley Street, N.W.
Washington, D.C. 20015
(202) 244-3003

PTO/SB/44 (02-01)
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Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO : 8,010,350

DATED : August 30, 2011

INVENTOR(S) : Robert W. Zopf

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

In column 41, line 24, in claim 8, delete "a the" and insert - - the - -, therefor.

In column 42, line 67, in claim 19, delete "$\Delta_0 = \lfloor (1 + Q_{ideal} - Q_0 | / 2) \rfloor$," and insert - - $\Delta_0 = \lfloor (1 + |Q_{ideal} - Q_0| / 2) \rfloor$, - -, therefor.

In column 44, line 23, in claim 27, delete "$\Delta_0 = \lfloor (1 + Q_{ideal} - Q_0 | / 2) \rfloor$," and insert - - $\Delta_0 = \lfloor (1 + |Q_{ideal} - Q_0| / 2) \rfloor$, - -, therefor.

MAILING ADDRESS OF SENDER:

PATENT NO. _____ 8,010,350_____

Fiala & Weaver
c/o CPA Global
P.O. Box 52050
Minneapolis, MN 55402

No. of additional copies

Atty Docket No: A05.00040001

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Patent No. : 7,815,806 B2
Ser. No. : 11/734,858
Inventor(s) : Cooper et al.
Issued : Oct. 19, 2010
Title : PURIFICATION OF FLUIDS WITH CARBON NANOTUBES HAVING ATTACHED FUNCTIONAL GROUP
Docket No. : 09102.0005-04
Re: Request for Certificate of Correction

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

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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 29 2012
OFFICE OF PETITIONS

SALIWANCHIK, LLOYD & EISENSCHENK
A PROFESSIONAL ASSOCIATION
PO Box 142950
GAINESVILLE FL 32614

In Re application of Kyong Jun Kim Application No. 11/734,872 Filed: April 13,2007 Attorney Docket No. SUN.LGI.112	: : : : :	ON PETITION

This is a decision on the petition to expunge, filed December 20, 2011, which is being as a petition under 37 CFR 1.59(b) to expunge information from the above identified application.

The petition is **granted**.

Petitioner requests that the amendment filed December 8, 2011be expunged from the record. Petitioner states that the information submitted was erroneously filed in the instant application.

The information in question has been determined by the undersigned to not be material to the examination of the instant application. The information was clearly intended to be filed in an unrelated application.

The expunged material has been removed from the official file.

In accordance with MPEP 724.05(III), no petition is needed since the papers in question were clearly identified for a different application. Therefore, the petition fee is refunded.

Telephone inquiries relative to this decision should be directed to Carl Friedman at (571) 272-6842.

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

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

MAILED

OCT 03 2011

OFFICE OF PETITIONS

In re Application of	:	
Hans Schoenmaker	:	
Application No. 11/734,878	:	DECISION GRANTING PETITION
Filed: April 13, 2007	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **200558.00025**	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, September 30, 2011 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on August 16, 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 3677 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

---

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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BATTELLE MEMORIAL INSTITUTE
ATTN: IP SERVICES, K1-53
P. O. BOX 999
RICHLAND WA 99352

MAILED
NOV 30 2010
OFFICE OF PETITIONS

In re Application of	:	
Whyatt et al.	:	
Application No. 11/734,909	:	DECISION ON PETITION
Filed: April 13, 2007	:	
Attorney Docket No. 15416-B	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 26, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely submit Corrected Drawings on or before September 27, 2010, as required by the Notice of Allowance and Fee(s) Due and the Notice of Allowability, mailed June 25, 2010. Accordingly, the date of abandonment of this application is September 28, 2010. A Notice of Abandonment was mailed October 12, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) Corrected Drawings, (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 Publishing Division for processing into a patent and review of the Corrected Drawings submitted with the instant petition.

Joan Olszewski

Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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OBLON, SPIVAK, MCCLELLAND
MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA VA 22314

MAILED

JUN 16 2011

OFFICE OF PETITIONS

In re Application of
Okada
Application No. 11/735,011
Filed: 13 April, 2007
Attorney Docket No. 307109US8CIP

DECISION ON PETITION

This is a decision on the petition filed on 1 June, 2011, pursuant to 37 C.F.R §1.182 requesting authorization to withdraw the two terminal disclaimers filed 28 April, 2011.

NOTE:

Petitioner seeks to reopen the question of the propriety of the double patenting rejection that prompted the filing of terminal disclaimers—historically, such requests have not been favorably considered. (*See*: MPEP §1490.)

Petitioner now must present an Interview Summary provided by the Examiner evidencing that Petitioner has satisfied the objections raised by the Examiner to the withdrawal of the terminal disclaimers in question.

As of this writing, there has been no response of concurrence from the Patent Legal Research Center in this matter. Thus, after the requirement to evidence the Examiner's concurrence has been satisfied, Petitioner also must ensure that the subsequent concurrence of the Patent Legal Research Center can be obtained.

The petition pursuant to 37 C.F.R §1.182 is **DISMISSED**.

The guidance in the Commentary at MPEP §1490 provides in pertinent part:

***

VII. WITHDRAWING A RECORDED TERMINAL DISCLAIMER

If timely requested, a recorded terminal disclaimer may be withdrawn before the application in which it is filed issues as a patent, or in a reexamination proceeding, before

the reexamination certificate issues. After a patent or reexamination certificate issues, it is unlikely that a recorded terminal disclaimer will be nullified.

A. Before Issuance Of Patent

While the filing and recordation of an unnecessary terminal disclaimer has been characterized as an "unhappy circumstance" in *In re Jentoft*, 392 F.2d 633, 157 USPQ 363 (CCPA 1968), there is no statutory prohibition against nullifying or otherwise canceling the effect of a recorded terminal disclaimer which was erroneously filed before the patent issues. *>Because< the terminal disclaimer would not take effect until the patent is granted, and the public has not had the opportunity to rely on the terminal disclaimer, relief from this unhappy circumstance may be available by way of petition or by refiling the application (other than by refiling it as a CPA).

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

***

It appears that Petitioner well may have determined for purposes of prosecution strategy to submit the terminal disclaimer notwithstanding Petitioner's own beliefs that the disclaimer was unnecessary.

Thus, Petitioner appears to have made choices deemed to provide to him a prosecution road to allowance, and the Office will not indiscriminately alter those choices.

Accordingly, the petition is **dismissed**.

This application is released to the Technology Center/AU 3716 for further processing in due course.

While telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214, it is noted 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/Caller'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.

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

MAILED
AUG 29 2011
OFFICE OF PETITIONS

In re Application of :
Okada :
Application No. 11/735,011 : DECISION ON PETITION
Filed: 13 April, 2007 :
Attorney Docket No. 307109US8CIP :

This is a decision on the petition filed on 17 August, 2011, pursuant to 37 C.F.R §1.182 requesting authorization to withdraw the terminal disclaimer (TD) filed 28 April, 2011.

NOTE:

Historically, an effort to reopen the question of the propriety of the double patenting rejection that prompted the filing of a terminal disclaimer (TD) has not been favorably considered. (*See*: MPEP §1490.)

Notably, Petitioner presented an Interview Summary provided by the Examiner evidencing that Petitioner has satisfied the objections raised by the Examiner to the withdrawal of the terminal disclaimers in question.[1]

The petition pursuant to 37 C.F.R §1.182 is **GRANTED**.

The guidance in the Commentary at MPEP §1490 provides in pertinent part:

***

VII. WITHDRAWING A RECORDED TERMINAL DISCLAIMER

If timely requested, a recorded terminal disclaimer may be withdrawn before the application in which it is filed issues as a patent, or in a reexamination proceeding, before

[1] The 14 June, 2011, request by the Office of Petitions to the Patent Legal Research Center that it indicate its concurrence in this matter or not has not received a response and is noted for the record.

the reexamination certificate issues. After a patent or reexamination certificate issues, it is unlikely that a recorded terminal disclaimer will be nullified.

A. Before Issuance Of Patent

While the filing and recordation of an unnecessary terminal disclaimer has been characterized as an "unhappy circumstance" in *In re Jentoft*, 392 F.2d 633, 157 USPQ 363 (CCPA 1968), there is no statutory prohibition against nullifying or otherwise canceling the effect of a recorded terminal disclaimer which was erroneously filed before the patent issues. *>Because< the terminal disclaimer would not take effect until the patent is granted, and the public has not had the opportunity to rely on the terminal disclaimer, relief from this unhappy circumstance may be available by way of petition or by refiling the application (other than by refiling it as a CPA).

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

***

It appears that Petitioner submitted (1 June, 2011) a substitute TD, which was approved following the 16 June, 2011, decision, and that the Examiner did not oppose the withdrawal of the 28 April, 2011, TD (*see:* Interview Summary of 10 August, 2011).

It appears as of this writing that the barriers to withdrawal of the 28 April, 2011, TD have been removed.

Accordingly, the petition is **granted**.

This application is released to the Technology Center/AU 3716 for further processing in due course.

While telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214, it is noted 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/Caller'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 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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James F. Hann
Haynes Beeffel & Wolfeld LLP
P.O. Box 366
Half Moon Bay, CA 94019

In re Application of:
Craig L. Kaprielian et al.
Application No. 11/735,126
Filed: April 13, 2007
For: Computer Controlled Fertigation System and Method

DECISION ON PETITION
UNDER 37 CFR § 1.48(a)

This is a decision on the petition, filed on 18 June 2010, under 37 C.F.R. § 1.48(a).

The petition is **GRANTED**.

The application is being forward to Technology Center Support Staff to remove inventor Bryan L. Aivazian as an inventor in the above captioned application serial number.

Kaprielian Craig is the sole inventor.

/Albert DeCady/

Albert DeCady
Supervisory Patent Examiner
Technology Center 2100
571-272-3819

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.
11/735,307	04/13/2007	Tetsuya Itani	50478-7700	1701

52044 7590 12/23/2010
SNELL & WILMER L.L.P. (Panasonic)
600 ANTON BOULEVARD
SUITE 1400
COSTA MESA, CA 92626

EXAMINER
ADEGEYE, OLUWASEUN

ART UNIT	PAPER NUMBER
2481	

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

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DEC 23 2010

DIRECTOR OFFICE
TECHNOLOGY CENTER 2400

SNELL & WILMER L.L.P. (PANASONIC)
600 ANTON BOULEVARD
SUITE 1400
COSTA MESA, CA 92626

In re Application of	:	
ITANI, TETSUYA	:	DECISION ON REQUEST TO
Application No. 11/735,307	:	PARTICIPATE IN PATENT
Filed: April 13, 2007	:	PROSECUTION HIGHWAY
Attorney Docket No. **50478-7700**	:	PROGRAM AND PETITION
	:	TO MAKE SPECIAL UNDER
	:	37 CFR 1.102(d)

This is a decision on the request to participate in the Patent Prosecution Highway (PPH) program and the petition under 37 CFR 1.102(d), filed October 18, 2010 to make the above-identified application special.

The request and petition are **GRANTED**.

A grantable request to participate in the PPH program and petition to make special require:

(1) The U.S. application must validly claim priority under 35 U.S.C. 119(a) to one or more applications filed in the JPO;
(2) Applicant must submit a copy of the allowable/patentable claim(s) from the JPO application(s) along with an English translation thereof and a statement that the English translation is accurate;
(3) All the claims in the U.S. application must sufficiently correspond or be amended to sufficiently correspond to the allowable/patentable claim(s) in the JPO application(s);
(4) Examination of the U.S. application has not begun;
(5) Applicant must submit a copy of all the office actions from each of the JPO application(s) containing the allowable/patentable claim(s) along with an English translation thereof and a statement that the English translation is accurate;
(6) Applicant must submit an IDS listing the documents cited by the JPO examiner in the JPO office action along with copies of documents except U.S. patents or U.S. patent application publications; and

The request to participate in the PPH program and petition comply with the above requirements. Accordingly, the above-identified application has been accorded "special" status.

Telephone inquiries concerning this decision should be directed to Mehrdad Dastouri at 571-272-7418.

All other inquiries concerning the examination or status of the application should be directed to Patent Application Information Retrieval (PAIR) system.

The application is being forwarded to the examiner for action on the merits commensurate with this decision.

/ Mehrdad Dastouri/

Mehrdad Dastouri
Quality Assurance Specialist
Technology Center 2400

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

TOWNSEND AND TOWNSEND AND CREW LLP
TWO EMBARCADERO CENTER
8TH FLOOR
SAN FRANCISCO CA 94111

MAILED

SEP 30 2010

OFFICE OF PETITIONS

In re Patent No. 7,641,903	:	DECISION ON REQUEST
Law et al.	:	FOR
Issue Date: January 5, 2010	:	RECONSIDERATION OF
Application No. 11/735,365	:	PATENT TERM ADJUSTMENT
Filed: April 13, 2007	:	and
Atty Docket No.018891-000821US	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on March 4, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by forty-five (45) days.

Patentee disputes the reduction of 72 days associated with the filing of an amendment after allowance. Patentee maintains that as the amendment was filed on October 26, 2009 and responded to by the Office on November 25, 2009, the period of reduction pursuant to 37 CFR 1.704(c)(10) is 30 days, not 72 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 forty-four (44) days.

Patentee's contention is well taken. However, the period of reduction is 31 days, not 30 days. 37 CFR 1.704(c) provides, in pertinent part, that:

> Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or

> examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:
>
> (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 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; …

On October 26, 2009, patentee filed an amendment after allowance. A response was mailed on November 25, 2009. However, the period of reduction begins on the date of filing of the amendment. As stated in MPEP 2731,

> When a period is indicated (in 37 CFR 1.703 or 1.704) as "beginning" on a particular day, that day is included in the period, in that such day is "day one" of the period and not "day zero." For example, a period beginning on April 1 and ending on April 10 is ten (and not nine) days in length.

Thus, in this instance, the period is 31 days counting the number of days beginning on October 26, 2009 and ending on November 25, 2009. The period of reduction of 72 days is being removed and a period of reduction of 31 days is being entered.

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

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

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

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by forty-four **(44)** 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 : 7,641,903 B2

DATED : **January 5, 2010** **DRAFT**

INVENTOR(S) : Law 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 3 days

Delete the phrase "by 3 days" and insert – by 44 days--

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20110504

DATE : April 19, 2011

TO SPE OF : ART UNIT 1642

SUBJECT : Request for Certificate of Correction on Patent No.: 7,641,903

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

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WILSON, SONSINI, GOODRICH & ROSATI
650 PAGE MILL ROAD
PALO ALTO CA 94304-1050

MAILED
SEP 27 2010
OFFICE OF PETITIONS

In re Application of	:	
William IRVIN	:	
Application No. 11/735,380	:	DECISION ON PETITION UNDER
Filed: April 13, 2007	:	37 CFR 1.182 AND 37 CFR 1.137(b)
Attorney Docket No. **23560-702.201**	:	

This is a decision on the petition under 37 CFR § l. l82, filed August 17, 2010 to expedited decision and the petition under the unintentional provisions of 37 CFR § 1.137(b), to revive the above-identified application.

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

The petition under 37 CFR 1.137(b) is **DISMISSED** as moot.

A review of the file record discloses that the Notice of Allowance and Fee(s) Due along with Examiner's Amendment were mailed on June 21, 2010. The issue and publication fee(s) in this case were timely paid on September 21, 2010.

In view of the above, the filing of a petition to revive under 37 CFR 1.137(b) is unnecessary. As authorized, the $400 fee for the petition under 37 CFR 1.182 has been charged to petitioner's deposit account. However, the $1620 petition to revive fee submitted has been refunded to petitioner's deposit account number 23-2415.

Telephone inquiries concerning this decision should be directed to Monica A. Graves at (571) 272-7253.

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

Thurman K. Page
Petitions Examiner
Office of Petitions

UNITED STATES DEPARTMENT OF COMMERCE
COMMISSIONER FOR PATENTS
P. O. BOX 1450
ALEXANDRIA, VA 22313-1450

Date	: 1/6/2012
Patent No.	: 7,976,561 B2
Serial No.	: 11/735,470
Inventor(s)	: Bruckheimer et al.
Issue Date	: July 12,2011
Title	: **INTRAVASCULAR PLATFORMS AND ASSOCIATED DEVICES**
File No.	: **PS/10-016.IL.PCT.US.C**

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.

The inventors' names are printed in accordance with the typed names on the Declaration, therefore the error was the result of applicants' failure to comply with the requirement that the correct names be indicated on the Declaration or Oath. No correction is in order here under the provisions of Rule 1.322.

In view of the foregoing, your request is hereby denied. However, further consideration will be given your request, upon receipt of a request under the provisions of Rule 1.323. accompanying the appropriate fee of $100.

Future correspondence concerning this matter should be filed and directed to Decisions & Certificates of Correction Branch.

Ernest C. White, *LIE* (571) 572-3385
Mary F. Diggs, *Supervisor* (703) 756-1580
Decisions & Certificates of Correction Branch
ernest.white@uspto.gov

Medrad Patents & Trademarks
One Medrad Drive
INDIANOLA PA 15051

ECW

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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ROBERT M. MCDERMOTT, ESQ.
1824 FEDERAL FARM ROAD
MONTROSS VA 22520

MAILED
JUL 13 2011
OFFICE OF PETITIONS

In re Application of	:	
Alain J. Cohen, et al.	:	
Application No. 11/735,474	:	DECISION ON PETITION
Filed: April 15, 2007	:	
Attorney Docket No. OP-060604	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 21, 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 June 4, 2011, as required by the Notice of Allowance and Fee(s) Due, mailed March 4, 2011. Accordingly, the date of abandonment of this application is June 5, 2011. The Notice of Abandonment was mailed June 21, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,510 and the publication fee of $300, (2) the petition fee of $1,620; and (3) a proper statement of unintentional delay.

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

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

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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GIFFORD, KRASS, SPRINKLE,ANDERSON & CITKOWSKI, P.C
PO BOX 7021
TROY MI 48007-7021

MAILED
AUG 16 2010
OFFICE OF PETITIONS

In re Application of:
NORDSTOG, Bruce
Application No. 11/735,536
Filed: April 16, 2007
Attorney Docket No. NBD-10002/15

ON PETITION

This is a decision on the Petition to Expunge Copy of Paper in Application Under 37 CFR 1.59(B), filed April 13, 2010. The requisite $200.00 petition fee has been submitted.

The petition is **GRANTED.**

Petitioner urges that papers unrelated to the above-identified application were inadvertently filed therein on April 5, 2010 in lieu of the correct papers, which were also filed on April 5, 2010 after the error was discovered. As such, Applicant requests that the incorrect papers be expunged. It is agreed that under the circumstances of this case, petitioner has shown to the satisfaction of the Director that expungement is appropriate.

The file entry of the subject document has been closed. As such, the document is no longer available to the public for inspection, which is the Image File Wrapper (IFW) equivalent to removal of a paper document from a paper file wrapper.

Telephone inquiries concerning this decision should be directed to Brian W. Brown at (571) 272-5338.

Brian W. Brown
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Date : March 25, 2011

Patent No. :7706995
Ser. No. :11735654
Inventor(s) : Phillip Sullivan et. al
Issued :April 27, 2010
Title :CAPACITANCE MENOMETERS AND METHODS RELATING TO AUTO-DRIFT
:CORRECTION

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) Support 1-866-217-9197 571-272-4100

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

Any inquiry concerning this communication should be directed to Ms. A. Green at (571)-272-9005.

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

McDermott Will & Emery LLP
600 13th Street, N.W.
Washington, DC 20005-3906

/arg

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McDermott Will & Emery
600 13th Street, NW
Washington, DC 20005-3096

MAILED
JUN 24 2011
OFFICE OF PETITIONS

In re Patent of Sullivan et al.	:	
Patent No. 7,706,995	:	
Issue Date: April 27, 2010	:	Letter
Application No. 11/735,654	:	
Filing Date: April 16, 2007	:	
Atty. Docket No. 56231-704(MKSK-185)	:	

This is a letter responding to the request under 37 CFR 3.81(b) filed May 10, 2011.

The request under 37 CFR 3.81 is **GRANTED**.

Pursuant to 37 CFR 3.81(b), a request to have a patent corrected to add, or change, an assignee's name must:

1. State an assignment to the assignee was recorded before issuance of the patent,
2. Include a request for a certificate of correction and the fee set forth in 37 CFR 1.20(a), and
3. Include the fee set forth in 37 CFR 1.17(i).

Patentees have met the requirements set forth above. Therefore, the request is granted.

The Certificates of Correction Branch will be informed of the instant decision and will issue the requested certificate of correction in due course.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES 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 : July 22, 2011

Patent No. :7759777
Inventor(s) :Ralf Otremba et al.
Issued :July 20, 2010
Title :SEMICONDUCTOR MODULE

Re: Request for Certificate of Correction

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

An error on a patent can be corrected by a certificate of correction, if appropriate. Accordingly, a petition under C.F.R. 1.182 is required to correct the alleged error concerning the inventor's names and addresses. Since this information is printed solely in accordance with the typewritten information provided on the Declaration, Oath or ADS, and since the error was the result of applicant's failure to comply with the requirement that the complete and correct information be provided accordingly, no correction is in order here under the provisions of Rules 1.322 or 1.323, unless a petition is granted in favor of applicants' request.

Accordingly, a petition under 37 CFR 1.182 should be directed to the attention of the Assistant Commissioner for Patents using the following mailing address or FAX number.

By Mail: Commissioner of Patents and Trademarks
Petitions Office
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (703) 308-6916
Attn: Office of Petitions

If the petition under 37 CFR 1.182 is filed and granted the patentee would be entitled to a certificate of correction under 37 CFR 1.323 (required fee currently $100).

Any telephone inquiry concerning this communication should be directed to Ms. A. Green at (572) 272-9005

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

Dickie, Billig & CZAJA, PllC
Attn: Katy Henry
Fifth Street Towers, Ste 2250
100 South Fifth Street
Minneapolis, MN 55402

/arg

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

MAILED

NOV 14 2011

OFFICE OF PETITIONS

In re Application of	:	
Eiji Ohta, et al.	:	
Application No. 11/735,792	:	DECISION GRANTING PETITION
Filed: April 16, 2007	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 3712174-01067	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, November 4, 2011 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on October 6, 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 2874 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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MAILED
MAR 10 2011
OFFICE OF PETITIONS

MARGER JOHNSON & MCCOLLOM, P.C.
210 SW MORRISON STREET, SUITE 400
PORTLAND OR 97204

In re Patent No. 7,736,444	:	
Issue Date: June 15, 2010	:	
Application No. 11/735,834	:	DECISION ON PETITION
Filed: April 16, 2007	:	
Attorney Docket No. 8412-002	:	

This is a decision on the Request To Correct The Name Of The Assignee and Request For Certificate Of Correction, filed November 5, 2010, requesting correction on the Title Page of the subject patent to identify the correct assignee's name. The Request is being treated as a Petition Under 37 CFR §3.81(b). A completed Certificate of Correction Form (PTO/SB/44) was submitted with Petition.

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

Petitioner requests that the present Petition was submitted to correct the assignee's name on the previously submitted PTOL-85B and 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:

"Silicon Steel Technology, Inc."

to:

-- Silicon Steel Technology, LLC --

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

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

The requisite $130.00 processing fee (Fee Code 1464), as set forth under 37 CFR 1.17(i), has been submitted. The $100.00 fee (Fee Code 1811), as set forth under 37 CFR 1.20(a), was not submitted. However, review of Office records show that the PTOL-85(b) accompanied deposit account authorization to charge any required fees. As such, the fee has been charged. 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. 7,736,444.

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

MAILED
MAY 12 2011
OFFICE OF PETITIONS

In re Application of	:	
Scott R. Myers et al.	:	
Application No. 11/735,854	:	DECISION ON PETITION
Filed: April 16, 2007	:	
Attorney Docket No. **23700-0052001**	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 28, 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 August 17, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). A one month's extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is December 18, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a 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 February 18, 2011 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

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

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

This application is being referred to Technology Center AU 3748 to await the filing of an appeal brief or for such other appropriate reply as may be submitted to continue prosecution of the application.

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

cc: **GE ENERGY GENERAL ELECTRIC**
C/O ERNEST G. CUSICK
ONE RIVER ROAD, BLD. 43, ROOM 225
SCHENECTADY NY 12345

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180 NORTH STETSON AVENUE
CHICAGO IL 60601-6731

MAILED
MAY 23 2011
OFFICE OF PETITIONS

In re Application of	:	
Abe et al.	:	DECISION ON APPLICATION
Application No. 11/736,064	:	for
Filed: April 17, 2007	:	PATENT TERM ADJUSTMENT
Atty Docket No. 701538	:	

This is a decision on the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN NOTICE OF ALLOWANCE (37 C.F.R. §1.705(b)), filed April 25, 2011. Applicants request that the determination of patent term adjustment under 35 U.S.C. 154(b) at the time of mailing of the notice of allowance be corrected from six hundred twenty-one (621) days to six hundred forty-eight (648) days.

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

The Office has updated the PALM screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is **six hundred forty-eight (648)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On January 24, 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 621 days. On April 25, 2011, applicants timely submitted the instant application for patent term adjustment[1]. Applicants maintain that the period of reduction of 27 days entered pursuant to 37 CFR 1.704(c)(8), for the filing of an Information Disclosure Statement (IDS) on August 11, 2010 was entered in error. Applicants contend that the IDS contained the certification pursuant to § 1.704(d), and

[1] PALM records show that the Issue Fee was received on April 25, 2011.

thus, its filing did not constitute a failure to engage in reasonable efforts to conclude prosecution of this application under 37 C.F.R. § 1.704(c)(8).

The Office concurs. Pursuant to 37 CFR § 1.704(c)(8), the submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, is a failure to engage in reasonable efforts to conclude prosecution. It is undisputed that after filing a response on July 15, 2010, on August 11, 2010, applicants filed an IDS. The record does not support a conclusion that the IDS was expressly requested by the examiner.

A review of the IDS filed August 11, 2010, reveals that it included the proper § 1.704(d) statement. The IDS states, in pertinent part, that:

> ..[E]ach 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.

Since the IDS was accompanied by a proper § 1.704(d) statement, no reduction is warranted. Accordingly, the 27 day reduction is being removed.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is six hundred forty-eight (648) days.

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

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

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of adjusted PAIR calculation for U.S. Application No. 11/736,064

Patent eBusiness

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- Patent Ownership
- Fees
- Supplemental Resources & Support

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11/736,064 NEW PIPERAZINE COMPOUND AND USE THEREOF AS A HCV POLYMERASE INHIBITOR

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:	04-17-2007	Overlapping Days Between {A and B} or {A and C}:	0
Issue Date of Patent:	-	Non-Overlapping USPTO Delays:	667
A Delays:	667	PTO Manual Adjustments:	27
B Delays:	0	Applicant Delays:	46
C Delays:	0	Total PTA Adjustments:	648

Patent Term Adjustment History **Explanation Of Calculations**

Number	Date	Contents Description	PTO (Days)	APPL (Days)	Start
76	05-20-2011	Adjustment of PTA Calculation by PTO	27		0
61	01-24-2011	Mail Notice of Allowance			0
60	01-18-2011	Issue Revision Completed			0
59	01-18-2011	Notice of Allowance Data Verification Completed			0
58	01-18-2011	Case Docketed to Examiner in GAU			0
57	01-18-2011	Document Verification			0
56	01-18-2011	Allowability Notice			0
55	12-05-2010	Date Forwarded to Examiner			0
54	12-01-2010	Response after Non-Final Action			0
53	09-01-2010	Electronic Review			0
52	09-01-2010	Email Notification			0
51	09-01-2010	Mail Non-Final Rejection			0
50	08-27-2010	Non-Final Rejection			0
49	08-11-2010	Information Disclosure Statement considered			0
48	08-11-2010	Information Disclosure Statement considered			0
47	08-11-2010	Information Disclosure Statement (IDS) Filed		27	41
46	08-11-2010	Reference capture on IDS			0
45	08-11-2010	Information Disclosure Statement (IDS) Filed			0
44	08-11-2010	Information Disclosure Statement (IDS) Filed			0
43	08-11-2010	Information Disclosure Statement (IDS) Filed			0
42	07-20-2010	Date Forwarded to Examiner			0
41	07-15-2010	Response to Election / Restriction Filed			0
40	07-15-2010	Request for Extension of Time - Granted			0
39	04-15-2010	Electronic Review			0
38	04-15-2010	Email Notification			0
37	04-15-	Mail Restriction Requirement	667		0.5

	2010			
36	04-12-2010	Restriction/Election Requirement		0
35	10-22-2007	Information Disclosure Statement considered		0
34	01-22-2010	Information Disclosure Statement considered		0
33	01-22-2010	Information Disclosure Statement considered		0
32	10-22-2007	Information Disclosure Statement (IDS) Filed		0
31	01-22-2010	Reference capture on IDS		0
30	01-22-2010	Information Disclosure Statement (IDS) Filed		0
29	01-22-2010	Information Disclosure Statement (IDS) Filed		0
28	01-22-2010	Information Disclosure Statement (IDS) Filed		0
27	08-13-2009	Case Docketed to Examiner in GAU		0
26	04-03-2008	PG-Pub Issue Notification		0
25	12-05-2007	Case Docketed to Examiner in GAU		0
24	10-22-2007	Reference capture on IDS		0
23	10-22-2007	Electronic Information Disclosure Statement		0
22	08-20-2007	Preliminary Amendment		0
21	08-06-2007	Request for Foreign Priority (Priority Papers May Be Included)		0
20	11-30-2007	IFW TSS Processing by Tech Center Complete		0
19	11-12-2007	Application Dispatched from OIPE		0
18	10-22-2007	Information Disclosure Statement (IDS) Filed		0
17	10-04-2007	Sent to Classification Contractor		0
16	09-28-2007	Cleared by L&R (LARS)		0
15	08-31-2007	Waiting LR clearance		0
14	08-31-2007	Application Is Now Complete		0
13	08-20-2007	Additional Application Filing Fees	19	4
12	08-20-2007	Translation of Claims into English		0
11	08-20-2007	CRF Disk Has Been Received by Preexam / Group / PCT		0
10	08-20-2007	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic		0
8	08-20-2007	Translation of Specification into English		0
7	08-21-2007	Referred to Level 2 (LARS) by OIPE CSR		0
6	08-21-2007	CASE CLASSIFIED BY OIPE		0
5	08-20-2007	IFW Scan & PACR Auto Security Review		0
4	05-01-2007	Notice Mailed--Application Incomplete--Filing Date Assigned		0
3	04-30-2007	CRF Is Good Technically / Entered into Database		0
1	04-17-2007	Initial Exam Team nn		0
0.5	04-17-2007	Filing date		0

- *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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CHICAGO IL 60601-6731

MAILED
FEB 28 2012
OFFICE OF PETITIONS

In re Patent of Abe et al.	:	
Patent No. 8,017,612	:	
Issued: September 13, 2011	:	DECISION ON
Application No. 11/736,064	:	REQUEST FOR RECONSIDERATION
Filed: April 17, 2007	:	OF
Atty Docket No. 701538	:	PATENT TERM ADJUSTMENT

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT INDICATED ON FACE OF ISSUED PATENT (37 C.F.R. §1.705(d)), filed October 26, 2011. Patentees request that the revised patent term adjustment indicated on the patent be corrected from one thousand one hundred fifty (1150) days to one thousand one hundred sixty-two (1162) days.

The petition is **GRANTED.**

On September 13, 2011, the above-identified application matured into U.S. Patent No. 8,017,612 with a revised patent term adjustment of 1150 days. On October 26, 2011, patentees timely filed the instant petition.

Patentees argue that the patent term adjustment indicated in the patent is incorrect and should be recalculated. Patentees argue the Office should not have charged applicants with a 11 day reduction under 37 CFR 1.704(c)(10) for the filing of an Information Disclosure Statement (IDS) on February 7, 2011, after the mailing of the Notice of Allowance on January 24, 2011 because the IDS was accompanied by a proper § 1.704(d) statement. In addition, patentees argue a 1 day reduction for payment of the issue fee on Monday, April 25, 2011, in response to the Notice of Allowance and Fee(s) Due, mailed January 24, 2011 is not warranted.

A review of the application history reveals patentees are correct.

The filing of the IDS on February 7, 2011 is **not** a basis for reduction of patent term adjustment pursuant to 37 CFR 1.704(c)(10).

37 CFR 1.704(c)(10) provides that:

Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper;

or

(ii) Four months;

However, the filing of an IDS after the mailing of a Notice of Allowance is **not** a failure to engage if it includes a proper § 1.704(d) statement. A review of the IDS filed February 7, 2011, reveals that it included a proper § 1.704(d) statement. The IDS states, in pertinent part, that:

The undersigned hereby states 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.

Since the IDS was accompanied by a proper § 1.704(d) statement, no reduction is warranted. Accordingly, the 11 day reduction is being removed.

Patentees dispute the period of reduction of 1 day, pursuant to 37 CFR 1.704(b), for Applicant delay in filing the issue fee on April 25, 2011, a Monday, in response to the Notice of Allowance and Fee(s) Due, mailed January 24, 2011.

Patentees argue the Office miscalculated a reduction based on an asserted misinterpretation of 35 U.S.C. 154(b)(2)(C)(ii).

Patentees argue a three month date (37 CFR 1.704(b)) should be calculated from the first business day after a weekend. Accordingly, patentees argue the reply filed on Monday, April 25, 2011 in response to a Notice of Allowance and Fee(s) Due, mailed January 24, 2011, should merit no reduction.

This reduction has been reconsidered, and it is determined that entry of a reduction for this reply timely filed pursuant to 35 U.S.C. §21(b) is not warranted. Accordingly, the period of reduction of 1 day is being removed.

Accordingly, the patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of one thousand one hundred sixty-two (1162) days, which is 686 days of A delay + 514 days of B delay minus 19 overlapping days of delay minus 19 days of applicant delay.

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

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand one hundred sixty-two (1162) days.**

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 8,017,612 B2

DATED : **September 13, 2011** **DRAFT**

INVENTOR(S) : Abe 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 1150 days

Delete the phrase "by 1150 days" and insert – by 1162 days--

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

MAILED
APR 25 2011
OFFICE OF PETITIONS

In re Application of	:	
LIM, Michele H. et al.	:	
Application No. 11/736,217	:	NOTICE
Patent No. 7,932,800	:	
Filed: April 17, 2007	:	
Attorney Docket No. **01640583AA**		

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 March 28, 2011.

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

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

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

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

/Tredelle D. Jackson/
Paralegal Specialist
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 01/06/11

TO SPE OF : ART UNIT 3662

SUBJECT : Request for Certificate of Correction for Appl. No.: 11736230 Patent No.: 7847734

CofC mailroom date: 12/20/10

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

Lamonte Newsome
Certificates of Correction Branch
571-272-3421

Thank You For Your Assistance

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

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

Comments: _____

/Thomas H._Tarcza/ — 3662
SPE — Art Unit

PTOL-306 (REV. 7/03)

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James Neil Rodgers
22915 Billy Brown Road
Fort Langley BC V1M 4G3 CA CANADA

MAILED

AUG 27 2010

OFFICE OF PETITIONS

In re Application of	:	
James Neil Rodgers	:	
Application No. 11/736,245	:	DECISION ON PETITION
Filed: April 17, 2007	:	
Attorney Docket No.	:	

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

The petition is **DISMISSED**.

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

The application became abandoned for failure to submit corrected drawings in a timely manner in reply to the Notice of Allowability mailed on February 22, 2010, which set a period for reply of three (3) months. Accordingly, the application became abandoned on May 23, 2010. A Notice of Abandonment was mailed on June 16, 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 items (3).

As to item (3), a proper statement of unintentional delay was not provided.

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

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

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

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

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

/Kimberly Inabinet/
Kimberly Inabinet
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

James Neil Rodgers
22915 Billy Brown Road
Fort Langley BC V1M 4G3 CA CANADA

MAILED
OCT 12 2010
OFFICE OF PETITIONS

In re Application of	:	
James Neil Rodgers	:	
Application No. 11/736,245	:	DECISION ON PETITION
Filed: April 17, 2007	:	
Attorney Docket No.	:	

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

The petition is **GRANTED**.

The application became abandoned for failure to submit corrected drawings in a timely manner in reply to the Notice of Allowability mailed on February 22, 2010, which set a period for reply of three (3) months. Accordingly, the application became abandoned on May 23, 2010. A Notice of Abandonment was mailed on June 16, 2010.

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

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

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

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: —

DATE : 2/16/2011

TO SPE OF : ART UNIT 3766

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/736286 Patent No.: 7873414 B2

CofC mailroom date: 2/9/2011

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Virginia Tolbert
Certificates of Correction Branch
571-272-0460

Thank You For Your Assistance

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

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

Comments: CORRECTION OF TYPOGRAPHICAL ERRORS ONLY.
ALL CHANGES ARE OK.

Carl H. Layno
SPE

3766
Art Unit

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	11736323
Filing Date	17-Apr-2007
First Named Inventor	Yoshito Nagao
Art Unit	2111
Examiner Name	FAISAL ZAMAN
Attorney Docket Number	307001US8
Title	ARBITRATION APPARATUS, METHOD, AND COMPUTER READABLE MEDIUM WITH DYNAMICALLY ADJUSTABLE PRIORITY SCHEME

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	/Marc A. Robinson/
Name	Marc A. Robinson
Registration Number	59276

UNITED STATES 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 : July 8,2011

In re Application of :

Yoshito Nagao

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11736323

Filed : 17-Apr-2007

Attorney Docket No : 307001US8

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed July 8,2011 , to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

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

Petitioner is advised that the issue fee paid 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 2111 for processing of the request for continuing examination under 37 CFR 1.114 .

Office of Petitions

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ARENT FOX LLP
1050 CONNECTICUT AVENUE, N.W.
SUITE 400
WASHINGTON DC 20036

MAILED

JUL 21 2011

OFFICE OF PETITIONS

In re Application of	:	
Patel et al.	:	DECISION ON PETITION
Application No. 11/736,339	:	TO WITHDRAW
Filed: April 17, 2007	:	FROM RECORD
Attorney Docket No. 030297-00003	:	

This is a decision on the Request to Withdraw as attorney or agent under 37 C.F.R. § 1.36(b) or 37 C.F.R. § 10.40 filed June 8, 2011.

The request is **DISMISSED**.

A review of the file record indicates that the attorneys/agents of Arent Fox LLP: (1) do not have power of attorney in this patent application; but (2) have been employed or otherwise engaged in the proceedings in this patent application. Although there was a Power of Attorney received on December 10, 2007, it was never accepted since it lacked a Statement under 3.73(b), which is required when an assignee wishes to take action in an application. The Office will no longer approve requests from practitioners to withdraw from applications where the requesting practitioner was never given power of attorney but 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.

The change of correspondence address as listed in the Request to Withdraw cannot be accepted because it was not signed by an attorney of record. See MPEP §§ 601.03 and 405. The Office will continue to mail all future correspondence solely to the address of record until otherwise properly notified.

There is an outstanding Office action mailed June 10, 2011 that requires a reply from the applicants.

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

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

Doc Code: PET.GREEN
Document Description: Petition for Green Tech Pilot

PTO/SB/420 (05-10)
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: 3245.008US1	Application Number (if known): 11/736,390	Filing date: April 17, 2007

First Named Inventor: Dieter Linke

Title: LARGE GRAIN, MULTI-CRYSTALLINE SEMICONDUCTOR INGOT FORMATION METHOD AND SYSTEM

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 set forth in the notice titled "Pilot Program for Green Technologies Including Greenhouse Gas Reduction," as modified by the notice titled "Elimination of Classification Requirement in the Green Technology Pilot Program," each of which was published in the Federal Register, if the Office determines that the claims are not obviously directed to a single invention.

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: Transmittal (1 pg); Communication (5 pgs.); Request for Early Publication (1 pg.); Preliminary Amendment (9 pgs.)

Signature Nicholas P. Lanzatella	Date 8-13-2010
Name (Print/Typed) Nicholas P. Lanzatella	Registration Number 63,803

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 4 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 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. **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

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/736,390	04/17/2007	Dieter Linke	3245.008US1	3715

21186 7590 08/19/2010
SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. BOX 2938
MINNEAPOLIS, MN 55402

EXAMINER
SONG, MATTHEW J

ART UNIT	PAPER NUMBER
1714	

NOTIFICATION DATE	DELIVERY MODE
08/19/2010	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):

uspto@slwip.com
request@slwip.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. BOX 2938
MINNEAPOLIS MN 55402

AUG 19 2010

In re Application of	:	
Linke et al.	:	DECISION ON PETITION
Application No. 11/736,390	:	TO MAKE SPECIAL UNDER
Filed: 4/17/2007	:	THE GREEN TECHNOLOGY
Attorney Docket No. **3245.008US1**	:	PILOT PROGRAM

This is a decision on the petition under 37 CFR 1.102, filed 8/13/2010, 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 **GRANTED**.

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 instant petition complies with items 1 – 8 above. Accordingly, the above-identified application has been accorded "special" status.

Telephone inquires concerning this decision should be directed to Tom Dunn at 571-272-1171.

The application is being forwarded to the Technology Center Art Unit 1714 for action on the merits commensurate with this decision.

/Tom Dunn/

Tom Dunn
Quality Assurance Specialist
Technology Center 1700

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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FISH & RICHARDSON'P.C.
PO BOX 1022
MINNEAPOLIS MN 55440-1022

MAILED
MAR 13 2012
OFFICE OF PETITIONS

In re Patent No. 8,086,624
Hubinette
Issue Date: December 27, 2011
Application No. 11/736,448
Filed: April 17, 2007
Attorney Docket No. 16113-0549001
Title: DETERMINING PROXIMITY TO TOPICS OF ADVERTISEMENTS

DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

This is a decision on the petition filed on February 23, 2012, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by four hundred forty-three (443) days.

The request for reconsideration of the patent term adjustment (PTA) pursuant to 37 CFR 1.705(d) is **DISMISSED**.

The above-identified application matured into U.S. Pat. No. 8,086,624 on December 27, 2011. The patent issued with a patent term adjustment of 333 days. The instant application for patent term adjustment was timely filed in accordance with 37 CFR 1.705(d). Patentees contest the period of adjustment of 0 days accorded pursuant to 37 CFR 1.702(b) and assert that the correct period of adjustment under 37 CFR 1.702(b) is 119 days. Patentees also state an additional reduction of 9 days should be taken pursuant to 37 CFR §1.704(c)(8) for the submission of a supplemental response on August 24, 2011.

As to patentees' argument regarding the 9 day reduction, patentees' argument is untimely. Issues that should have been raised on application for patent term adjustment under 37 CFR 1.705(b) are untimely if first raised on request for reconsideration under 37 CFR 1.705(d). Issues under 37 CFR

1.705(d) are those tied to the revised determination calculated after the mailing of the notice of allowance. As such challenges to calculations determined prior to the notice of allowance (and reflected in the determination sent with the notice of allowance) are untimely when first presented under 1.705(d). Patentees are reminded that patent term can be disclaimed with a statutory disclaimer at any time after issuance of the patent.

Patentees' argument has been carefully considered, but is not persuasive. The period of adjustment pursuant to 37 CFR 1.702(b) was properly calculated at 0 days.

35 USC 154(b)(1)(B) states in relevant part:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including – (i) any time consumed by continued examination of the application requested by the applicant under section 132(b).

37 CFR 1.702(b) states in relevant part:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including: (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b).

37 CFR 1.703(b) states in relevant part:

The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the following periods: (1) The number of days, if any, in the period beginning on the date on which a request for continued

examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56365, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

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

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted

as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

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

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

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, No. 07-1492, 2008 U.S. Dist. LEXIS 76063 (D.D.C., September 30, 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate

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

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

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

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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.

after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

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

the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[2] permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued

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

examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

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

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

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

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

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

Charlema Grant

Charlema Grant
Attorney Advisor
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Decision Date : October 7,2011

In re Application of :

Richard Ewers

Application No : 11736539

Filed : 17-Apr-2007

Attorney Docket No : USGINZ05800

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY/AGENTOF RECORD

This is an electronic decision on the Request to Withdraw as attorney or agent of record under 37 CFR § 1.36(b), filed October 7,2011

The request is **APPROVED.**

The request was signed by Johney U. Han (registration no. 45565) on behalf of all attorneys/agents associated with Customer Number 40518 . All attorneys/agents associated with Cusotmer Number 40518 have been withdrawn.

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

Name	USGI Medical, Inc.
Name2	
Address 1	1140 Calle Cordillera
Address 2	
City	San Clemente
State	CA
Postal Code	92673
Country	US

As a reminder, requester is required to inform the first named inventor or assignee that has properly made itself of record pursuant to 37 CFR 3.71 of the electronically processed petition.

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

Office of Petitions

Doc Code: PET.AUTO **Document Description: Petition automatically granted by EFS-Web**	PTO/SB/83 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	**REQUEST FOR WITHDRAWAL AS ATTORNEY OR AGENT AND CHANGE OF CORRESPONDENCE ADDRESS**
Application Number	11736539
Filing Date	17-Apr-2007
First Named Inventor	Richard Ewers
Art Unit	3734
Examiner Name	KEVIN TRUONG
Attorney Docket Number	USGINZ05800
Title	TISSUE GRASPING APPARATUS

◉ Please withdraw me as attorney or agent for the above identified patent application and the practitioners of record associated with Customer Number: 40518

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

10.40(b)(4)

Certifications

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

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

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

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

Name	USGI Medical, Inc.
Address	1140 Calle Cordillera
City	San Clemente
State	CA
Postal Code	92673
Country	US

I am authorized to sign on behalf of myself and all withdrawing practitioners.	
Signature	/Johney U. Han/
Name	Johney U. Han
Registration Number	45565

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
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HAMILTON, BROOK, SMITH & REYNOLDS, P.C.
530 VIRGINIA ROAD
P.O. BOX 9133
CONCORD MA 01742-9133

MAILED
NOV 23 2010
OFFICE OF PETITIONS

In re Application of :
ERGEN, et al. :
Application No. 11736,597 :
Filed: April 18, 2007 :
Attorney Docket No.: **2376.2451-001** :

NOTICE

This is a notice regarding the request for acceptance of a fee deficiency submission under 37 CFR 1.28(c) filed October 18, 2010 (Certificate of Mailing or Transmission was dated October 13, 2010) in the above-identified application. 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.

The fee deficiency submission under 37 CFR 1.28(c) 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 Brian W. Brown at (571) 272-5338.

Brian W. Brown
Petitions Examiner
Office of Petitions

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P.O. Box 1450
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530 VIRGINIA ROAD
P.O. BOX 9133
CONCORD MA 01742-9133

MAILED

NOV 23 2010

OFFICE OF PETITIONS

In re Application of :
ERGEN, et al. :
Application No. 11/736,597 :
Filed: April 18, 2007 :
Attorney Docket No.: **2376.2451-001** :

DECISION ON PETITION

This is a decision on the "REQUEST TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 C.F.R. 1.181(a)", filed November 18, 2010. The Request has been treated as a petition under 37 CFR 1.181 for which no petition fee is required.

The petition is **GRANTED**.

The above-identified application was filed with the United States Patent and Trademark Office (USPTO) on April 18, 2007. Examination of the application was concluded with the mailing of a Notice of Allowance on July 14, 2010 that set for a statutory three month time period for applicants to submit the Issue and Publications fee, which expired at midnight on October 14, 2010. A collection of documents and fees, discussed in detail below, were submitted by applicants on October 18, 2010 (Certificate of Mailing or Transmission was dated October 13, 2010). A Notice of Abandonment was mailed on October 27, 2010 informing applicants that the application became abandoned in view of their failure to timely pay the Issue and Publication Fees. The petition was accompanied, inter alia, by a copy of the papers filed October 18, 2010 and a copy of a date stamped itemized return receipt post card.

A review of the application file reveals that the collection of documents and fees referred to above were received by the USPTO on October 18, 2010 and included a completed "PART B – FEE(S) TRANMITTAL", a "SMALL ENTITY STATUS CHANGE AND FEE DEFICIENCY SUBMISSION UNDER 37 § C.F.R. 1.28(c)", a check in the total amount of $2215.00, and a transmittal letter entitled "REMARKS" that states, in part:

> "Enclosed please find an Issue Fee Transmittal and Small Entity Status Change and Fee Deficiency Submission Under 37 CFR § 1.28(c). Also enclosed is a check in the amount of $2215.00, of which $1810.00 represents the Issue and Publications [sic] Fees and $405.00 represents the Fee Deficiency due."

This October 18, 2010 submission also included at least one Certificate of Mailing or Transmission certifying that such submission was mailed or facsimile transmitted on October 13, 2010, prior to the October 14, 2010 deadline set forth in the Notice of Allowance. On this basis, the Issue and Publication Fees were timely paid. The copies of the documents, fees, and date stamped itemized return receipt post card filed with the present petition are consistent with corresponding documents and fees previously made of record in the application filed. As such, it is appropriate to withdraw the Notice of Abandonment.

The Small Entity Status Change and Fee Deficiency Submission Under 37 CFR § 1.28(c), filed October 18, 2010 and discussed further below, will be treated in due course in a separate decision.

Telephone inquiries concerning this decision should be directed to Brian W. Brown at (571) 272-5338.

This application is being referred to Publishing Division for processing into a patent.

Brian W. Brown
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/736,651	04/18/2007	Michael John Velde	087165-9145-US00	4166

23409 7590 08/20/2010
MICHAEL BEST & FRIEDRICH LLP
100 E WISCONSIN AVENUE
Suite 3300
MILWAUKEE, WI 53202

EXAMINER
KUMAR, VINOD

ART UNIT	PAPER NUMBER
1638	

MAIL DATE	DELIVERY MODE
08/20/2010	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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MICHAEL BEST & FRIEDRICH LLP
100 E WISCONSIN AVENUE
Suite 3300
MILWAUKEE WI 53202

AUG 2 0 2010

In re Application of:
Michael John Velde
Serial No.: 11/736,651
Filed: April 18, 2007
Attorney Docket No.: **087165-9145-US00**

: PETITION DECISION

This is in response to the petition under 37 CFR § 1.59(b), filed July 26, 2010, to expunge information from the above identified application. This application has not been allowed.

Petitioner requests that the Reply to Request for Information under 37 CFR 1.105, and attachment thereto, submitted to the Patent Office on July 26, 2010, be expunged from the record. Petitioner states either: (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR § 1.17(g) has been paid.

This is an examined application which is currently under non-final rejection. As such the information provided has been reviewed, in part, but proceedings in the application have not been terminated. As stated in M.P.E.P. 724, upon allowance or other action closing prosecution in an application, petition may be made for return of Proprietary information. The information cannot be expunged at this time.

The petition is **DISMISSED**. Petitioner may resubmit the petition subsequent to a Notice of Allowability or *ex parte Quayle* action being mailed in the application. No additional petition fee will be required at that time.

Should there be any questions about this decision please contact Marianne C. Seidel by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 571-273-8300.

Marianne C. Seidel
Quality Assurance Specialist
Technology Center 1600

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.
11/736,651	04/18/2007	Michael John Velde	087165-9145-US00	4166

23409 7590 05/19/2011
MICHAEL BEST & FRIEDRICH LLP
100 E WISCONSIN AVENUE
Suite 3300
MILWAUKEE, WI 53202

EXAMINER
KUMAR, VINOD

ART UNIT	PAPER NUMBER
1638	

MAIL DATE	DELIVERY MODE
05/19/2011	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
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MAY 1 9 2011

MICHAEL BEST & FRIEDRICH LLP
100 E WISCONSIN AVENUE
Suite 3300
MILWAUKEE WI 53202

In re Application of:
Michael John Velde
Serial No.: 11/736,651
Filed: April 18, 2007
Attorney Docket No.: **087165-9145-US00**

: PETITION DECISION

This is in response to the renewed petition under 37 CFR § 1.59(b), filed May 10, 2011, to expunge information from the above identified application. This application has been allowed.

Petitioner requests that the Reply to Request for Information under 37 CFR 1.105, and attachment thereto, submitted to the Patent Office on July 26, 2010 be expunged from the record. Petitioner states either: (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR § 1.17(g) has been paid.

The reasons set forth in this petition establishes to the satisfaction of the Director that expungement of the information is appropriate. The file entry for this document has been closed and as such the document is no longer publicly available, which is the IFW equivalent to removal of a paper document from a paper file wrapper.

Therefore, petitioner's petition is GRANTED.

Should there be any questions about this decision please contact Marianne C. Seidel by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 571-273-8300.

/MC Seidel/
Marianne C. Seidel, Quality Assurance Specialist
Technology Center 1600

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PETER H. PRIEST
5015 SOUTHPARK DRIVE, SUITE 230
DURHAM NC 27713

MAILED
MAY 23 2011
OFFICE OF PETITIONS

In re Application of	:	
Gerald George PECHANEK	:	
Application No. 11/736,788	:	DECISION ON PETITION
Filed: April 18, 2007	:	
Attorney Docket No. A03588 (800.0182)	:	

This is a decision on the petition, filed March 16, 2011, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely pay the issue and publication fees on or before February 26, 2011, as required by the Notice of Allowance and Fee(s) Due (Notice), mailed November 26, 2010, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on February 27, 2011.

Petitioner states that a timely reply was mailed via certificate of mailing on February 23, 2011, which included an authorization to charge the issue and publication fees. Petitioner has submitted a copy of the previously mailed correspondence, which bears a certificate of mailing dated February 23, 2011, which would have rendered the reply timely if received.

The file record does not include the originally submitted papers. Failure to receive correspondence which includes a certificate of mailing or certificate of facsimile transmission is addressed in 37 CFR 1.8(b), reproduced below:

> In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time

has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely pay the issue and publication fees is hereby withdrawn.

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

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

Thurman K. Page
Petitions Examiner
Office of Petitions

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WOODCOCK WASHBURN LLP
CIRA CENTRE, 12TH FLOOR
2929 ARCH STREET
PHILADELPHIA PA 19104-2891

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FEB 17 2011

OFFICE OF PETITIONS

In re Application of	:	
Nicolaides et al.	:	
Application No. 11/736,888	:	ON PETITION
Filed: April 18, 2007		
Attorney Docket No. MOR-0695 / MORR-011-D2US	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed January 13, 2011 and March 17, 2008.

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**.

Further, a request for acceptance of a fee deficiency submission under 37 CFR 1.28 was previously filed on March 17, 2008. A fee deficiency in the amount of $1000.00 was submitted at that time therefore, no further amount is due.

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

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CHOATE HALL & STEWART LLP
TWO INTERNATIONAL PLACE
BOSTON, MA 02110

MAILED

DEC 13 2010

OFFICE OF PETITIONS

In re Application of	:	
Preston R. Ford	:	
Application No. 11/736,962	:	DECISION ON PETITION
Filed: April 18, 2007	:	TO WITHDRAW
Attorney Docket No.: 2006201-0002 (BLCR-001)	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed November 12, 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 Brenda Herschbach Jarrell 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 Customer Number provided (48329) 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

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/737,042	04/18/2007	Lou MONTULLI	NETS0017D1-D2	4897

22862 7590 01/31/2011
GLENN PATENT GROUP
3475 EDISON WAY, SUITE L
MENLO PARK, CA 94025

EXAMINER
HARRELL, ROBERT B

ART UNIT	PAPER NUMBER
2442	

NOTIFICATION DATE	DELIVERY MODE
01/31/2011	ELECTRONIC

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

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

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

eptomatters@glenn-law.com

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JAN 28 2011

DIRECTOR OFFICE
TECHNOLOGY CENTER 2400

GLENN PATENT GROUP
3475 EDISON WAY, SUITE L
MENLO PARK CA 94025

In re Application of: Lou MONTULLI
Application No. 11/737042
Filed: April 18, 2007
Docket No. NETS0017D1-D2
Title: SYSTEM, PROGRAM AND METHOD FOR COMMUNICATING NAME-VALUE PAIRS BETWEEN A CLIENT AND A SERVER

DECISION ON PETITION FOR EXPUNGING INFORMATION UNDER UNDER 37 CFR § 1.59

This is a decision on the petition under 37 CFR § 1.59(b), filed on Nov 23, 2010, to expunge information from the above identified application.

The petition is **DISMISSED as MOOT**.

Petitioner requests that all documents and publication filed under seal and identified in the Form PTO/SB/08 filed concurrently with the petition to be expunged from the record if not found to be material to patentability to the invention claimed in the instant application. The petition fee set forth in 37 CFR 1.17(g) has been paid.

37 CFR 1.98(d) states if the IDS submitted in the parent application complies with 37 CFR 1.98(a) to (c), copies of the patents, publications, pending U.S. applications, or other information submitted in the parent application need not be resubmitted in the continuing application.

Pursuant 37 CFR 1.98 (d), no document or publication was filed with PTO/SP/08 filed concurrent with the petition thus there is *no document to be expunged.* All documents listed on PTO/SB/80 for the instant application are filed with the parent application (10/272,896) whose petition will be treated accordingly. Since there is no document or publication to be expunged, the petition is **DISMISSED as MOOT**.

Any inquiry regarding this decision should be directed the undersigned whose telephone number is (571) 272-4147.

If attempts to reach the undersigned by telephone are unsuccessful, Beatriz Prieto, Quality Assurance Specialist, can be reached at (571) 272-3902.

/Kim Huynh/

Kim Huynh,
Quality Assurance Specialist
Technology Center 2400
Network, Multiplexing, Cable and Information Security

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/737,043	04/18/2007	Lou Montulli	NETS0017D1-D1	4899

22862 7590 01/31/2011
GLENN PATENT GROUP
3475 EDISON WAY, SUITE L
MENLO PARK, CA 94025

EXAMINER
HARRELL, ROBERT B

ART UNIT	PAPER NUMBER
2442	

NOTIFICATION DATE	DELIVERY MODE
01/31/2011	ELECTRONIC

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

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

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

eptomatters@glenn-law.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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JAN 28 2011

DIRECTOR OFFICE
TECHNOLOGY CENTER 2400

GLENN PATENT GROUP
3475 EDISON WAY, SUITE L
MENLO PARK CA 94025

In re Application of: Lou MONTULLI)
Application No. 11/737043)
Filed: April 18, 2007)
Docket No. NETS0017D1-D1)
Title: PERSISTANT CLIENT STATE IN A)
HYPERTEXT TRANSFER PROTOCOL)
BASED CLIENT-SERVER SYSTEM)

DECISION ON PETITION FOR EXPUNGING INFORMATION UNDER UNDER 37 CFR § 1.59

This is a decision on the petition under 37 CFR § 1.59(b), filed on Nov 23, 2010, to expunge information from the above identified application.

The petition is **DISMISSED as MOOT**.

Petitioner requests that all documents and publication filed under seal and identified in the Form PTO/SB/08 filed concurrently with the petition to be expunged from the record if not found to be material to patentability to the invention claimed in the instant application. The petition fee set forth in 37 CFR 1.17(g) has been paid.

37 CFR 1.98(d) states if the IDS submitted in the parent application complies with 37 CFR 1.98(a) to (c), copies of the patents, publications, pending U.S. applications, or other information submitted in the parent application need not be resubmitted in the continuing application.

Pursuant 37 CFR 1.98 (d), no document or publication was filed with PTO/SP/08 filed concurrent with the petition thus there is *no document to be expunged.* All documents listed on PTO/SB/80 for the instant application are filed with the parent application (10/272,896) whose petition will be treated accordingly.

Since there is no document or publication to be expunged, the petition is **DISMISSED as MOOT**.

Any inquiry regarding this decision should be directed the undersigned whose telephone number is (571) 272-4147.

If attempts to reach the undersigned by telephone are unsuccessful, Beatriz Prieto, Quality Assurance Specialist, can be reached at (571) 272-3902.

/Kim Huynh/

Kim Huynh,
Quality Assurance Specialist
Technology Center 2400
Network, Multiplexing, Cable and Information Security

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/737,055	04/18/2007	Lou MONTULLI	NETS0017D1-D3	4915

22862 7590 01/31/2011
GLENN PATENT GROUP
3475 EDISON WAY, SUITE L
MENLO PARK, CA 94025

EXAMINER
HARRELL, ROBERT B

ART UNIT	PAPER NUMBER
2442	

NOTIFICATION DATE	DELIVERY MODE
01/31/2011	ELECTRONIC

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

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

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

eptomatters@glenn-law.com

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JAN 28 2011

DIRECTOR OFFICE
TECHNOLOGY CENTER 2400

GLENN PATENT GROUP
3475 EDISON WAY, SUITE L
MENLO PARK CA 94025

In re Application of: Lou MONTULLI
Application No. 11/737055
Filed: April 18, 2007
Docket No. NETS0017D1-D3
Title: SYSTEM, METHOD, AND COMPUTER-READABLE MEDIUM FOR INCLUDING NAME-VALUE PAIRS AND ASSOCIATED ATTRIBUTES IN RESPONSES TO REQUESTS MADE TO A SERVER

DECISION ON PETITION FOR EXPUNGING INFORMATION UNDER UNDER 37 CFR § 1.59

This is a decision on the petition under 37 CFR § 1.59(b), filed on Nov 23, 2010, to expunge information from the above identified application.

The petition is **DISMISSED as MOOT**.

Petitioner requests that all documents and publication filed under seal and identified in the Form PTO/SB/08 filed concurrently with the petition to be expunged from the record if not found to be material to patentability to the invention claimed in the instant application. The petition fee set forth in 37 CFR 1.17(g) has been paid.

37 CFR 1.98(d) states if the IDS submitted in the parent application complies with 37 CFR 1.98(a) to (c), copies of the patents, publications, pending U.S. applications, or other information submitted in the parent application need not be resubmitted in the continuing application.

Pursuant 37 CFR 1.98 (d), no document or publication was filed with PTO/SP/08 filed concurrent with the petition thus there is *no document to be expunged.* All documents listed on PTO/SB/80 for the instant application are filed with the parent application (10/272,896) whose petition will be treated accordingly.

Since there is no document or publication to be expunged, the petition is **DISMISSED as MOOT**.

Any inquiry regarding this decision should be directed the undersigned whose telephone number is (571) 272-4147.

If attempts to reach the undersigned by telephone are unsuccessful, Beatriz Prieto, Quality Assurance Specialist, can be reached at (571) 272-3902.

/Kim Huynh/

Kim Huynh,
Quality Assurance Specialist
Technology Center 2400
Network, Multiplexing, Cable and Information Security

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HOLME ROBERTS & OWEN LLP-CLIENT-1
1700 LINCOLN STREET, SUITE 4100
DENVER, CO 80203

MAILED

AUG 02 2010

OFFICE OF PETITIONS

In re Application of	:	
Hall, David R. et al.	:	
Application No. 11/737,178	:	NOTICE UNDER 37 CFR. 1.28(c)
Filed: April 19, 2007	:	
Attorney Docket No. **55724-10803**	:	

This is a notice regarding your renewed request for acceptance of a fee deficiency submission under 37 CFR 1.28.

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

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

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

Inquiries related to this communication should be directed to Michelle R. Eason at (571) 272-4231.

Thurman K. Page
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

LIFE TECHNOLOGIES CORPORTION
C/O INTELLEVATE
P.O. BOX 52050
MINNEAPOLIS MN 55402

MAILED
DEC 30 2010
OFFICE OF PETITIONS

In re Application of	:	
Kevin MCKERNAN, et al	:	
Application No. 11/737,308	:	DECISION ON PETITION
Filed: April 19, 2007	:	
Attorney Docket No. 6405 US	:	

This is a decision on the petition under the unavoidable provisions of 37 CFR 1.137(a), filed November 30, 2010, to revive the above-identified application, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment.

The petition is **GRANTED**.

This application was held abandoned for failure to reply to the non final Office action mailed March 5, 2010, which set a **three (3) month** shortened statutory period for reply. A Notice of Abandonment was mailed on November 9, 2010.

Petitioner asserts that an incorrect Customer Number was associated with this application for correspondence from the Office.

A review of the written record indicates that an incorrect Customer Number was, in fact, associated with the above-identified application. Accordingly, the application is not abandoned and the correspondence address information has been corrected.

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

Since the petition fee of $540 submitted with the petition dated November 30, 2010, is unnecessary, this fee will be credited to petitioner's Deposit Account No. 50-3994.

This application is being referred to the Technology Center technical support staff of Art Unit 1639 for re-mailing the Office action of March 5, 2010. The period for reply will run from the mailing date of the Office action.

Telephone inquires concerning this decision should be directed to Diane Goodwyn at (571) 272-6735.

All other inquires should be directed to the Technology Center at (571) 272-1600.

Thurman K. Page
Petitions Examiner
Office of Petitions

Cc: ASHITA DOSHI
LIFE TECHNOLOGIES CORPORATION
5791 VAN ALLEN WAY
CARLSBAD, CA 92008

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 01/09/11

TO SPE OF : ART UNIT 3728

SUBJECT : Request for Certificate of Correction for Appl. No.: 11737383 Patent No.: 7654390

CofC mailroom date: 01/04/12

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
You can fax the Directors/SPE response to 571-273-3421

Note: **Should the changes to claim 8 be approved?**

Lamonte Newsome

Certificates of Correction Branch 571-272-3421

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments:

/Mickey Yu/
SPE **Art Unit 3728**

MLL
01/10/12

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 01/09/11

TO SPE OF : ART UNIT 3728

SUBJECT : Request for Certificate of Correction for Appl. No.: 11737383 Patent No.: 7654390

CofC mailroom date: 01/04/12

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 changes to claim 8 be approved?**

Lamonte Newsome

Certificates of Correction Branch 571-272-3421

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments:

/Mickey Yu/
SPE **Art Unit 3728**

MLL
01/10/12

UNITED STATES PATENT AND TRADEMARK OFFICE

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

CHOATE, HALL & STEWART / CITRIX SYSTEMS, INC.
TWO INTERNATIONAL PLACE
BOSTON, MA 02110

MAILED

DEC 30 2010

OFFICE OF PETITIONS

In re Application of	:	
Decasper et al.	:	DECISION ON PETITION
Application No. 11/737,425	:	TO WITHDRAW
Filed: April 19, 2007	:	FROM RECORD
Attorney Docket No. 2006579-1067 (CTX-297CON)	:	

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 10, 2010.

The request is **NOT APPROVED**.

The Office strongly encourages practitioner(s) requesting withdrawal from representation as practitioner of record in an application to review the record to determine whether he or she is, in fact, of record and how he or she was made of record. For example, the practitioner(s) should determine whether he or she was appointed by naming each practitioner individually or through the use of a Customer Number.

The request was signed by Brenda Herschbach Jarrell on behalf of all attorneys of record. In the instant application, the practitioner(s) were appointed via Customer Number however the request does not designate a Customer Number to be withdrawn by. Therefore, the current request cannot be approved at this time. Any subsequent request must withdraw all associated practitioner(s) in the same manner as appointed.

Further, the Office no longer accepts address changes to a new practitioner or law firm filed with requests under 37 C.F.R. § 1.36(b). 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.

In view of the above the request cannot be approved at this time.

All future communications from the Office will be directed to above-listed address until otherwise properly notified by the applicant or a proper change of correspondence address have been submitted.

There are no outstanding Office actions that require a reply from the 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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 09/01/10

TO SPE OF : ART UNIT 2893

SUBJECT : Request for Certificate of Correction for Appl. No.: 11737477 Patent No.: ~~7622784~~ 7622785

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

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

Lamonte Newsome
Certificates of Correction Branch
703-756-1574

Thank You For Your Assistance

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

X Approved — **All** changes apply.

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

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

Comments: _____

/Davienne Monbleau/
SPE

2893
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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BAKER BOTTS LLP
C/O INTELLECTUAL PROPERTY DEPARTMENT
THE WARNER, SUITE 1300
1299 PENNSYLVANIA AVE, NW
WASHINGTON, DC 20004-2400

MAILED

NOV 09 2010

OFFICE OF PETITIONS

In re Application of	:	
Carmi Raz	:	
Application No. 11/737,501	:	ON PETITION
Filed: April 19, 2007	:	
Attorney Docket No. 021619.0116	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 18, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to file a reply in a timely manner to the Restriction Requirement, mailed December 22, 2009, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on January 23, 2010. A Notice of Abandonment was mailed July 7, 2010.

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

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

This matter is being referred to Technology Center 1715 for further examination on the merits.

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

MAILED

FEB 16 2011

OFFICE OF PETITIONS

Sheridan Ross PC
1560 Broadway
Suite 1200
Denver, Colorado 80202

In re Application of	:	
Gary TURNER	:	DECISION GRANTING PETITION
Application No. 11/737,550	:	UNDER 37 CFR 1.137(b)
Filed: 19 April 2007	:	
Atty. Docket No.: 5310-3	:	

This is a decision on the petition under 37 CFR 1.137(b), filed 7 January 2011, to revive the above-identified application ("Application").

The petition is **GRANTED**.

The Application became abandoned for failure to reply in a timely manner to the non-final Office action mailed 8 December 2009 ("outstanding Office action"), which set a shortened statutory reply period of three (3) months. A 3-month extension of time was obtained. The application became abandoned on 9 June 2010, with notification mailed 28 July 2010.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a Statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d).

The petition satisfies the conditions for revival pursuant to 37 CFR 1.137(b) by including (1) a reply in the form of a Response to the outstanding Office action, (2) a petition fee of $810.00 (small entity), and (3) a Statement of unintentional delay. The reply to the outstanding Office action is accepted as having been unintentionally delayed.

37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Since the statement appearing in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the

required statement. Petitioner must notify the Office if this is **not** a correct reading of the statement appearing in the petition.

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 extension of time fee submitted with the petition on 7 January 2011 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

General inquiries relating to this decision should be directed to Robert DeWitty, Petitions Examiner, Office of Petitions (571-272-6051).

The application file will be referred to Technology Center AU 2425 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

MAILED

JUN 16 2011

OFFICE OF PETITIONS

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

In re Application of
Fabio Lopiano
Application No. 11/737,639
Filed: April 19, 2007
Attorney Docket No.: 16113-0120001

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed May 20, 2011, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner indicates that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on January 8, 2008. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen month publication country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. §122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing.

A petition to revive an application abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

(1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
(2) the petition fee as set forth in 37 CFR 1.17(m); and
(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of September 22, 2011 accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3204.

This application is being referred to the Technology Center 2158.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/737,639	04/19/2007	Fabio Lopiano	16113-0120001

CONFIRMATION NO. 6001

26192
FISH & RICHARDSON P.C.
PO BOX 1022
MINNEAPOLIS, MN 55440-1022

NONPUBLICATION RESCISSION LETTER

OC000000048211688

Date Mailed: 06/15/2011

Communication Regarding Rescission Of Nonpublication Request and/or Notice of Foreign Filing

Applicant's rescission of the previously-filed nonpublication request and/or notice of foreign filing is acknowledged. The paper has been reflected in the Patent and Trademark Office's (USPTO's) computer records so that the earliest possible projected publication date can be assigned.

The projected publication date is 09/22/2011.

If applicant rescinded the nonpublication request before or on the date of "foreign filing,"[1] then no notice of foreign filing is required.

If applicant foreign filed the application after filing the above application and before filing the rescission, and the rescission did not also include a notice of foreign filing, then a notice of foreign filing (not merely a rescission) is required to be filed within 45 days of the date of foreign filing. See 35 U.S.C. § 122(b)(2)(B)(iii), and Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. § 122(b)(2)(B)(ii)-(iv), 1272 Off. Gaz. Pat. Office 22 (July 1, 2003).

If a notice of foreign filing is required and is not filed within 45 days of the date of foreign filing, then the application becomes abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii). In this situation, applicant should either file a petition to revive or notify the Office that the application is abandoned. See 37 CFR 1.137(f). Any such petition to revive will be forwarded to the Office of Petitions for a decision. Note that the filing of the petition will not operate to stay any period of reply that may be running against the application.

Questions regarding petitions to revive should be directed to the Office of Petitions at (571) 272-3282.

[1] Note, for purpose of this notice, that "foreign filing" means "filing an application directed to the same invention in another country, or under a multilateral international agreement, that requires publication of applications 18 months after filing".

/sdbrinkley/

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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SHUMAKER & SIEFFERT, P.A.
1625 Radio Drive
Suite 300
St. Paul, MN 55125

MAILED

AUG 09 2010

OFFICE OF PETITIONS

In re Application of Ronald E. Stickney, et. al. Application No. 11/737,703 Filed: April 19, 2007 Attorney Docket No. 1074-073US02/PB10009.03	DECISION ON PETITION UNDER 37 CFR 1.78(a)(3)

This is a decision on the petition under 37 CFR 1.78(a)(3) filed on July 14, 2010, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the concurrently filed amendment.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

All of the above requirements having been satisfied, the late claim for priority under 35 U.S.C. § 120 is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) should not be construed as meaning that this

application is entitled to the benefit of the prior-filed applications. In order for this application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

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

This application is being forwarded to Technology Center Art Unit 3766 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.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3226. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center at (571) 272-2100.

Andrea Smith
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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
11/737,703	04/19/2007	3766	2300	1074-073US02/PB10009.03	38	5

CONFIRMATION NO. 6119

CORRECTED FILING RECEIPT

53049
SHUMAKER & SIEFFERT, P.A.
1625 Radio Drive
Suite 300
St. Paul, MN 55125

OC000000042937644

Date Mailed: 08/06/2010

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)

Ronald E Stickney, Edmonds, WA;
James W. Taylor, Sammamish, WA;
Patricia O'Hearn, Mercer Island, WA;
Cynthia P. Jayne, Redmond, WA;
Paula Lank, Renton, WA;
David R. Hampton, Woodinville, WA;

Power of Attorney: None

Domestic Priority data as claimed by applicant

This application is a DIV of 10/013,941 12/06/2001 ABN
and is a CIP of 10/229,320 08/26/2002 ABN
which is a CIP of 09/410,198 09/30/1999 PAT 6,440,082
and is a CIP of 10/013,941 12/06/2001 ABN

Foreign Applications

If Required, Foreign Filing License Granted: 05/04/2007

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/737,703**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Pulse Detection Method and Apparatus Using Patient Impedance

Preliminary Class

600

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

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

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 20100914

DATE : 09/09/10

TO SPE OF : ART UNIT 2863

SUBJECT : Request for Certificate of Correction for Appl. No 11/737831 -Pt.: 7653503

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?

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: OK TO ENTER CORRECTION

DREW A. DUNN
SUPERVISORY PATENT EXAMINER
SPE

2863
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

LISA V. MUELLER
POLSINELLI SHUGHART PC
161 N. CLARK STREET
SUITE 4200
CHICAGO IL 60601

MAILED
MAR 15 2011
OFFICE OF PETITIONS

In re Application of	:	
Yihong QIU et al.	:	
Application No. 11/737,914	:	DECISION ON PETITION
Filed: April 20, 2007	:	
Attorney Docket No. 057975-138695	:	
(7505USP2)		

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 03, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of August 02, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is November 03, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810.00, and the submission required by 37 CFR 1.114; (2) the petition fee of $1,620.00; and (3) a proper statement of unintentional delay. Accordingly, the reply to the final Office action of August 02, 2010 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 1619 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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

ANNEMARIE V. DOCKENDORF
481 Cardinal Dr.
Satellite Beach FL 32937

MAILED

NOV 19 2010

OFFICE OF PETITIONS

In re Application of
Dockendorf
Application No. 11/737,941
Filed: April 20, 2007
For: CONVERTIBLE PILLOW SYSTEM AND ASSOCIATED METHODS

: DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed August 30, 2010.

The petition is **GRANTED**.

This application became abandoned May 13, 2010 for failure to timely reply to the Notice of Allowance and Issue Fee Due (Notice) mailed February 12, 2010. The Notice set a three (3) month statutory period of time for reply. Notice of Abandonment was mailed June 1, 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 has been carefully reviewed and found in compliance with the requirements set forth above.

In view thereof, this application is being forwarded to the Office of Data Management for further processing.

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

/ALESIA M. BROWN/

Alesia M. Brown
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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SLATER & MATSIL, L.L.P.
17950 PRESTON ROAD, SUITE 1000
DALLAS, TX 75252

MAILED
AUG 05 2010
OFFICE OF PETITIONS

In re Application of	:	
Blawid et al.	:	DECISION ON PETITION
Application No. 11/738,086	:	TO WITHDRAW
Filed: April 20, 2007	:	FROM RECORD
Attorney Docket No. QM000023	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed June 17, 2010.

The request is **DISMISSED** as involving a moot issue.

A review of the file record indicates that the power of attorney to 68038 was revoked by the Assignee of the patent application on July 13, 2010. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

Telephone inquires concerning this decision should be directed to the undersigned at 571-272-3206. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

Liana Walsh
Petitions Examiner
Office of Petitions

cc: JOHN S. ECONOMOU
202 MAMARONECK AVE., THIRD FLOOR
WHITE PLAINS NY 10601

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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DIEHL SERVILLA LLC
33 WOOD AVE SOUTH
SECOND FLOOR, SUITE 210
ISELIN NJ 08830

MAILED

MAY 23 2011

OFFICE OF PETITIONS

In re Application of	:	
TAWIL, Jack J.	:	
Application No. 11/738,099	:	DECISION ON PETITION
Filed: April 20, 2007	:	TO WITHDRAW
Attorney Docket No. **TAW0001-00**	:	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 **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 Glen M. Deihl on behalf of all attorneys of record. All attorneys/agents associated have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the first named inventor Jack J. Tawil at the address indicated below.

There is an outstanding Office action mailed April 21, 2011 that requires a reply from the 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: **JACK J. TAWIL**
1185 FAULKINGHAM ROAD
MERRITT ISLAND, FL 32952

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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CAESAR, RIVISE, BERNSTEIN,
COHEN & POKOTILOW, LTD.
11TH FLOOR, SEVEN PENN CENTER
1635 MARKET STREET
PHILADELPHIA PA 19103-2212

MAILED
APR 19 2012
OFFICE OF PETITIONS

In re Application of
Joseph S. Friedberg et al. :
Application No. 11/738,106 : ON PETITION
Filed: April 20, 2007 :
Attorney Docket Number: F1120/20009 :

This is a decision on the petition, filed March 23, 2012 under 37 CFR 1.137(b)[1], to revive the above identified application.

The petition is **GRANTED**.

While the issue fee was paid February 27, 2012, this application became abandoned March 1, 2012 for failure to file corrected drawings in response to the Notice of Allowability mailed on November 30, 2011. Accordingly, the Notice of Abandonment was mailed on March 19, 2012.

All other requirements of 37 CFR 1.137(b) having now been met, this matter is being referred to the Publishing Division to be processed into a patent.

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

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

[1]Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Decision Date : February 27, 2012

In re Application of :

Dan Millward

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11738169

Filed : 20-Apr-2007

Attorney Docket No : MTI-34410

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed February 27, 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 1713 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	11738169
Filing Date	20-Apr-2007
First Named Inventor	Dan Millward
Art Unit	1713
Examiner Name	ANITA ALANKO
Attorney Docket Number	MTI-34410
Title	EXTENSIONS OF SELF-ASSEMBLED STRUCTURES TO INCREASED DIMENSIONS VIA A "BOOTSTRAP" SELF-TEMPLATING 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	/Kristine M. Strodthoff/
Name	Kristine M. Strodthoff
Registration Number	34259

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.
11/738,282	04/20/2007	Dennis L. Schultze	1423-098	7209

32905 7590 08/03/2010
JONDLE & ASSOCIATES P.C.
858 HAPPY CANYON ROAD SUITE 230
CASTLE ROCK, CO 80108

EXAMINER
KUBELIK, ANNE R

ART UNIT	PAPER NUMBER
1638	

NOTIFICATION DATE	DELIVERY MODE
08/03/2010	ELECTRONIC

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

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

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

JondleOA@jondlelaw.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

AUG 0 3 2010

JONDLE & ASSOCIATES P.C.
858 HAPPY CANYON ROAD SUITE 230
CASTLE ROCK CO 80108

In re Application of:	
Dennis L. Schultze	: PETITION DECISION
Serial No.: 11/738,282	
Filed: April 20, 2007	
Attorney Docket No.: **1423-098**	

This is in response to the petition under 37 CFR § 1.59(b), filed July 30, 2010, to expunge information from the above identified application. This application has been allowed.

Petitioner requests that the Reply to Request for Information Under 37 CFR 1.105 submitted to the Patent Office on October 29, 2008 be expunged from the record. Petitioner states either: (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR § 1.17(g) has been paid.

The reasons set forth in this petition establishes to the satisfaction of the Director that expungement of the information is appropriate. The file entry for this document has been closed and as such the document is no longer publicly available, which is the IFW equivalent to removal of a paper document from a paper file wrapper.

Therefore, petitioner's petition is GRANTED.

Should there be any questions about this decision please contact Marianne C. Seidel by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 703-872-9306.

Marianne C. Seidel
Quality Assurance Specialist
Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

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

GENENTECH, INC.
1 DNA WAY
SOUTH SAN FRANCISCO CA 94080

MAILED

OCT 12 2011

OFFICE OF PETITIONS

In re Application of
Naveed Shams
Application No. 11/738,284
Filed: April 20, 2007
Attorney Docket No: P2187R1C1

ON PETITION

This is a decision on the petition filed September 21, 2011 under 37 CFR 1.137(b),[1] to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the non-Final Office Action mailed October 6, 2009. A shortened statutory period of three months was set for replying to the non-Final Office Action. No response having been timely filed, this application became abandoned January 7, 2010. Accordingly, a Notice of Abandonment was sent via Electronic Notification on April 20, 2010.

This matter is being referred to Technology Center 1649 for appropriate action on the amendment filed September 21, 2011.

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

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

[1]Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

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UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/738,288	04/20/2007	Dennis L. Schultze	1423-099	7224

32905 7590 12/06/2010
JONDLE & ASSOCIATES P.C.
858 HAPPY CANYON ROAD SUITE 230
CASTLE ROCK, CO 80108

EXAMINER
KUBELIK, ANNE R

ART UNIT	PAPER NUMBER
1638	

NOTIFICATION DATE	DELIVERY MODE
12/06/2010	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):

JondleOA@jondlelaw.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

DEC 0 6 2010

JONDLE & ASSOCIATES P.C.
858 HAPPY CANYON ROAD SUITE 230
CASTLE ROCK CO 80108

In re Application of:	:
Dennis L. Schultze	: PETITION DECISION
Serial No.: 11/738,288	:
Filed: April 20, 2007	:
Attorney Docket No.: **1423-099**	

This is in response to the renewed petition under 37 CFR § 1.59(b), filed December 2, 2010, to expunge information from the above identified application. This application has been allowed.

Petitioner requests that the material submitted to the Patent Office on October 7, 2008 and May 29, 2009 be expunged from the record. Petitioner states either: (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR § 1.17(g) has been paid.

The reasons set forth in this petition establishes to the satisfaction of the Director that expungement of the information is appropriate. The file entry for this document has been closed and as such the document is no longer publicly available, which is the IFW equivalent to removal of a paper document from a paper file wrapper.

Therefore, petitioner's petition is GRANTED.

Should there be any questions about this decision please contact Marianne C. Seidel by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 571-273-8300.

Marianne C. Seidel
Quality Assurance Specialist
Technology Center 1600

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: ——

DATE : 4/13/2011

TO SPE OF : ART UNIT 1638

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/738288 Patent No.: 7884266 B2

CofC mailroom date: 4/8/2011

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

Virginia Tolbert
Certificates of Correction Branch
571-272-0460

Thank You For Your Assistance

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

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

Comments: _____

SPE

1638
Art Unit

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.
11/738,291	04/20/2007	Leland C. Leber	187742/US/2	7230

20686 7590 04/22/2011
DORSEY & WHITNEY, LLP
INTELLECTUAL PROPERTY DEPARTMENT
1400 Wewatta Street
Suite 400
DENVER, CO 80202-5549

EXAMINER
HWU, DAVIS D

ART UNIT	PAPER NUMBER
3752	

NOTIFICATION DATE	DELIVERY MODE
04/22/2011	ELECTRONIC

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

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

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

docketing-dv@dorsey.com
docketingDV@dorsey.foundationip.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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DORSEY & WHITNEY, LLP
INTELLECTUAL PROPERTY DEPARTMENT
1400 Wewatta Street
Suite 400
DENVER CO 80202-5549

In re Application of:
LEBER, LELAND C.
Serial No.: 11/738,291
Filed: April 20, 2007
Docket: 187742/US/2
Title: CONVERGING SPRAY SHOWERHEAD

DECISION ON PETITION
UNDER 37 CFR 1.91

This is a decision on the petition for request entry of exhibit filed under 37 CFR 1.91.

The petition filed on Sep. 23, 2009 requests entry of CD-ROM showing five video files of the showerheads, filed under 37 CFR 1.91[1] and includes the required petition and the required fee as set forth in 37 CFR 1.17(h). The petition fee of $130.00 was paid in accordance with 37 CFR 1.17(h).

The request to enter the CD-ROM does not comply with the requirements as set forth in 37 CFR 1.91 because petitioner did not explain why entry of the CD-ROM in the file record is necessary to demonstrate patentability. It is noted the Rule 132 Affidavit of September 23, 2009 has been entered as evidence in the pending appeal without any objection. Accordingly, the requested entry of the CD-ROM in the file record will not be granted. Currently, the CD-ROM has been placed in a separate artifact file.

The application is being forwarded to the examiner for preparation of an Examiner's Answer.

[1] § 1.91 Models or exhibits not generally admitted as part of application or patent. (a) A model or exhibit will not be admitted as part of the record of an application unless it: (1) Substantially conforms to the requirements of § 1.52 or § 1.84; (2) Is specifically required by the Office; or (3) Is filed with a petition under this section including: (i) The fee set forth in § 1.17(h); and (ii) An explanation of why entry of the model or exhibit in the file record is necessary to demonstrate patentability. (b) Notwithstanding the provisions of paragraph (a) of this section, a model, working model, or other physical exhibit may be required by the Office if deemed necessary for any purpose in examination of the application. (c) Unless the model or exhibit substantially conforms to the requirements of § 1.52 or § 1.84 under paragraph (a)(1) of this section, it must be accompanied by photographs that show multiple views of the material features of the model or exhibit and that substantially conform to the requirements of § 1.84.

Telephone inquiries concerning this decision should be directed to Henry C. Yuen at 571-272-4856.

Petition is dismissed

Angela D. Sykes, Director
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
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MAILED

SEP 28 2010

OFFICE OF PETITIONS

McDermott Will & Emery LLP
600 13th Street, NW
Washington DC 20005-3096

In re Application of
Jonathan Walborn et al.
Application No. 11/738,296
Filed: April 20, 2007
Attorney Docket No. **047145-0437**

DECISION ON PETITION

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

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 25, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is April 26, 2010.

The petition is **GRANTED**.

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

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.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See* In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $1,110 extension of time fee submitted with the petition on September 1, 2010 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) 272-4584.

This application is being referred to Technology Center AU 3767 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

/JoAnne Burke/
JoAnne Burke
Petitions Examiner
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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MILES & STOCKBRIDGE PC
1751 PINNACLE DRIVE
SUITE 500
MCLEAN VA 22102-3833

MAILED
JUN 07 2011
OFFICE OF PETITIONS

In re Application of	:	
Casey K. Lee	:	
Application No. 11/738,439	:	DECISION ON PETITION
Filed: April 20, 2007	:	
Attorney Docket No. A-10529	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 4, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Restriction Requirement, mailed October 5, 2010, 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 November 6, 2010. The Notice of Abandonment was mailed May 12, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of 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 3733 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

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

Mail Date: 08/03/2010

Applicant	: Jerry L. Doorenbos	: DECISION ON REQUEST FOR
Patent Number	: 7648271	: RECALCULATION of PATENT
Issue Date	: 01/19/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/738,595	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/23/2007	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **268** 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

4-4-2012

Commissioner for Patents
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P.O. Box 1450
Alexandria, VA 22313-1450
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Patent No. : 8,064,632 B2
Ser. No. : 11/738,674
Inventor(s) : Bill Baloukas, et. al.
Issued : November 22, 2011

Re: Request for Certificate of Correction

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

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

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

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

A. **the processing fee set forth in 37 CFR 1.17(i) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

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

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

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

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

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

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

Eva James
For Mary Diggs
Decisions & Certificates
of Correction Branch
(571) 272-3422 or 703- 756 -1580

Anglehart, et. al.
1939 de Maisonneuve Ouest
Montreal, Quebec H3H 1K3 Canada

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : October 4, 2010

TO SPE OF : ART UNIT 1797
SUBJECT : Request for Certificate of Correction for Appl. No/11/738730 pat.7687432

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Magdalene Talley

Certificates of Correction Branch

571-272-0423

Thank You For Your Assistance

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

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

Comments: OK TO ENTER

/MICHAEL MARCHESCHI/ SPE 1797

SPE **Art Unit**

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GORE ENTERPRISE HOLDINGS, INC.
551 PAPER MILL ROAD
P. O. BOX 9206
NEWARK DE 19714-9206

MAILED
MAR 09 2011
OFFICE OF PETITIONS

In re Application of	:	
John E. Bacino et al.	:	
Application No. 11/738,761	:	DECISION ON PETITION
Filed: April 23, 2007	:	
Attorney Docket No. MI/283	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 4, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Notice of File Corrected Application Papers, mailed September 30, 2010. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on December 1, 2010. A Notice of Abandonment was mailed on December 15, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in an amendment to the specification, (2) the petition fee of $1,620, (3) a proper statement of unintentional delay. Accordingly the amendment 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 Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

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QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO CA 92121

MAILED
DEC 02 2010
OFFICE OF PETITIONS

In re Application of	:	
Charles OPPENHEIMER	:	
Application No. 11/738,778	:	DECISION ON PETITION
Filed: April 23, 2007	:	
Attorney Docket No. 091871	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 05, 2010, to revive the above-identified application.

The petition is **GRANTED.**

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

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1,620.00, and (3) a proper statement of unintentional delay. Accordingly, the reply to the non-final Office action of August 21, 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 2179 for appropriate action by the Examiner in the normal course of business on the reply received.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/738,800	04/23/2007	Robert J. Sundstrom	I471/US	8176

49277 7590 02/09/2011
SCENERA RESEARCH, LLC
5400 Trinity Road
Suite 303
Raleigh, NC 27607

EXAMINER
SURYAWANSHI, SURESH

ART UNIT	PAPER NUMBER
2115	

MAIL DATE	DELIVERY MODE
02/09/2011	PAPER

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

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

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Alexandria, VA 22313-1450
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SCENERA RESEARCH, LLC
5400 TRINITY ROAD
Suite 303
CARY, NC 27607

In re Application of:
SUNDSTROM, et al.
Appl. No.: 11/738,800
Filed: April 23, 2007
Docket No.: 1471/US
For: METHOD AND SYSTEM FOR MANAGING ACTIVITIES IN A BATTERY POWERED DEVICE

DECISION ON PETITION UNDER 37 CFR § 1.103(a)

This is a decision on the petition for suspension of prosecution under 37 CFR § 1.103(a) filed on 25 January 2011.

The petition is **GRANTED**.

Pursuant to applicant's request filed on 25 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) 272-3595.

Brian Johnson, SPRE/QAS
Technology Center 2100
Computer Architecture and Software

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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.
11/738,800	04/23/2007	Robert J. Sundstrom	I471/US	8176

49277 7590 05/18/2011
SCENERA RESEARCH, LLC
5400 Trinity Road
Suite 303
Raleigh, NC 27607

EXAMINER
SURYAWANSHI, SURESH

ART UNIT	PAPER NUMBER
2115	

MAIL DATE	DELIVERY MODE
05/18/2011	PAPER

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

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

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SCENERA RESEARCH, LLC
5400 TRINITY ROAD
Suite 303
CARY, NC 27607

In re Application of:
SUNDSTROM, et al.
Appl. No.: 11/738,800
Filed: April 23, 2007
Docket No.: 1471/US
For: METHOD AND SYSTEM FOR MANAGING ACTIVITIES IN A BATTERY POWERED DEVICE

DECISION ON PETITION UNDER 37 CFR § 1.103(a)

This is a decision on the petition for suspension of prosecution under 37 CFR § 1.103(a) filed on 16 May 2011.

The petition is **GRANTED**.

Pursuant to applicant's request filed on 16 May 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) 272-3595.

Brian Johnson, 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.
11/738,800	04/23/2007	Robert J. Sundstrom	I471/US	8176

49277 7590 08/16/2011
SCENERA RESEARCH, LLC
5400 Trinity Road
Suite 303
Raleigh, NC 27607

EXAMINER
SURYAWANSHI, SURESH

ART UNIT	PAPER NUMBER
2115	

MAIL DATE	DELIVERY MODE
08/16/2011	PAPER

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

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

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SCENERA RESEARCH, LLC
5400 TRINITY ROAD
Suite 303
RALEIGH, NC 27607

In re Application of:
SUNDSTROM, et al.
Appl. No.: 11/738,800
Filed: April 23, 2007
Docket No.: 1471/US
For: METHOD AND SYSTEM FOR MANAGING ACTIVITIES IN A BATTERY POWERED DEVICE

DECISION ON PETITION UNDER 37 CFR § 1.103(a)

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

The petition is **GRANTED**.

Pursuant to applicant's request filed 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) 272-3595.

Brian Johnson, 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.
11/738,800	04/23/2007	Robert J. Sundstrom	I471/US	8176

49277 7590 11/28/2011
SCENERA RESEARCH, LLC
5400 Trinity Road
Suite 303
Raleigh, NC 27607

EXAMINER
SURYAWANSHI, SURESH

ART UNIT	PAPER NUMBER
2115	

MAIL DATE	DELIVERY MODE
11/28/2011	PAPER

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

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

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Kevin L. Wingate
SCENERA RESEARCH, LLC
5400 Trinity Road
Suite 303
Raleigh, North Carolina 27607

In re Application of:
Robert J. SUNDSTORM et al.
Appl. No.: 11/738,800
Filed: April 23, 2007
For: METHOD AND SYSTEM FOR MANAGING ACTIVITIES

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 23 November 2011.

The petition is **GRANTED**.

Pursuant to applicant's requests filed on 23 November 2011, action by the Office is suspended on this application under 37 CFR § 1.103(a) for a period of three (3) months from the mailing date of this letter. At the end of this period, applicant is required to notify the examiner and request continuance of prosecution or a further suspension. See MPEP § 709.

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

Any inquiry concerning this decision should be directed to the undersigned whose telephone number is (571) 272-3613.

/Vincent N. Trans/
Vincent N. Trans, QAS
Technology Center 2100
Computer Architecture and Software

UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/738,800	04/23/2007	Robert J. Sundstrom	1471/US	8176

49277 7590 03/02/2012
SCENERA RESEARCH, LLC
5400 Trinity Road
Suite 303
Raleigh, NC 27607

EXAMINER
SURYAWANSHI, SURESH

ART UNIT	PAPER NUMBER
2115	

MAIL DATE	DELIVERY MODE
03/02/2012	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

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Kevin L. Wingate
SCENERA RESEARCH, LLC
5400 Trinity Road
Suite 303
Raleigh, North Carolina 27607

In re Application of:
Robert J. SUNDSTORM et al.
Appl. No.: 11/738,800
Filed: April 23, 2007
For: METHOD AND SYSTEM FOR MANAGING ACTIVITIES

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 February 2012.

The petition is **GRANTED**.

Pursuant to applicant's requests filed on 28 February 2012, action by the Office is suspended on this application under 37 CFR § 1.103(a) for a period of three (3) months from the mailing date of this letter. At the end of this period, applicant is required to notify the examiner and request continuance of prosecution or a further suspension. See MPEP § 709.

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

Any inquiry concerning this decision should be directed to the undersigned whose telephone number is (571) 272-3613.

/Vincent N. Trans/
Vincent N. Trans, QAS
Technology Center 2100
Computer Architecture and Software

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Paper No.

Foley & Lardner LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON WI 53701-1497

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JAN 17 2012

OFFICE OF PETITIONS

In re Application of	:	
Rhoads et al.	:	
Application No. 11/738,973	:	ON APPLICATION FOR
Filed: April 23, 2007	:	PATENT TERM ADJUSTMENT
Atty Docket No. 098888-1985	:	

This is in response to the Request for Reconsideration of the Patent Term Adjustment under 37 C.F.R. § 1.705 filed January 11, 2012. Applicant submits that the correct patent term adjustment to be indicated on the patent is at least one thousand one hundred thirteen (1113) days. Applicant requests this correction solely on the basis that the Office will take in excess of three years to issue this patent.

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

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

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

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

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

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

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

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No.

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

MAILED

JAN 17 2012

OFFICE OF PETITIONS

In re Application of	:	
Rhoads et al.	:	
Application No. 11/738,973	:	ON APPLICATION FOR
Filed: April 23, 2007	:	PATENT TERM ADJUSTMENT
Atty Docket No. 098888-1985	:	

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 January 11, 2012. Applicant requests reconsideration of the initial determination of patent term adjustment solely on the basis that the Office will take in excess of three years to issue the patent.

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

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

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

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

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

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

---

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

The application is being forwarded to the Office of Data Management for processing into a patent.

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

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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FENWICK & WEST LLP
SILICON VALLEY CENTER
801 CALIFORNIA STREET
MOUNTAIN VIEW CA 94041

MAILED
AUG 04 2011
OFFICE OF PETITIONS

In re Application of	:	
Tamara L. Casey et al	:	
Application No. 11/739,023	:	DECISION ON PETITION
Filed: April 23, 2007	:	
Attorney Docket No. 25258-11919	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 1, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an RCE and an amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final Office action mailed September 20, 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 2453 for appropriate action by the Examiner in the normal course of business.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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2018 POWERS FERRY ROAD
SUITE 800
ATLANTA GA 30339

MAILED
JUN 29 2011
OFFICE OF PETITIONS

In re Application of	:	
David A. Gill	:	
Application No. 11/739,059	:	ON PETITION
Filed: 04/23/2007	:	
Attorney Docket No. 8C25.1-011	:	

This is a decision on the petition under 37 CFR 1.137(b), filed June 17, 2011, to revive the 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 June17, 2010, which set a three-month shortened statutory period for response. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on September 18. 2010. The Office mailed a Notice of Abandonment on January 14, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that applicant has supplied (1) the reply in the form of a RCE, the RCE fee, and 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 3784 for processing of the RCE and for appropriate action by the Examiner on the amendment submitted in accordance with 37 CFR 1.114.

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

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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LEE & HAYES, PLLC
601 W. RIVERSIDE AVENUE
SUITE 1400
SPOKANE WA 99201

MAILED

AUG 3 0 2010

OFFICE OF PETITIONS

In re Application of	:	
John M. Oslake, et al.	:	
Application No. 11/739,063	:	DECISION GRANTING PETITION
Filed: April 23, 2007	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. MSI-3406US	:	

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

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on August 12, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 2128 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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MAILED
JUN. 14 2011
OFFICE OF PETITIONS

Intellectual Property Department
Cubist Pharmaceuticals, Inc.
65 Hayden Avenue
Lexington MA 02421

In re Application of	:
KELLEHER et al.	:
Application No. 11/739,180	: DECISION ON PETITIONS
Filed: April 24, 2007	: UNDER 37 CFR 1.78(a)(3) AND (a)(6)
Attorney Docket No. C062-02/03 US	:

This is a decision on the petitions under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed May 27, 2011, to accept an unintentionally delayed claim under 35 U.S.C. §§120 and 119(e) for the benefit of the prior-filed applications as set forth in the currently filed Application Data Sheet.

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 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 1656 for consideration by the examiner of the claim under 35 U.S.C. § §120 and 119(e) of the prior-filed nonprovisional and provisional applications.

David Bucci
Petitions Examiner
Office of Petitions

ATTACHMENT : Corrected Filing Receipt

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
11/739,180	04/24/2007	1656	8291	C062-02/03 US	53	1

CONFIRMATION NO. 8837

CORRECTED FILING RECEIPT

34103
Intellectual Property Department
Cubist Pharmaceuticals, Inc.
65 Hayden Avenue
Lexington, MA 02421

OC000000048168136

Date Mailed: 06/13/2011

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)

Thomas Kelleher, Weston, MA;
Jan-Ji Lai, Westborough, MA;
Joseph P. DeCourcey, Charlestown, MA;
Paul Lynch, Arlington, MA;
Maurizio Zenoni, Milan, ITALY;
Auro Tagliani, Pavia, ITALY;

Power of Attorney: None

Domestic Priority data as claimed by applicant

This application is a CON of 10/747,485 12/29/2003 ABN
which is a DIV of 09/735,191 11/28/2000 PAT 6,696,412
which claims benefit of 60/177,170 01/20/2000

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 05/08/2007

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/739,180**

Projected Publication Date: Not Applicable

Non-Publication Request: No

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

Title

High Purity Lipopeptides

Preliminary Class

514

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

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

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : September 7, 2011

TO SPE OF : ART UNIT 1613

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/739183 Patent No.: 7968711

CofC mailroom date: 8-18-11

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

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: _____

brian-yong s kwon

SPE — **Art Unit** 1613

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-30408.1	Patent Number: 7,665,850
Filing Date (or 371(b) or (f) Date): 04-24-2007	Issue Date: 02/23/2010
First Named Inventor: Steven M. Penn	
Title: PRISM FOR HIGH CONTRAST PROJECTION	

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

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

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

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

Signature /Wade J. Brady III/	Date August 12, 2010
Name (Print/Typed) Wade J. Brady III	Registration Number 32,080

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

☑ *Total of 1 forms are submitted.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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

Mail Date: 08/17/2010

Applicant	: Steven M. Penn	: DECISION ON REQUEST FOR
Patent Number	: 7665850	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/739,292	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/24/2007	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **0** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

2 7 AUG 2010

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Millen, White, Zelano & Branigan, P.C.
Suite 1400
2200 Clarendon Boulevard
Arlington VA 22201

In re Application of:	:	
GOLZ-BERNER, et al.	:	
U.S. Application No.: 11/739,294	:	DECISION
Filing Date: April 24, 2007	:	
Attorney Docket No.: GULDE-0074	:	
For: MOISTURE-REGULATING	:	
COSMETIC	:	

This decision is issued in response to the "Petition Under 37 CFR 1.78 And Request For Corrected Filing Receipt" filed July 28 2010, as well as the "Request For Complete Notice Of Allowance And Corrected Filing Receipt" filed on April 14, 2010 and resubmitted on July 16, 2010. Deposit Account No. 13-3402 will be charged the $1,410 surcharge applicable to a petition under 37 CFR 1.78.

BACKGROUND

On April 24, 2007, applicants initiated the present application using the EFS-Web electronic filing system. Among the materials filed by applicants was a "Transmittal Letter To The United States Designated/Elected office (DO/EO/US) Concerning A Filing Under 35 U.S.C. 371" (Form PTO-1390), a description, claims, drawings, abstract, preliminary amendment, and fee payment. The Form PTO-1390 Transmittal Letter identified the submission as a national stage filing under 35 U.S.C. 371 with respect to international application PCT/EP2005/011621. However, as evidenced by the "Electronic Acknowledgment Receipt," during the electronic filing process applicant identified the present application as a "Utility" application filed under 35 U.S.C. 111(a), not a national stage application filed under 35 U.S.C. 371. Accordingly, the application was processed by the USPTO as a filing under 35 U.S.C. 111(a).

On May 08, 2007, the USPTO mailed a filing receipt that did not include a reference to the international application.

On April 14, 2010, applicants filed a "Request For Complete Notice Of Allowance And Corrected Filing Receipt" requesting that USPTO records be corrected to identify the application as the U.S. national stage of PCT/EP2005/011621 and that the USPTO acknowledge receipt of the certified copy of the German priority application from the International Bureau of WIPO. This correspondence was resubmitted on July 16, 2010.

On July 28, 2010, applicants filed the "Petition Under 37 CFR 1.78 And Request For Corrected Filing Receipt" considered herein.

DISCUSSION

1. Request To Have The Present Application Treated As A National Stage Application Filed Under 35 U.S.C. 371

The "Request For Complete Notice Of Allowance And Corrected Filing Receipt" filed April 14, 2010 and July 16, 2010 and the "Petition Under 37 CFR 1.78 And Request For Corrected Filing Receipt" filed July 28, 2010 both request that USPTO records be corrected to identify the present application as the U.S. national stage of PCT/EP2005/011621 filed under 35 U.S.C. 371. Such requests are treated herein as a petition under 37 CFR 1.181.

Any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). See 37 CFR 1.495(g):

> The documents and fees submitted ... must be clearly identified as a submission to enter the national stage under 35 U.S.C. 371. Otherwise the submission will be considered as being made under 35 U.S.C. 111(a).

Section 1893.03(a) of the MPEP states (emphasis added):

> **If there are any conflicting instructions as to whether the filing is under 35 U.S.C. 111(a) or 35 U.S.C. 371, the application will be accepted as filed under 35 U.S.C. 111(a).**

Here, as noted above, during the electronic filing process applicant selected the application identifier "Utility (Utility under 35 U.S.C. 111(a)" rather than the separate application identifier for "U.S. National Stage Under 35 U.S.C. 371." This is evident from the Electronic Acknowledgement Receipt generated at the time of filing, which identifies the application as a "Utility" application.

Applicant's identification of the application during the electronic filing process as a utility application filed under 35 U.S.C. 111(a) represents a conflicting instruction that is not consistent with the intent to file a U.S. national stage application under 35 U.S.C. 371. Accordingly, pursuant to the policy set forth in MPEP section 1893.03(a), the present application was properly treated by the USPTO as a filing under 35 U.S.C. 111(a). Applicant's request that USPTO records be changed to identify the present application as a national stage application filed under 35 U.S.C. 371 is therefore appropriately dismissed.

It is noted that, because the present application is not a national stage application filed under 35 U.S.C. 371, applicant cannot rely on the certified copy of the German foreign priority application being transmitted to the USPTO by the International Bureau of WIPO. See MPEP section 1896(III): "In a U.S. national application filed under 35 U.S.C. 111(a), the certified copy of the foreign priority application must be provided to the Office by applicant, or a copy of the foreign application must be received from a foreign office in accordance with 37 CFR 1.55(d)."

2. Petition Under 37 CFR 1.78

As discussed above, the present application has been properly treated as a U.S. non-provisional application filed under 35 U.S.C. 111(a). The first sentence of the description in the application as filed did not include an acceptable benefit claim directed to international application PCT/EP2005/011621, nor was an application data sheet (ADS) including such a benefit claim included with the application as filed. Further, applicant did not submit an ADS or amendment adding an acceptable benefit claim directed to international application PCT/EP2005/011621 prior to the expiration of the four month deadline set forth in 37 CFR 1.78(a)(2)(ii). The present application therefore does not include a benefit claim directed to the international application.[1]

37 CFR 1.78(a)(3) provides a petition mechanism for adding to a U.S. non-provisional application an unintentionally delayed domestic benefit claim directed to a prior-filed international application, and applicants' present petition is identified as being made under 35 U.S.C. 1.78. The petition is therefore considered herein as a petition under 37 CFR 1.78(a)(3) to add to the present application a benefit claim directed to international application PCT/EP2005/011621.

A grantable petition under 37 CFR 1.78(a)(3) must include the following:

(1) the reference to the prior-filed application, as required by 35 U.S.C. 120 and 37 CFR 1.78(a)(2)(i), unless previously submitted;
(2) the surcharge set forth in 37 CFR 1.17(t);
(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 present petition does not satisfy items (1) and (3).

With respect to item (1), 37 CFR 1.78(a)(2)(iii) requires that the necessary reference to the prior-filed application be present in the first sentence of the description or in an ADS. As set forth in 37 CFR 1.78(a)(2)(i), an acceptable benefit claim must identify the international application by "international application number and international filing date and indicat[e] the relationship of the applications." As set forth in MPEP section 201.11(III)(A), the relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed application. An example of a proper benefit claim would therefore be: "This application is a continuation of international application PCT/EP2005/011621, filed October 24, 2005." A benefit claim that merely states: "This application claims the benefit of" the international application 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.

[1] It is noted that, without an acceptable intermediate benefit claim directed to the international application, applicants' foreign priority claim directed to German application 10 2004 052 404.1, filed October 25, 2004, is defective because the German application was filed more than twelve months prior to the present application.

As noted above, applicants here have not amended the first sentence of the description to include a benefit claim directed to the international application, nor have they have filed an ADS including such a claim. Item (1) of a grantable petition is therefore not satisfied.

With respect to item (3), the present petition did not include 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. Item (3) is therefore not satisfied.

In view of the above, applicant's petition does not satisfy the requirements for a grantable petition under 37 CFR 1.78(a)(3) to add to the present application a benefit claim directed to PCT/EP2005/011621.

CONCLUSION

The petition under 37 CFR 1.181 requesting that the present application be treated as the U.S. national stage of PCT/EP2005/011621 filed under 35 U.S.C. 371 is **DISMISSED** without prejudice.

The present application will continue to be treated as a U.S. non-provisional application filed under 35 U.S.C. 111(a). On the present record, the application does not include a benefit claim directed to international application PCT/EP2005/011621.

The petition under 37 CFR 1.78 is **DISMISSED** without prejudice.

Any renewed petition under 37 CFR 1.78(a)(3) to add to the present application a benefit claim directed to international application PCT/EP2005/011621 would need to include the materials required to satisfy elements (1) and (3) of a grantable petition, as discussed above and in the MPEP, that is, a proper amendment to the first sentence of the description (or an ADS) containing an acceptable benefit claim directed to the international application, and 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.

Any further correspondence with respect to this petition may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Richard M. Ross
Attorney Advisor
Office of PCT Legal Administration
Telephone: (571) 272-3296
Facsimile: (571) 273-0459

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Date Mailed :April 26, 2011

Patent No. :7670142
Inventor(s) :Thierry Giono
Issued :March 2, 2010
Title :PROSTHESIS MOUNTING DEVICE AND ASSEMBLY

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.

Related Application Data with respect to the first sentence of the specification" and/or any amendments thereto, is used for printing data claimed under 35 USC 120. Since the first sentence of the specification does not refer to the additional information as reflected on applicants request nor does the Oath/ADS or any amendment refer to the application data as requested, correction is not warranted under Rule 1.322 or 1.323. See MPEP §1.78(a)(3).

In view of the forgoing your request in this matter is hereby denied. Any inquiry concerning this communication should be directed to Ms. A. Green (571) 272-9005.

Mary Diggs, Supervisor
Decisions & Certificates
of Correction Branch
(703) 305-8309 or (571) 272-9005

Mr. Eric T. Jones
Reising Ethington P.C.
P.O. Box 4390
Troy MI 48099-4390

/arg

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Alexandria, VA 22313-1450
www.uspto.gov

HOWARD & HOWARD ATTORNEYS PLLC
450 West Fourth Street
Royal Oak MI 48067

MAILED

AUG 17 2010

OFFICE OF PETITIONS

In re Application of	:	
Patrick L. Scherer	:	
Application No. 11/739,403	:	DECISION ON
Filed: April 24, 2007	:	PETITION TO WITHDRAW
Attorney Docket No. 065439.00002	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed June 28, 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 Samuel J. Haidle on behalf of all attorneys/agents associated with customer 27305. All attorneys/agents associated with customer number 27305 have been withdrawn.

Applicant is reminded that there is no attorney of record at this time.

The correspondence address has been changed and is copied below.

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

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Patrick L. Scherer
6816 Sterling Greens Place
Unit 406
Naples, FL 34104

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
11/739,403	04/24/2007	Patrick L. Scherer	065439.00002

CONFIRMATION NO. 9237

POWER OF ATTORNEY NOTICE

27305
HOWARD & HOWARD ATTORNEYS PLLC
450 West Fourth Street
Royal Oak, MI 48067

OC000000043068128

Date Mailed: 08/16/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 06/28/2010.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/kainabinet/

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
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OBLON, SPIVAK, MCCLELLAND MAIER
& NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA VA 22314

MAILED
OCT 18 2010
OFFICE OF PETITIONS

In re Application: :
Seong Chul Shin :
Application No. 11/739,431 : NOTICE
Filed: April 24, 2007 :
Attorney Docket No. 307331US8 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed September 8, 2008. 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 the Technology Center 3777.

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

Patent No. : 7,745,933 B2
Ser. No. : 11/739,515
Inventor(s) : Yu
Issued : Jun. 29, 2010
Title : CIRCUIT STRUCTURE AND PROCESS THEREOF
Docket No. : JCLA22790
Re: Request for Certificate of Correction

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

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No.

J C PATENTS
4 VENTURE, SUITE 250
IRVINE CA 92618

MAILED
JUL 07 2011
OFFICE OF PETITIONS

In re Application of	:	
Yu	:	
Application No. 11/739,515	:	
In re Patent No. 7,745,933	:	DECISION ON PETITION
Filing Date: April 24, 2007	:	PURSUANT TO 37 C.F.R.
Issue Date: June 29, 2010	:	§ 3.81(B)
Attorney Docket Number:	:	
JCLA22790	:	
Title: CIRCUIT STRUCTURE AND	:	
PROCESS THEREOF	:	

This is a decision on the petition pursuant to 37 C.F.R. § 3.81(b), filed April 28, 2011, to correct the Assignee's information on the Issue Fee Transmittal Form PTOL-85(b).

The petition is **DISMISSED.**

With this petition, Petitioner requests that a Certificate of Correction be issued to correct the assignee information that appears on the face of the patent. Petitioner has requested that the name of the Assignee should be changed from "United Microelectronics Corp." to "Unimicron Technology Corp."

37 C.F.R. § 3.81(b), effective June 25, 2004, reads:

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

The present request pursuant to 37 C.F.R. § 3.81(b) was accompanied by the petition fee, a request for a certificate of correction and the associated fee, and a copy of a recordation document.

On May 18, 2010, Applicant submitted form PTOL-85b to the Office, which erroneously lists "United Microelectronics Corp." of "Hsinchu, Taiwan" (emphasis added) as the assignee.

Office records show that on May 23, 2007, prior to the issuance of this patent, an assignment was submitted for recordation, which lists "Unimicron Technology Corp." of "Taoyuan, Taiwan, R.O.C." (emphasis added) as the assignee.

With this petition, Petitioner has included a certificate of correction: Petitioner seeks to correct the name of the assignee, but not the geographical location of the same. Were this petition to be granted, this would result in the issuance of a Certificate of Correction which lists the assignee as "Unimicron Technology Corp., Hsinchu, Taiwan."

This cannot be done, since an assignment which lists "Unimicron Technology Corp." of "Hsinchu, Taiwan" was not submitted for recordation prior to the issuance of this patent. It follows that Petitioner has failed to comply with the provisions of this title, and as such, the request cannot be granted. It is clear that the assignment, *as currently written*, was not submitted for recordation as set forth in 37 C.F.R. § 3.11 before the issuance of this patent.

Any reply must be submitted within **TWO MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. § 1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. § 3.81(b)". This is not a final agency action within the meaning of 5 U.S.C § 704.

Any renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail[1], hand-delivery[2], or facsimile[3]. Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web[4].

---

1 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
2 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.
3 (571) 273-8300: please note this is a central facsimile number.
4 https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html

If responding by mail, Petitioner is advised not to place the undersigned's name on the envelope. Only the information that appears in the footnote should be included - adding anything else to the address will delay the delivery of the response to the undersigned.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225[5].

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Paper No.

J C PATENTS
4 VENTURE, SUITE 250
IRVINE CA 92618

MAILED

AUG 22 2011

OFFICE OF PETITIONS

In re Application of	:	
Yu	:	
Application No. 11/739,515	:	
In re Patent No. 7,745,933	:	DECISION ON RENEWED
Filing Date: April 24, 2007	:	PETITION PURSUANT TO 37
Issue Date: June 29, 2010	:	C.F.R. § 3.81(B)
Attorney Docket Number:	:	
JCLA22790	:	
Title: CIRCUIT STRUCTURE AND	:	
PROCESS THEREOF	:	

This is a decision on the renewed petition pursuant to 37 C.F.R. § 3.81(b), filed August 11, 2011, to correct the Assignee's information on the Issue Fee Transmittal Form PTOL-85(b).

The renewed petition is **GRANTED**.

An original petition pursuant to 37 C.F.R. § 3.81(b) was filed on April 28, 2011, and was dismissed via the mailing of a decision on July 7, 2011.

With this renewed petition, Petitioner requests that a Certificate of Correction be issued to correct the assignee information that appears on the face of the patent. Petitioner has requested that the Assignee should be changed from "United Microelectronics Corp., Hsinchu (TW)" to "Unimicron Technology Corp., Taoyuan, Taiwan, R.O.C."

37 C.F.R. § 3.81(b), effective June 25, 2004, reads:

> (b) After payment of the issue fee: Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in 3.11

> before issuance of the patent, and must include a request for a certificate of correction under 1.323 of this chapter (accompanied by the fee set forth in 1.20(a)) and the processing fee set forth in 1.17(i) of this chapter.

Petitioner has set forth that the assignment was submitted for recordation as set forth in 37 C.F.R. § 3.11 before issuance of the patent, and Office records confirm that an assignment was received in the Office on May 23, 2007, listing "Unimicron Technology Corp., Taoyuan, Taiwan, R.O.C."" as the Assignee.

The Certificates of Correction Branch will be notified of this decision so that the requested Certificate of Correction can be issued, correcting the Assignee information to "Unimicron Technology Corp., Taoyuan, Taiwan, R.O.C."

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225. Any questions concerning the issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (703) 756-1814.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

GREENBERG TRAURIG LLP (LA)
C/O: GREENBERG TRAURIG LLP
CHICAGO OFFICE
77 WEST WACKER DRIVE, SUITE 3100
INTELLECTUAL PROPERTY DEPARTMENT
CHICAGO IL 60601

MAILED

SEP 26 2011

OFFICE OF PETITIONS

In re Application of	:	
WILLENBORG, et al	:	
Application No. 11/739,645	:	DECISION ON PETITION
Filed: April 24, 2007	:	TO WITHDRAW
Attorney Docket No. 102583-010200	:	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, 2009.

The request is **DISMISSED**.

The request to withdraw from record cannot be approved because the request to change the correspondence address is not acceptable. The Office will either change the correspondence address of record to the most current address information provided for the assignee of the entire interest who properly became of record under 37 CFR 3.71 or, if no assignee of the entire interest has properly been made of record under 37 CFR 3.71, the most current address information provided for the first named inventor. 37 CFR 3.71 states:

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

According to a review of USPTO records, there is currently no Statement under 37 CFR 3.73 of record in the instant application, the Office cannot change the correspondence address to the address indicated on the Request to Withdraw filed September 29, 2009.

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

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

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

TOUCAN GLOBAL, LLC
C/O TODD SMITH
3053 FILLMORE STREET, SUITE 248
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OFFICE OF PETITIONS

In re Application of:	:	LETTER REGARDING
Leveillard et al.	:	PATENT TERM ADJUSTMENT
Application No. 11/739,734	:	and
Filed: April 25, 2007	:	NOTICE OF INTENT TO ISSUE
Attorney Docket No. NI1-046USDVRCE	:	CERTIFICATE OF CORRECTION
Title: POLYNUCLEOTIDES ENCODING ROD-DERIVED CONE VIABILITY FACTOR (RDCVF) AND METHODS OF USING THE SAME	:	

This is in response to the petition pursuant to 37 C.F.R. § 1.705(b) filed October 18, 2011. Applicant requests an adjustment of the initial patent term adjustment from 295 days to 253 days, a reduction of 42 days.

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

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is **two hundred and fifty-three (253)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On July 25, 2011, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 295 days. The present application for patent term

adjustment was timely filed[1] on or before payment of the issue fee. Applicant argues that one additional period of applicant delay should have been assessed.

37 C.F.R. § 1.704(c)(8) indicates that the following occurrence constitutes applicant delay:

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

On November 13, 2009, the Office mailed a non-final Office action. A response was received on February 12, 2010. Forty-two days later, an Information Disclosure Statement was filed. Applicant argues that this warrants a 42-day reduction, pursuant to 37 C.F.R. § 1.704(c)(8). A review of the record shows this assertion to be accurate.

A reduction of 42 days has been added.

In view thereof, the revised patent term adjustment is 253 (388 - 135) **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 Office of Patent Publication will be notified of this decision so that the present application can be processed into a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment

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1 PALM records indicate that the issue fee was submitted concurrently with the filing of this petition.

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).

It is noted in passing that Applicant has made reference to the submission of replacement drawings subsequent to the mailing of a notice of allowance. Applicant will note that the computer will not calculate any further Office delay under 37 C.F.R. § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, in this regard, the Office cannot make a determination on the correctness of the patent term adjustment until the patent has issued.

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

Paul Shanoski

Paul Shanoski
Senior Attorney
Office of Petitions

Encl. Copy of the Revised Patent Term Adjustment

Patent Term Adjustments

PTA/PTE Information

Application Number*: 11739734 Search Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application: 11739734

Application Filing Date	04/25/2007	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	388
A Delays	388	PTO Manual Adjustment	-42
B Delays	0	Applicant Delay (APPL)	93
C Delays	0	Total PTA (days)	253

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
116	10/25/2011		P028	Adjustment of PTA Calculation by PTO		42	0
105	07/25/2011		MN/=.	Mail Notice of Allowance			0
104	07/22/2011		OAR	Office Action Review			0
103	07/22/2011		N/=.	Notice of Allowance Data Verification Completed			0
102	07/22/2011		DOCK	Case Docketed to Examiner in GAU			0
101	07/22/2011		IREV	Issue Revision Completed			0
100	07/22/2011		DVER	Document Verification			0
99	07/21/2011		CNTA	Allowability Notice			0
95	07/20/2011		FWDX	Date Forwarded to Examiner			0
94	07/14/2011		A.NE	Amendment after Final Rejection			0
93	05/16/2011		MCTFR	Mail Final Rejection (PTOL - 326)			0
92	05/12/2011		OAR	Office Action Review			0
91	05/09/2011		OAR	Office Action Review			0
90	05/09/2011		CTFR	Final Rejection			0
88	02/25/2011		FWDX	Date Forwarded to Examiner			0
89	02/22/2011		IDSC	Information Disclosure Statement considered			0
87	02/22/2011		A...	Response after Non-Final Action			0
86	02/22/2011		M844	Information Disclosure Statement (IDS) Filed			0
85	02/22/2011		WIDS	Information Disclosure Statement (IDS) Filed			0
84	01/18/2011	12/25/2010	MCTNF	Mail Non-Final Rejection	24		78
83	01/18/2011		CTNF	Non-Final Rejection			0
80	08/27/2010		FWDX	Date Forwarded to Examiner			0
77	08/27/2010		ABN9	Disposal for a RCE / CPA / R129			0
79	08/25/2010		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
78	08/25/2010		RCEX	Request for Continued Examination (RCE)			0
76	08/25/2010		BRCE	Workflow - Request for RCE - Begin			0
75	08/10/2010		MCTAV	Mail Advisory Action (PTOL - 303)			0
74	08/09/2010		CTAV	Advisory Action (PTOL-303)			0
73	08/04/2010		FWDX	Date Forwarded to Examiner			0
72	08/02/2010		A.NE	Amendment after Final Rejection			0
71	07/16/2010		MCTAV	Mail Advisory Action (PTOL - 303)			0
70	07/15/2010		CTAV	Advisory Action (PTOL-303)			0
69	07/08/2010		FWDX	Date Forwarded to Examiner			0
68	07/06/2010		A.NE	Amendment after Final Rejection			0
67	05/25/2010		MCTFR	Mail Final Rejection (PTOL - 326)			0
66	05/24/2010		CTFR	Final Rejection			0
63	03/26/2010		IDSC	Information Disclosure Statement considered			0
62	03/26/2010		EIDS.	Electronic Information Disclosure Statement			0
61	03/26/2010		WIDS	Information Disclosure Statement (IDS) Filed			0
57	03/11/2010		FWDX	Date Forwarded to Examiner			0
64	02/12/2010		IDSC	Information Disclosure Statement considered			0
60	02/12/2010		M844	Information Disclosure Statement (IDS) Filed			0
59	02/12/2010		M844	Information Disclosure Statement (IDS) Filed			0
58	02/12/2010		C614	New or Additional Drawing Filed			0
56	02/12/2010		A...	Response after Non-Final Action			0
55	02/12/2010		WIDS	Information Disclosure Statement (IDS) Filed			0
53	11/13/2009		MCTNF	Mail Non-Final Rejection			0
52	11/09/2009		CTNF	Non-Final Rejection			0
54	10/22/2009	07/21/2009	M844	Information Disclosure Statement (IDS) Filed		93	34
47	10/22/2009		IDSC	Information Disclosure Statement considered			0
46	10/22/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
35	08/29/2009		FWDX	Date Forwarded to Examiner			0
34	07/21/2009		ELC.	Response to Election / Restriction Filed			0
33	06/24/2009	06/25/2008	MCTRS	Mail Restriction Requirement	364		0.5
32	06/22/2009		CTRS	Restriction/Election Requirement			0

30	03/05/2009	PG-ISSUE	PG-Pub Issue Notification	0
29	02/11/2009	DOCK	Case Docketed to Examiner in GAU	0
23	12/31/2008	TSSCOMP	IFW TSS Processing by Tech Center Complete	0
36	12/04/2008	IDSC	Information Disclosure Statement considered	0
28	12/04/2008	M844	Information Disclosure Statement (IDS) Filed	0
22	12/04/2008	WIDS	Information Disclosure Statement (IDS) Filed	0
21	12/03/2008	OIPE	Application Dispatched from OIPE	0
20	11/25/2008	PGPC	Sent to Classification Contractor	0
19	11/25/2008	FLRCPT.U	Filing Receipt - Updated	0
18	11/21/2008	CRFE	CRF Is Good Technically / Entered into Database	0
37	10/21/2008	IDSC	Information Disclosure Statement considered	0
27	10/21/2008	M844	Information Disclosure Statement (IDS) Filed	0
25	10/21/2008	A.PE	Preliminary Amendment	0
17	10/21/2008	ADDFLFEE	Additional Application Filing Fees	0
16	10/21/2008	CRFL	CRF Disk Has Been Received by Preexam / Group / PCT	0
15	10/21/2008	WIDS	Information Disclosure Statement (IDS) Filed	0
14	09/05/2008	SQPR	SEQUENCE ERRORS	0
9	08/28/2008	CRFD	CRF Is Flawed Technically / Not Entered into Database	0
8	07/15/2008	PA..	Change in Power of Attorney (May Include Associate POA)	0
7	07/10/2008	C.AD	Correspondence Address Change	0
38	06/06/2008	IDSC	Information Disclosure Statement considered	0
26	06/06/2008	M844	Information Disclosure Statement (IDS) Filed	0
6	06/06/2008	WIDS	Information Disclosure Statement (IDS) Filed	0
13	08/31/2007	ADDFLFEE	Additional Application Filing Fees	0
12	08/31/2007	SEQLIST	A set of symbols and procedures, provided to the PTO on a set of computer listings, that describe in	0
11	08/31/2007	CRFL	CRF Disk Has Been Received by Preexam / Group / PCT	0
10	08/31/2007	OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	0
5	05/31/2007	INCD	Notice Mailed--Application Incomplete--Filing Date Assigned	0
3	05/18/2007	L194	Cleared by OIPE CSR	0
2	05/13/2007	SCAN	IFW Scan & PACR Auto Security Review	0
24	04/25/2007	A.PE	Preliminary Amendment	0
1	04/25/2007	IEXX	Initial Exam Team nn	0
0.5	04/25/2007	EFILE	Filing date	0

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REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF *WYETH**

Attorney Docket Number: TI-38359.1	Patent Number: 7,667,243
Filing Date (or 371(b) or (f) Date): 04-25-2007	Issue Date: 02/23/2010
First Named Inventor: Charvaka Duvvury	
Title: LOCAL ESD PROTECTION FOR LOW-CAPICITANCE APPLICATIONS	

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

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

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

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

Signature / Wade J. Brady III /	Date August 12, 2010
Name (Print/Typed) Wade J. Brady III	Registration Number 32,080

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

☑ *Total of 1 forms are submitted.

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

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

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

Mail Date: 08/17/2010

Applicant	: Charvaka Duvvury	: DECISION ON REQUEST FOR
Patent Number	: 7667243	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/739,801	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/25/2007	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **219** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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OFFICE OF PETITIONS

In re Patent No. 7,913,032	: DECISION ON
Cornwell, et al.	: REQUEST FOR RECONSIDERATION
Application No. 11/739,816	: of PATENT TERM ADJUSTMENT
Issue Date: March 22, 2011	: and
Filed: April 25, 2007	: NOTICE OF INTENT TO ISSUE
Attorney Docket No. 19154-0029001	: CERTIFICATE OF CORRECTION

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)", filed May 23, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected from three hundred ninety-one (391) days to four hundred thirty-eight (438) days.

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

On March 22, 2011, the instant application matured into U.S. Patent No. 7,913,032 with a patent term adjustment of three hundred ninety-one (391) days. The Office determined a patent term adjustment of 391 days based upon 391 days of Office delay pursuant to 37 CFR 1.703(a)(1), reduced by 0 days of Applicant delay.

Patentees argue that even though they filed an RCE (on January 27, 2010 and again on October 13, 2010), they should be awarded 37 CFR 1.703(b) "over three year" delay from the time the Office mailed a Notice of Allowance on November 16, 2010 until the issue date of the patent. In other words, Patentee argue that no continued examination took place during this time period, and the Office should be accorded 127 days of delay pursuant to 37 CFR 1.703(b). Patentee's argument has been considered, but is not persuasive.

RELEVANT STATUTE AND REGULATIONS

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

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

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

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

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

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

OPINION

Patentee's arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 0 days based on the application having been filed under 35 U.S.C. 111(a) on April 25, 2007 and a request for continued examination under 132(b) having been filed on January 27, 2010. In other words, the 127 day period beginning on the date of mailing of the notice of allowance on

November 16, 2010 to the date of issuance of the patent was considered time consumed by continued examination of an application under 35 U.S.C. 132(b) and was not included in the "B delay."

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

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

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

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

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

(2) Abandonment of the application; or

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

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

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

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

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

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

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, (580 F. Supp. 2d 138), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than

three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

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

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

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

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

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures3 permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

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

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

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

In this instance, a request for continued examination was filed on January 27, 2010, and the patent issued by virtue of that request on March 22, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on January 27, 2010 and ending on March 22, 2011 is not included in calculating Office delay.

In addition, Patentees also point out that they should have been assessed eighty (80) days of Applicant delay pursuant to 37 CFR 1.704(c)(8). A review of the record reveals that Applicants filed an Amendment on April 23, 2010. Subsequently, Applicants filed an IDS on July 12, 2010. Accordingly, pursuant to 37 CFR 1.704(c)(8), 80 days of Applicant delay should have been assessed.

In view thereof, the correct number of days of patent term adjustment is **three hundred eleven (311)** days (391 days of "A" delay, reduced by 80 days of Applicant delay).

The application is being forwarded to the Certificate of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **three hundred eleven (311) days.**

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

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

DRAFT CERTIFICATE OF CORRECTION

PATENT : 7,913,032 B2

DATED : **March 22, 2011**

INVENTOR(S) : Cornwell 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 391 days.

Delete the phrase "by 391 days" and insert – by 311 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

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Fish & Richardson PC
P.O.Box 1022
Minneapolis MN 55440

In re Patent No. 7,996,599
Cornwell et al.
Issue Date: August 9, 2011
Application No. 11/739,878
Filed: April 25, 2007
Attorney Docket No. 19154-027001/P470US1
Title: COMMAND RESEQUENCING IN MEMORY OPERATIONS

DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

This is a decision on the petition filed on October 7, 2011, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by four hundred eighty-nine (489) days.

The request for reconsideration of the patent term adjustment (PTA) pursuant to 37 CFR 1.705(d) is **DISMISSED**.

The above-identified application matured into U.S. Pat. No. 7,996,599 on August 9, 2011. The patent issued with a patent term adjustment of 366 days. The instant application for patent term adjustment was timely filed in accordance with 37 CFR 1.705(d). Patentees contest the period of adjustment of 0 days accorded pursuant to 37 CFR 1.702(b) and assert that the correct period of adjustment under 37 CFR 1.702(b) is 128 days.

Petitioner's arguments have been carefully considered, but are not persuasive. The period of adjustment pursuant to 37 CFR 1.702(b) was properly calculated at 0 days.

35 USC 154(b)(1)(B) states in relevant part:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United

States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including – (i) any time consumed by continued examination of the application requested by the applicant under section 132(b).

37 CFR 1.702(b) states in relevant part:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including: (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b).

37 CFR 1.703(b) states in relevant part:

The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the following periods: (1) The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the

final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56365, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

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

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

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

after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

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

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, No. 07-1492, 2008 U.S. Dist. LEXIS 76063 (D.D.C., September 30, 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

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

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

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.
effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the

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

application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

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

subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[2] permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued

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

examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

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

Patentees also indicate that a 6 day reduction is required for the submission of an information disclosure statement on February 4, 2010. In addition petitioner argues the 1 day reduction for the submission of the issue fee on July 5, 2011 should be removed as 35 USC §154(b)(2)(C)(ii) as the three month reply period fell over a federal holiday.

Patentees' argument is untimely. Issues that should have been raised on application for patent term adjustment under 37 CFR 1.705(b) are untimely if first raised on request for reconsideration under 37 CFR 1.705(d). Issues under 37 CFR 1.705(d) are those tied to the revised determination calculated after the mailing of the notice of allowance. As such challenges to calculations determined prior to the notice of allowance (and reflected in the determination sent with the notice of allowance) are untimely when first presented under 1.705(d). Thus, Patentees' request for reconsideration of said 6 and 1 day reductions are dismissed as untimely.

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

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

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

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

Charlema Grant
Attorney Advisor
Office of Petitions

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

Attorney Docket Number: 503526	
Application Number: 11/739,977	Filing Date (or 371(b) or (f) Date): April 25, 2007
Patent Number: 7,665,929	Issue Date: February 23, 2010
First Named Inventor: Pierce Barker, III	
Title: Starting Gate For BMX and Mountain Bike Racing	

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

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

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

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

Signature /Michael J. Baima/	Date August 23, 2010
Name (Print/Typed) Michael J. Baima	Registration Number 62023

***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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www.uspto.gov

REINHART BOERNER VAN DEUREN P.C.
2215 PERRYGREEN WAY
ROCKFORD, IL 61107

Mail Date: 08/30/2010

Applicant	: Pierce Barker III	: DECISION ON REQUEST FOR
Patent Number	: 7665929	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/739,977	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/25/2007	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **50** 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.
11/740,063	04/25/2007	Melani S. Hernoud	5719-2	1443

22442 7590 10/31/2011
SHERIDAN ROSS PC
1560 BROADWAY
SUITE 1200
DENVER, CO 80202

EXAMINER
POTRATZ, DANIEL B

ART UNIT	PAPER NUMBER
2491	

MAIL DATE	DELIVERY MODE
10/31/2011	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

MAILED

OCT 31 2011

DIRECTOR OFFICE
TECHNOLOGY CENTER 2400

Jason H. Vick
Sheridan Ross P.C.
1560 Broadway
Suite 1200
Denver, CO 80202-5141

In re Application of: HERNOUD, et al. Application No. **11/740,063** Attorney Docket No. 5719-2 Filed: April 25, 2007 Atty Docket No. 5719-2 Title of Invention: LOGICAL AND PHYSICAL SECURITY	)))))	**DECISION ON PETITION UNDER 37 C.F.R. § 1.84(a)(2) TO ACCEPT COLOR DRAWINGS**

This is a decision on the petition under 37 C.F.R.. § 1.84(a)(2), filed **September 8, 2011**, requesting acceptance of color drawings.

The petition requests that the color drawings, figures 2, 6-37 and 40 be accepted in lieu of black and white drawings.

A grantable petition under 37 C.F.R.. §1.84(a)(2) must be accompanied by a fee set forth under 37 C.F.R.. 1.17(h), 3 (three) sets of the color drawings in question, and the specification must contain, or be amended to contain, the following language as the first paragraph in that portion of the specification relating to the brief description of the drawings: *"the file of this patent contains at least one drawing executed in color. Copies of this patent with color drawing(s) will be provided by the Patent and Trademark Office upon request and payment of the necessary fee."*

The petition as filed meets the above requirements.

The petition is **GRANTED**.

Any inquiry regarding this decision should be directed the undersigned whose telephone number is (571) 272-3972.

/ASHOK PATEL/

Ashok Patel, SPE (Art Unit 2491)
Network, Multiplexing, Cable and Security

UNITED STATES PATENT AND TRADEMARK OFFICE

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BANNER & WITCOFF, LTD
ATTORNEYS FOR CLIENT NUMBER 007131
10 SOUTH WACKER DR. SUITE 3000
CHICAGO, IL 60606

MAILED

FEB 14 2011

OFFICE OF PETITIONS

In re Application of
DEBASHIS GHOSH ET AL
Application No. 11/740,130
Filed: April 25, 2007
Attorney Docket No. 007131.00026

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.181, filed, November 2, 2010, requesting refund of a petition fee. This is also a decision on the petition under 37 CFR 1.48(a) filed June 7, 2010, which is proper for consideration under 37 CFR 1.324.

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

The petition under 37 CFR 1.324 is **GRANTED**.

Petitioner requests that the U.S. Patent and Trademark Office (Office) update their records to add the names MARC DOUGLAS HALSTED as an inventor. Petitioner submits a statement signed by the inventor to be added and a statement of consent by the assignee. Inventor Marc Douglas Halsted indicates that the error in failing to name the inventor Marc Douglas Halsted, occurred without any deceptive intent. The required 37 CFR 1.17(i) fee submitted June 7, 2010 has been received. The petition is granted. The inventorship of this patent has been amended by the addition of **MARC DOUGLAS HALSTED**.

The erroneously submitted fee of $130.00 will be refunded to petitioner's deposit account 19-0733.

Further correspondence with respect to this matter should be delivered through one of the following mediums:

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

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

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

By internet: EFS-Web[1]

Any questions concerning this matter may be directed to the undersigned at (571) 272-0602.

Thurman K. Page
Petitions Examiner
Office of Petitions

Enclosed: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/740,130	04/25/2007	3691	1550	007131.00026	21	4

CONFIRMATION NO. 1567

CORRECTED FILING RECEIPT

OC000000046004700

71733
BANNER & WITCOFF, LTD
ATTORNEYS FOR CLIENT NUMBER 007131
10 SOUTH WACKER DR.
SUITE 3000
CHICAGO, IL 60606

Date Mailed: 02/14/2011

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

Applicant(s)

Debashis Ghosh, Charlotte, NC;
William Anthony Nobili, Charlotte, NC;
Arun R. Pinto, Charlotte, NC;
Kurt D. Newman, Matthews, NC;
David N. Joffe, Charlotte, NC;
Sudeshna Banerjee, Waxhaw, NC;
Marc Douglas Halsted, Charlotte, NC;

Assignment For Published Patent Application

Bank of America Corporation, Charlotte, NC

Power of Attorney: The patent practitioners associated with Customer Number 71733

Domestic Priority data as claimed by applicant

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 05/08/2007

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/740,130**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

CALCULATING CREDIT WORTHINESS USING TRANSACTIONAL DATA

Preliminary Class

705

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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FOLEY & LARDNER LLP
150 EAST GILMAN STREET
PO BOX 1497
MADISON WI 53701-1497

MAILED

JUN 10 2011

OFFICE OF PETITIONS

In re Application of	:	
Geoffrey B. Rhoads	:	
Application No. 11/740,140	:	ON REQUEST FOR
Filed: April 25, 2007	:	RECONSIDERATION OF
Attorney Docket Number: 098888-1988	:	PATENT TERM ADJUSTMENT

This is a decision on the petition under 37 CFR 1.705(b), filed May 23, 2011. Applicant believes that the PTA should be accorded an additional two hundred sixty-eight (268) days. Applicant requests this correction on the basis that the Office will take in excess of three years to issue this patent pursuant to 37 CFR 1.702(b).

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

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

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

Rather than file a request for reconsideration of patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, 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 **six hundred twenty-one (621) days.**

The application is being forwarded to the Office of Data Management for issuance of the patent.

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

Anthony Knight
Director
Office of Petitions

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

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OFFICE OF PETITIONS

TROUTMAN SANDERS LLP
5200 BANK OF AMERICA PLAZA
600 PEACHTREE STREET, N.E.
SUITE 5200
ATLANTA, GA 30308-2216

In re Application of Robert Honzek, et al. Application No. 11/740,145 Filed: April 25, 2007 Attorney Docket No.: AGCOLTD22	: : : : :	ON PETITION

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

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. However, in accordance with 37 CFR 1.34(a), the signature of William B. Lafferty 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. . If Mr. Lafferty desires to receive correspondence regarding this file, the appropriate power of attorney documents must be submitted. A courtesy copy of this decision is being mailed to Mr. Lafferty; however, until otherwise instructed, all future correspondence regarding this application file will be directed solely to the above-noted correspondence address of record.

The petition is GRANTED.

This application became abandoned for failure to timely pay the issue and publication fees on or before July 1, 2011, as required by the Notice of Allowance and Fee(s) Due, mailed April 1, 2011. A Notice of Abandonment was mailed on July 20, 2011. In response, on July 21, 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 payment of the issue fee of $1,510 and publication fee of $300; (2) the petition fee of $1,620; and (3) an adequate statement of unintentional delay[1].

The application is being referred to the Office of Data Management to be processed into a patent.

[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.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing as a patent should be directed to (571) 272-4200.

/SDB/

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: WILLIAM B. LAFFERTY
4205 RIVER GREEN PARKWAY
DULUTH, GA 30096

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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INTERNATIONAL BUSINESS MACHINES CORPORATION
Richard Lau
IPLAW DEPARTMENT / Bldg 008-2
2455 SOUTH ROAD - MS P386
POUGHKEEPSIE, NY 12601

MAILED
MAY 27 2011
OFFICE OF PETITIONS

In re Application of	:	
Shawn D. LUNDVALL, et *al.*	:	
Application No. 11/740,165	:	DECISION GRANTING PETITION
Filed: April 25, 2007	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **POU920050047US1**	:	

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

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on April 19, 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 2193 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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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/740,222	04/25/2007	Olivier Bailly	16113-0129001	1722

26192 7590 08/20/2010
FISH & RICHARDSON P.C.
PO BOX 1022
MINNEAPOLIS, MN 55440-1022

EXAMINER
HOFFLER, RAHEEM

ART UNIT	PAPER NUMBER
2165	

NOTIFICATION DATE	DELIVERY MODE
08/20/2010	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):

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John F. Conroy
Fish & Richardson P.C.
P.O. Box 1022
Minneapolis, MN 55440-1022

In re Application of:
Oliver BAILLY, et al.
Application No. 11/740,222
Filed: April 25, 2007
For: SHARED GEO-LOCATED OBJECTS

DECISION ON PETITION UNDER 37 C.F.R. § 1.181

This is a decision on the petition filed 17 May 2010 under 37 CFR § 1.181 to require the status of the priority claim of the '672 application be clarified.

A review of the '672 application indicates that the priority claim to a Provisional application has been corrected.

Accordingly, the petition is **DISMISSED AS MOOT.**

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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SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP
379 LYTTON AVENUE
PALO ALTO, CA 94301

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NOV 17 2011

OFFICE OF PETITIONS

In re Application of	:	
Michele Colucci-Zieger	:	
Application No. 11/740,256	:	DECISION GRANTING PETITION
Filed: April 25, 2007	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 18FB-137558	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed November 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 on October 26, 2011 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 3625 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

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

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

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

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OFFICE OF PETITIONS

In re Application of	:	DECISION ON REQUEST
Imafuku et al.	:	FOR RECONSIDERATION OF
Patent Number: 7,589,904	:	DISMISSAL OF REQUEST
Issue Date: 09/15/2009	:	FOR RECALCULATION OF
Application No. 11/740319	:	PATENT TERM ADJUSTMENT
Filing or 371(c) Date: 04/26/2007	:	IN VIEW OF WYETH
Attorney Docket Number: 520.47427X00	:	

This is a decision on the petition filed on May 14, 2010, requesting reconsideration of a dismissal of Patentee's Request for Recalculation of Patent Term Adjustment in View of Wyeth.

The petition requesting reconsideration of a dismissal of Patentee's Request for Recalculation of Patent Term Adjustment in View of Wyeth is **DISMISSED**.

Patentees filed a Request for Recalculation of Patent Term Adjustment in View of Wyeth on March 15, 2010. The request was dismissed in a dismissed in a Decision mailed April 21, 2010. Applicant fils the present request for reconsideration of the dismissal, noting that none of the reasons provided in the dismissal apply to the present patent.

A review of Office records reveals that the application was filed on April 26, 2007, and issued on September 15, 2009.

As to the "B" delay, 35 U.S.C. 154(b)(1)(B) provides a "guarantee of no more that three year application pendency." The present patent issued within three years of the application filing date, and as such, the provisions of 35 U.S.C. 154(b)(1)(B), and Wyeth, do not apply to the present 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

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/740,360	04/26/2007	Steven Yellin Schondorf	81148864	1011

36865 7590 10/14/2010
ALLEMAN HALL MCCOY RUSSELL & TUTTLE, LLP
806 S.W. BROADWAY, SUITE 600
PORTLAND, OR 97205

EXAMINER
VANAMAN, FRANK BENNETT

ART UNIT	PAPER NUMBER
3618	

MAIL DATE	DELIVERY MODE
10/14/2010	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.

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OCT 14 2010

ALLEMAN HALL MCCOY RUSSELL & TUTTLE, LLP
806 S.W. BROADWAY, SUITE 600
PORTLAND, OR 97205

In re Application of: Schondorf et al.	: **DECISION ON PETITION**
Appl. No. 11/740,360	: **TO REVIEW RESTRICTION**
Filed: April 26, 2007	: **REQUIREMENT**
For: AUXILLARY POWER COMPENSATION	: **UNDER 37 CFR 1.181**
DURING MAP TESTING	:

This is a decision on applicant's petition under 37 CFR 1.181 filed on June 25, 2010 to review the examiner's election of species requirement made in the Office action mailed on February 16, 2010 and requesting that the election of species requirement be withdrawn.

The petition is **DENIED.**

A review of the record indicates that the examiner required an election of species between species 1 (shown in Figure 9), species 2 (shown in Figure 10) and species 3 (shown in Figure 11) in the Office action mailed on February 16, 2010. On March 16, 2010, applicant elected with traverse to prosecute species 1 (claims 1-11); and requested reconsideration of the election of species requirement. In the Office action mailed on June 14, 2010, the examiner made the restriction requirements final and withdrew claims 12-17 as being drawn to a nonelected species.

Applicant contends that the election of species requirement between species 1, species 2 and species 3 is improper because examiner failed to show a serious burden on the examiner if election of species was not required.

MPEP § 808.01 (a) states that "Where there is no disclosure of a relationship between species (see MPEP §806.04(b)), they are independent inventions. A requirement for restriction is permissible If there is a patentable difference between the species as claimed and there would be a serious burden on the examiner if restriction is not required."

MPEP § 808.02 establishes burden reasons required by the examiner to show for insisting upon restriction. Specifically, § 808.02 states "[w]here the inventions as claimed are shown to be independent or distinct under the criteria of MPEP § 806.05(c) - § 806.06, the examiner, in order to establish reasons for insisting upon restriction, must explain why there would be a serious burden on the examiner if restriction is not required. Thus the examiner must show by appropriate explanation one of the following:

(A) **Separate classification thereof:** This shows that each invention has attained recognition in the art as a separate subject for inventive effort, and also a separate field of search. Patents need not be cited to show separate classification.

(B) **A separate status in the art when they are classifiable together:** Even though they are classified together, each invention can be shown to have formed a separate subject for inventive effort when the examiner can show a recognition of separate inventive effort by inventors. Separate status in the art may be shown by citing patents which are evidence of such separate status, and also of a separate field of search.

(C) **A different field of search:** Where it is necessary to search for one of the inventions in a manner that is not likely to result in finding art pertinent to the other invention(s) (e.g., searching different classes/subclasses or electronic resources, or employing different search queries, a different field of search is shown, even though the two are classified together. The indicated different field of search must in fact be pertinent to the type of subject matter covered by the claims. Patents need not be cited to show different fields of search."

First, after a review of the record, there is no disclosure of a relationship between the species (see MPEP § 808.01 cited above) and applicant has not indicated that these three distinct species are obvious variants of each other, thus these three species are found to be independent and distinct from each other. Additionally, the examiner would have a serious burden searching and determining patentability for each of these independent and distinct species, because the examiner can meet the requirements set forth in MPEP § 808.02(C). In this particular case, the examiner would be required to employee different search queries to search for these distinct inventions. Specifically, the examiner would have to search the method step of adjusting the input parameter until the desired output value is produced for species 2, whereas, the search for species 1 only requires the step of selecting the input parameters from a predetermined range. In order to search properly for species 3, the examiner would have to specifically search the method step of measuring environmental conditions during a map calibration, which is not required for either species 1 or species 2. Therefore, there would be a serious search burden placed on the examiner to formulate a search for each specific species, thus the requirement for election of species in this case was proper.

In view of the findings noted above, the restriction requirement with regards to claims 1-17 is maintained and claims 12-17 remain withdrawn as being directed to a non-elected species. Accordingly, the six month statutory deadline from the examiner's non-final rejection continues to run from the mail date of June 14, 2010.

Any questions regarding this decision should be directed to J. Allen Shriver at (571) 272-6698.

Dave Talbott, Director
Technology Center 3600
(571) 272-5250

Jas/lm : 9/13/2010
LM

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ALLEMAN HALL MCCOY RUSSELL & TUTTLE, LLP
806 S.W. BROADWAY, SUITE 600
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OFFICE OF PETITIONS

In re Application of :
Steven Yellin Schondorf et al. :
Application No. 11/740,360 : ON PETITION
Filed: April 26, 2007 :
Attorney Docket No. 81148864 :

This is a decision on the petition filed December 14, 2010 under 37 CFR 1.181, requesting that the Director exercise his supervisory authority and overturn the decision of the Director, Technology Center 3600 (Technology Center Director), dated October 14, 2010, which refused to grant the request to withdraw the election of species requirement mailed February 16, 2010.

The petition under 37 CFR 1.181 to overturn the decision of the Technology Center Director dated October 14, 2010, is **DENIED**[1].

BACKGROUND

A restriction requirement was mailed February 16, 2010. The restriction identified three patentably distinct species.

Applicant responded on March 15, 2010 with an election and traverse of the restriction.

A non-final Office action was mailed June 14, 2010 which acknowledged the election and responded to applicants' traverse of the restriction. The restriction was deemed proper and made final.

A petition to the Technology Center Director under 37 CFR 1.181 was filed June 25, 2010 requesting withdrawal of the requirement for restriction. This petition was Denied in a decision mailed October 14, 2010.

[1] This decision is a final agency action within the meaning of 5 U.S.C. § 704 for purposes of seeking judicial review. See MPEP 1002.02.

The instant petition was filed December 14, 2010.

STATUTE, REGULATION, AND EXAMINING PROCEDURE

MPEP 808.01 states in part:

> **808.01 [R-3] Reasons for Holding of Independence or Distinctness**
> The particular reasons relied on by the examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given.

MPEP 808.01(a) states in part:

> **808.01(a) [R-5] Species**
> Where there is no disclosure of a relationship between species (see MPEP § 806.04(b)), they are independent inventions. A requirement for restriction is permissible if there is a patentable difference between the species as claimed and there would be a serious burden on the examiner if restriction is not required. See MPEP § 803 and § 808.02.
> Where there is a relationship disclosed between species, such disclosed relation must be discussed and reasons advanced leading to the conclusion that the disclosed relation does not prevent restriction, in order to establish the propriety of restriction.

MPEP 806.04(b) states in part:

> **806.04(b) [R-3] Species May Be Independent or Related Inventions**
> Species may be either independent or related under the particular disclosure.
> Where species under a claimed genus are not connected in any of design, operation, or effect under the disclosure, the species are independent inventions.

MPEP 806.04(f) states in part:

> **806.04(f) [R-3] Restriction Between Mutually Exclusive Species**
> Where two or more species are claimed, a requirement for restriction to a single species may be proper if the species are mutually exclusive. Claims to different species are mutually exclusive if one claim recites limitations disclosed for a first species but not a second, while a second claim recites limitations disclosed only for the second species and not the first. This may also be expressed by saying that to require restriction between claims limited to species, the claims must not overlap in scope.

OPINION

The restriction requirement, mailed February 16, 2010, identified three patentably distinct species identified as illustrated by Figures 9, 10 and 11. The requirement indicated that the species were independent or distinct because the claims to the different species recite "mutually exclusive characteristics". It was also stated that the species are not obvious variants of each other based on the current record and finally, the examiner indicated there would be a search burden due to the mutually exclusive characteristics.

Petitioners argue that the Technology Center Director's decision ignored the deficiencies in regard to the search burden requirement. Although the examiner had failed at any time in prosecution to identify a specific search burden, the Technology Center Director's decision sets forth on page 2, an explanation of the different search queries required for each of the three indicated species thus satisfying the requirement to state the search burden. As noted above, the examiner identified three distinct species identified as figures 9, 10 and 11. Figures 9, 10 and 11 illustrate a first, second and third method to calibrate and/or validate a map in a vehicle as discussed on pages 12 through 14 of the specification. The figure 9 method changes input parameters across a range of values. The figure 10 method determines a desired output value wherein an input value is chosen to produce the desired output value. The figure 11 method measures environmental conditions during a map calibration and/or validation. The Technology Center Director's decision sets forth the search burden.

Petitioners argue that the mutual exclusivity issue raised by the examiner in the restriction requirement has not been properly addressed. The file record shows that although the examiner raised the mutual exclusivity issue in the original restriction requirement, he dropped this argument in his response to applicant's traverse in the non-final Office action mailed June 14, 2010. Thus there would be no reason for the Technology Center Director to address this issue.

Petitioners argue that the Technology Center Director's decision that there is no disclosure of a relationship between the species is incorrect. The petition identifies portions of the specification that shows evidence of relationships between the three species. However, MPEP 808.01(a) indicates that a requirement for restriction between species is permissible if there is a patentable difference between the species as claimed and there would be a serious burden on the examiner if restriction was not required. The Technology Center Director's decision indicated that the record was reviewed and the species were found to be independent and distinct from each other. A review of the specification indicates no disclosure that species 1 and 2 are usable together. In fact, they are referred to as "another approach" and "yet another approach", "first exemplary method" and "second exemplary method". There is no specific disclosure that species 1 and 2 are usable together. The distinctness of the species was based on applicant's failure to indicate the species were obvious variants of each other and thus the application record indicated the species were distinct. Thus, the decision set forth that there was a patentable difference between the species and there was a search burden. Therefore, distinctness based on lack of disclosure of a relationship is not at issue.

Petitioners argue that the withdrawal of claims 5 and 18-23 in the final Office action reinforces applicant's arguments. This was not an issue raised in the petition to the Technology Center Director. This point appears to be nothing more than further discussion of the points raised above.

DECISION

A review of the record indicates that the Technology Center Director did not abuse his discretion or act in an arbitrary and capricious manner in the petition decision of October 14, 2010. The record establishes that the Technology Center Director had a reasonable basis to support his findings and conclusion. It is emphasized that this is review of the Technology Center Director's petition decision, as petitioned, not a review of the examiner's restriction requirement.

The petition is granted to the extent that the decision of the Technology Center Director of October 14, 2010 has been reviewed, but is denied with respect to making any change therein. As such, the decision of October 12, 2010 will not be disturbed. The petition is denied.

Telephone inquires concerning this decision should be directed to Carl Friedman at (571) 272-6842.

Andrew Hirshfeld
Associate Commissioner
For Patent Examining Policy

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OFFICE OF PETITIONS

In re Application of	:	
Nolte et al	:	
Application No. 11/740,400	:	DECISION GRANTING PETITION
Filed: April 26, 2007	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 66835-0057	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed January 31, 2011, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on December 20, 2011 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 3752 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed IDS.

/Karen Creasy/
Karen Creasy
Petitions Examiner
Office of Petitions

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

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OFFICE OF PETITIONS

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

In re Application of
Bu, et al.
Application No. 11/740,426
Filed: April 26, 2007
Atty. Dkt. No.: TI-37287.1

: DECISION ON PETITION

This decision is in response to the petition under 37 CFR 1.137(b), filed September 14, 2010.

The petition is **GRANTED**.

The application became abandoned March 2, 2010 for failure to timely submit a proper reply to the non-final Office action mailed December 1, 2009. The non-final Office action set a three 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 June 10, 2010.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 C.F.R. § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee set forth in 37 C.F.R. § 1.20(d)) required pursuant to 37 C.F.R. § 1.137(c).

The 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 2891 for further processing.

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

/ALESIA M. BROWN/

Alesia M. Brown
Petitions Attorney
Office of Petitions

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Michael F. Krieger
Kirton & McConkie
P.O. Box 45120
Salt Lake City UT 84145

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OFFICE OF PETITIONS

In re Application of	:
ISAMI et al.	:
Application No. 11/740,515	: DECISION ON PETITIONS
Filing Date: April 26, 2007	: UNDER 37 CFR 1.78(a)(3) AND (a)(6)
Attorney Docket No. 10209.852	:

This is a decision on the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed April 27, 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)**.

As to item (1), a review of provisional application no. 60/335,343, reveals that there is no common inventorship between the provisional application no. 60/335,343, and application serial no. 10/285,359.

> Under 35 U.S.C. 119(e), a later filed nonprovisional application under 35 U.S.C. 111(a) that is filed within twelve months of an earlier provisional application may claim benefits based on the earlier filed provisional application so long as both applications have at least one inventor in common.

Here, because there is no common inventor between the provisional application no. 60/335,343, and application serial no. 10/285,359 the priority claim to provisional application 60/335,343 is improper and must be removed.

Further, copendency does not exist between the present application serial no. 11/740,515 filed April 26, 2007, and Application Serial No 11/091,051, filed March 28, 2005.

> Under 35 U.S.C. 120, when a later-filed application is claiming the benefit of a prior-filed nonprovisional application, the later-filed application must be copending with the prior application or with an intermediate nonprovisional application similarly entitled to the benefit of the filing date of the prior application. Copendency is defined in the clause which requires that the later-filed application must be filed before: (A) the patenting of the prior application; (B) the abandonment of the prior application; or (C) the termination of proceedings in the prior application.

Here, Application Serial No 11/091,051 was abandoned on April 25, 2007 for failure to prosecute, before the filing date of present application serial no. 11/740,515 filed April 26, 2007.

Moreover, the Amendment to the Specification does not make a proper benefit claim to United States Patent Application Serial No. 10/439,596. Petitioner states "[t]his application is a continuation of United States Patent Application Serial No. 11/091,051, filed March 28, 2005, entitled..., *and* claims priority to United States Patent Application Serial No. 10/439,596, filed May 16, 2003..." An example of a proper benefit claim is: "This application is a continuation of Application No. 10/---, filed---." A benefit claim that merely states: "This application claims the benefit of Application No. 10/---, filed---," does not comply with 37 CFR 1.72(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. Also, the status of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. *See* MPEP Section 201.11, Reference to Prior Nonprovisional Applications. The amendment fails to comply with the provisions of 37 CFR 1.78(a)(2)(i) and is therefore unacceptable.

The MPEP 201.06(d) provides:

> Where an application claims a benefit under 35 U.S.C. § 120 of a chain of applications, the application must make a reference to the first (earliest) application and every intermediate application. *See Sampson v. Ampex Corp.*, 463 F.2d 1042, 1044-45, 174 USPQ 417, 418-19 (2d Cir. 1972); *Sticker Indus. Supply Corp. v. Blaw-Knox Co.*, 405 F.2d 90, 93, 160 USPQ 177, 179 (7th Cir. 1968); *Hovlid v. Asari*, 305 F.2d 747, 751, 134 USPQ 162, 165 (9th Cir. 1962). *See also* MPEP § 201.11. In addition, every

intermediate application must also make a reference to the first (earliest) application and every application after the first application and before such intermediate application.

Here, the Office records do not reflect that application no. 11/360,550 is a divisional of application no. 11/285,389, filed October 31, 2002 which claims the benefit of provisional application 60/335,343. Accordingly, the amendment is unacceptable.

Furthermore, petitioner should clarify that it is "this application" that application serial no. 10/006,014 is a continuation-in-part of and also that it is "this application" that application serial no. 11/553,323 is a continuation-in-part of. See line 7 of the amendment.

Before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) an Application Data Sheet or a substitute amendment (complying with 35 U.S.C. 120; 37 CFR 1.121 and 37 CFR 1.76(b)(5)), which states the relationship of the prior-filed application(s) to this application, are required.

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

By mail: Mail Stop PETITIONS
Director 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 Buiei
Petitions Examiner
Office of Petitions

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Michael F. Krieger
Kirton & McConkie
P.O. Box 45120
Salt Lake City UT 84145

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OFFICE OF PETITIONS

In re Application of	:
ISAMI et al.	:
Application No. 11/740,515	: DECISION ON PETITIONS
Filing Date: April 26, 2007	: UNDER 37 CFR 1.78(a)(3) AND (a)(6)
Attorney Docket No. 10209.852	:

This is a decision on the renewed petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed November 16, 2011, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 119(e) for the benefit of priority to the prior-filed nonprovisional and provisional applications set forth in the concurrently filed amendment.

The petition is **DISMISSED.**

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000 and after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

(1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional where there is a question whether the delay was unintentional.

The petition does not comply with item **(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 number 11/360,550 does not make reference to Application serial number 11/285,389. *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.

Furthermore, petitioner should clarify that it is "this application" that application serial no. 10/006,014 is a continuation-in-part of and also that it is "this application" that application serial no. 11/553,323 is a continuation-in-part of. See line 7 of the amendment.

Before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) an Application Data Sheet or a substitute amendment (complying with 35 U.S.C. 120; 37 CFR 1.121 and 37 CFR 1.76(b)(5)), which states the relationship of the prior-filed application(s) to this application, are required.

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

By mail: Mail Stop PETITIONS
Director 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.

Jose' G Dees
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

ALSTON & BIRD, LLP
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE NC 28280-4000

MAILED
DEC 06 2010
OFFICE OF PETITIONS

In re Application of Kevin T. Slattery Application No. 11/740,520 Filed: April 26, 2007 Attorney Docket No. **038190/328000**	: : : : :	DECISION ON PETITION

This is a decision on the petition, filed August 20, 2010, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to reply to the final Office action of July 22, 2009 which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on August 10, 2010.

Petitioner contends that the Notice of Abandonment was mailed in error since a timely reply (Notice of Appeal) was received by the office on January 20, 2010, with a three (3) month extension of time. A review of the application file record confirms the receipt of this reply with the fees for a three (3) month extension of time, on January 20, 2010. It is also noted that petitioner has filed a Request for Continued Examination (RCE) and RCE fee along with fee for a five (5) month extension of time on August 20, 2010. Thus, the application is not abandoned in fact.

In view of the above, the Notice of Abandonment is hereby **VACATED** and the holding of abandonment **WITHDRAWN**.

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

This application is being referred to 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 in accordance with 37 CFR 1.114 received August 20, 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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MAR 15 2012
OFFICE OF PETITIONS

SPRINKLE IP LAW GROUP / ZIMMER
1301 W. 25TH STREET
SUITE 408
AUSTIN TX 78705

In re Application of	:	
JOSHI	:	
Application No. 11/740,561	:	DECISION ON PETITION
Filed: April 26, 2007	:	TO WITHDRAW
Attorney Docket No. ZIMM1100	:	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 15, 2012.

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

A review of the file record indicates that the power of attorney to Katharina W. Schuster, has been revoked by the assignee of the patent application on February 9, 2012. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

All future communications from the Office will be sent to the address indicated below until otherwise 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: SEAGER, TUFTE & WICKHEM, LLC
1221 NICOLLET AVENUE
SUITE 800
MINNEAPOLIS, MN 55403-2420

UNITED STATES 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
APR 19 2011
OFFICE OF PETITIONS

In re Application of	:	
Dellow, et al.	:	
Application No. 11/740,575	:	DECISION ON PETITION
Filed: April 26, 2007	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 18173US01	:	

This is a decision on the petition under 37 CFR 1.78(a)(4), filed February 18, 2011, which is being treated as a petition under 37 CFR 1.78(a)(3) to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the application No. 11/136,027, set forth in the amendment submitted with the petition.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;

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

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

The instant petition does not satisfy requirement (1) above. The amendment is not acceptable because the Examiner has determined that it does not *prima facie* place the application in condition for allowance. A proper response to a final Office action consists of either: (1) an amendment that *prima facie* places the application in condition for allowance; (2) a Notice of Appeal; (3) a Request for Continued Examination; or (4) a continuing application.

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 inquiries concerning this decision may be directed to Petitions Attorney Cliff Congo at (571) 272-3207.

Chris Bottorff
Petitions Examiner
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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MCANDREWS HELD & MALLOY LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED

MAY 17 2011

OFFICE OF PETITIONS

In re Application of	:	
Dellow, et al.	:	CORRECTED
Application No. 11/740,575	:	DECISION ON PETITION
Filed: April 26, 2007	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 18173US01	:	

This is a corrected decision on the petition under 37 CFR 1.78(a)(4), filed February 18, 2011, which is being treated as a petition under 37 CFR 1.78(a)(3) to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the application No. 11/136,027, set forth in the amendment submitted with the petition. A previous decision on petition was mailed on April 19, 2011.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;

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

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

All of the above requirements having been satisfied, the late claim for priority under 35 U.S.C. § 120 is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the prior-filed applications. In order for this application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

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

Any inquiries concerning this decision may be directed to Petitions Attorney Cliff Congo at (571) 272-3207. 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 2611 for consideration by the examiner of applicants' entitlement to claim benefit of priority under 35 U.S.C. § 120 to the non-provisional application No. 11/136,027, set forth in the Amendment, filed February 18, 2011.

Chris Bottorff
Petitions Examiner
Office of Petitions

Enc: Corrected Filing Receipt (3 pages)

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
11/740,575	04/26/2007	2439	1200	18173US01	24	3

CONFIRMATION NO. 1433

CORRECTED FILING RECEIPT

23446
MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO, IL 60661

OC000000047670617

Date Mailed: 05/16/2011

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

Applicant(s)

Andrew Dellow, Minchinhampton, UNITED KINGDOM;
Iue-Shuenn Chen, San Diego, CA;
Stephane (Steve) Rodgers, San Diego, CA;
Xuemin (Sherman) Chen, San Diego, CA;

Power of Attorney: The patent practitioners associated with Customer Number 23446

Domestic Priority data as claimed by applicant

This application is a CIP of 11/136,027 05/23/2005 PAT 7,844,996

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 05/13/2011

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/740,575**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

METHOD AND SYSTEM FOR ALLOWING NO CODE DOWNLOAD IN A CODE DOWNLOAD SCHEME

Preliminary Class

713

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

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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SPRINKLE IP LAW GROUP / ZIMMER
1301 W. 25TH STREET
SUITE 408
AUSTIN, TX 78705

MAILED

DEC 05 2011

OFFICE OF PETITIONS

In re Application of	:	
JOSHI, Abhijeet	:	
Application No. 11/740,588	:	DECISION ON PETITION
Filed: April 26, 2007	:	TO WITHDRAW
Attorney Docket No. **1292.1370101**	:	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 21, 2011.

The request is **NOT APPROVED** as moot.

A review of the file record indicates that the power of attorney to Sprinkle IP Law Group/Zimmer has been revoked by the assignee of the patent application on November 14, 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 the undersigned at 571-272-4231.

/Michelle R. Eason/
Michelle R. Eason
Paralegal Specialist
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: 1023-591US01	Patent Number: 7,668,601
Filing Date (or 371(b) or (f) Date): April 26, 2007	Issue Date: February 23, 2010
First Named Inventor: Michael T. Hegland et al.	
Title: IMPLANTABLE MEDICAL LEAD WITH MULTIPLE ELECTRODE CONFIGURATIONS	

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 8-3-10
Name (Print/Typed) Jason D. Kelly	Registration Number 54,213

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).

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Alexandria, Virginia 22313-1450
www.uspto.gov

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

Mail Date: 08/11/2010

Applicant	: Michael T. Hegland	: DECISION ON REQUEST FOR
Patent Number	: 7668601	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 11/740,643	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/26/2007	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **466** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: —

DATE : 4/7/2011

TO SPE OF : ART UNIT 2465

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/740658 Patent No.: 7830902 B2

CofC mailroom date: 3/31/2011

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

Virginia Tolbert
Certificates of Correction Branch
571-272-0460

Thank You For Your Assistance

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

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

Comments: _____

SPE — Art Unit 2471

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INTERNATIONAL BUSINESS MACHINES CORPORATION
Richard Lau
IPLAW DEPARTMENT / Bldg 008-2
2455 SOUTH ROAD - MS P386
POUGHKEEPSIE, NY 12601

MAILED
MAY 27 2011
OFFICE OF PETITIONS

In re Application of	:	
Shawn D. LUNDVALL, et *al.*	:	
Application No. 11/740,701	:	DECISION GRANTING PETITION
Filed: April 26, 2007	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **POU920060221US1**	:	

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

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on April 20, 2011 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This application is being referred to Technology Center AU 2193 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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SEP 07 2011
OFFICE OF PETITIONS

FULBRIGHT & JAWORSKI L.L.P.
98 SAN JACINTO BOULEVARD
SUITE 1100
AUSTIN TX 78701-4255

In re Patent of Agaian et al.	:	DECISION ON REQUEST
Patent No. 7,965,861	:	FOR RECONSIDERATION OF
Issue Date: June 21, 2011	:	PATENT TERM ADJUSTMENT
Application No. 11/740,742	:	and
Filed: April 26, 2007	:	NOTICE OF INTENT TO ISSUE
Attny Docket No. UTSJ:052US/	:	CERTIFICATE OF CORRECTION
10705233	:	

This is a decision on the petition under 37 C.F.R. 1.705(d), filed August 22, 2011. Patentees request that the patent term adjustment indicated in the patent be corrected from one thousand four (1004) days to one thousand fifty-nine (1059) days.

The petition under 37 CFR 1.705(d)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 to one thousand fifty-nine (1059) days is **granted.**

Patentees dispute the period of reduction of 55 days entered in connection with the filing of corrected figures on April 20, 2011, after the mailing of a notice of allowance on February 7, 2011. Patentees assert a reduction of only 8 days should have been entered for the April 20, 2011 submission of a Rule 312 amendment, which included the corrected figures.

Pursuant to 37 CFR 1.704(c)(10), the Office should have entered a period of reduction of 8 days, counting the number of days in the period beginning on April 20, 2011, the date the Rule 312 amendment, which included the corrected figures, was filed, and ending on April 27, 2011, the date the Office mailed correspondence in response to the filing. Accordingly, the period of reduction of 55 days will be removed. Only a period of

reduction of 8 days in connection with the April 20, 2011 submission will be retained.

In view thereof, the patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of one thousand fifty-nine (1059) days, which is 846 days of A delay plus 421 days of B delay minus 177 overlapping days, minus 31 days of Applicant delay.

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

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand fifty-nine (1059)** days.

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,965,861 B2

DATED : **June 21, 2011** **DRAFT**

INVENTOR(S) : Agaian 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 1004 days

Delete the phrase "by 1004 days" and insert – by 1059 days--

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SCHLUMBERGER TECHNOLOGY CORPORATION
10001 RICHMOND AVENUE
IP ADMINISTRATION CENTER OF EXCELLENCE
HOUSTON, TX 77042

MAILED
FEB 09 2012
OFFICE OF PETITIONS

In re Application of	:	
Reinhart Ciglenec et al.	:	
Application No.: 11/740,745	:	DECISION ON PETITION
Filed: April 26, 2007	:	
Attorney Docket No. 25.0398	:	

This is a decision on the renewed petition under 37 CFR 1.137(b), filed October 24, 2011, to revive the above-identified application.

The petition is **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 January 6, 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 April 7, 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, an after final amendment which places the application in condition for allowance, (2) the petition fee of $1860; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final Office Action of January 6, 2011 is accepted as having been 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 $1270 extension of time fee submitted with the petition on October 24, 2011 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited 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 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 2624 for appropriate action on the concurrently filed after final.

David Bucci
Petitions Examiner
Office of Petitions

cc: David J. Smith
200 Gillingham Lane, MD-2
Sugar Land, TX 77478

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QUICKPATENTS, INC.
32861 CALLE PERFECTO, SUITE A
SAN JUAN CAPISTRANO, CA 92675

MAILED

JAN 14 2011

OFFICE OF PETITIONS

In re Application of
Maria N. WILSON
Application No. 11/740,766
Filed: April 26, 2007
Attorney Docket No. **MW70312**

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 20, 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 Kevin Prince, the sole attorney of record. Kevin Prince has been withdrawn as attorney or agent of record. Applicant is reminded that there is no attorney of record at this time.

All future communications from the Office will be directed to the sole named signing at the address below until otherwise properly notified by the applicant.

There is an outstanding non-final Office action mailed April 21, 2010 that requires a reply from the applicant.

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

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **MARIA N. WILSON**
1505 GROVE ROAD
CHARLOTTESVILLE, VA 22901

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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WesternGeco L.L.C.
Kevin McEnaney, IP Dept
10001 Richmond Avenue
HOUSTON TX 77042-4299

MAILED
OCT 29 2010
OFFICE OF PETITIONS

In re Application of	:	
Svein Arne Frivik, et al.	:	
Application No. 11/740,788	:	DECISION GRANTING PETITION
Filed: April 26, 2007	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 14.0329-US	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, October 28, 2010 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on October 11, 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 3672 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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10001 RICHMOND AVENUE
KEVIN MCENANEY, IP DEPT
HOUSTON TX 77042-4299

MAILED
AUG 09 2011
OFFICE OF PETITIONS

In re Application of	:	
Frivik, et al.	:	
Application No. 11/740,788	:	DECISION
Filed/Deposited: 26 April, 2007	:	
Attorney Docket No. 14.0329-US	:	

This is a decision on the papers filed on 23 June, 2011, for revival of an application abandoned due to unintentional delay under 37 C.F.R. §1.137(b).

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

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement and/or showing of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(II).

BACKGROUND

The record reflects as follows:

Applicant failed to reply timely and properly to the Notice of Allowance/Allowability and Fees Due mailed on 7 February, 2011, with reply due under a non-extendable deadline on or before 9 May, 2011.

The application went abandoned by operation of law after midnight 9 May, 2011.

The Office mailed the Notice of Abandonment on 26 May, 2011.

On 23 June, 2011, Petitioner filed, *inter alia*, a petition (with fee) pursuant to 37 C.F.R. §1.137(b) to revive the application as having been abandoned due to unintentional delay, a reply in the form of fees due and made the statement of unintentional delay.

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c) as to the showing regarding unintentional delay and a petition pursuant to 37 C.F.R. §1.137(b).

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

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

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[2]
The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority.

Unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and, by definition, are not intentional.[3]))

---

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

[2] 35 U.S.C. §133 provides:

35 U.S.C. §133 Time for prosecuting application.

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

[3] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

As to Allegations of
Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

It appears that the requirements under the rule have been satisfied.

CONCLUSION

Accordingly, the petition pursuant to 37 C.F.R. §1.137(b) is **granted**.

The instant application is released to the Publications Branch to be processed into a patent in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the instant decision to ensure that the revival has been acknowledged by the Publications Branch in response to this decision. It is noted that all inquiries with regard to status need be directed to the Publications Branch where that change of status must be effected—that does not occur in the Office of Petitions.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however , that all practice before the Office is in writing (see: 37 C.F.R. §1.2[4]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

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

[4] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing. The personal attdance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

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JUN 03 2011
OFFICE OF PETITIONS

Hulsey IP Intellectual Properly Lawyers, P.C.
Suite 919
919 Congress Avenue
Austin, TX 78701

In re Application of Perkins :
Application No. 11/740,795 : Decision on Petition
Filing Date: April 26, 2007 :
Attorney Docket No. TTVN001 :

This is a decision on the petition under 37 CFR 1.181 filed January 25, 2011, which requests withdrawal of the holding of abandonment of the above-identified application.

The petition is **dismissed**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181."

Facts

The Office mailed a final Office action on May 27, 2010. The Office action set a shortened statutory period for reply of three (3) months.

Petitioner electronically filed a one-page document on November 29, 2010. The document is a copy of an "Auto-Reply Facsimile Transmission" receipt ("Receipt"). The Receipt indicates the Office received a total of three pages, including the cover page, at 12:50 pm on August 27, 2010. The Receipt includes a copy of the first page of the received document, which is titled "Amendment/Request for Continued Examination." The Receipt states, "Please check to make sure that the number of pages listed as received ... matches what was intended to be sent."

The Office mailed a Notice of Abandonment on December 22, 2010. The notice states, "The reply received on 11/29/10 does not constitute a proper reply to the Final Rejection mailed on 5/27/2010 [and the] period for reply has expired."

The instant petition was filed January 25, 2011.

The petition states,

> [A]pplicant attempted to transmit a proper response [to the] Office Action mailed May 27, 2010.... Applicant's attorney (the undersigned) respectfully points out that he did respond to the Office action mailed May 27, 2010 and that the Office failed to completely receive the proposed reply.... Because the present Application went abandoned through no fault of the Applicants, the Applicants believe that the statement and showing above are sufficient to support the withdrawal of the holding of abandonment.

The petition includes a copy of the amendment the attorney attempted to file on August 27, 2010. The amendment consists of the cover page shown on the Receipt, five pages of claims, and eleven pages of remarks.

Discussion

The examiner of record has determined the amendment filed with the petition does not constitute a proper reply to the May 27, 2010 final Office action. A draft Advisory Action prepared by the examiner is enclosed.

Since the amendment filed with the petition does not constitute a proper reply to the final Office action, the Office need not determine which pages of the amendment, if any, were filed August 27, 2010, in order to conclude a proper reply was not timely filed in response to the May 27, 2010 final Office action.

An extension of time to respond to the final Office action was not obtained and a proper reply was not timely filed in response to the final Office action. Therefore, the application became abandoned on August 28, 2010, and the holding of abandonment will not be withdrawn.

Petitioner may wish to consider filing a petition to revive based on unintentional abandonment under 37 CFR 1.137(b). If such a petition is filed, the petition must include a proper reply to the outstanding final Office action, the required petition fee of $810, and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

A copy of a PDF "fillable" petition under 37 CFR 1.137(b) form can be found at: http://www.uspto.gov/web/forms/sb0064.pdf.

The Office notes the amendment is titled "Amendment/Request for Continued Examination." The language "Request for Continued Examination" is commonly used to refer to a request for continued examination under 37 CFR 1.114. As a result, Petitioner's use of the language "Request for Continued Examination" in the title for a document when a party is not actually requesting continued examination under 37 CFR 1.114 might result in confusion or delay in the future. Therefore, the Office suggests Petitioner refrain from using the language "Request for Continued Examination" in the title of any document filed in the future unless Petitioner intends for the document to be a request for continued examination under 37 CFR 114.

Further correspondence with respect to this matter may be submitted as follows:

By Internet: A request for reconsideration may be filed electronically using EFS Web.[1] Document Code "PET.OP" should be used if the request is filed electronically.

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

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

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

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

cc: Draft Advisory Action

[1] General Information concerning EFS Web can be found at http://www.uspto.gov/patents/process/file/efs/index.jsp.

Advisory Action Before the Filing of an Appeal Brief	Application No. 11/740,795	Applicant(s) PERKINS, STEPHEN D.	
	Examiner KRISTIE SHINGLES	Art Unit 2448	

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

THE REPLY FILED 25 January 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: *See Continuation Sheet*. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-14 and 16-22*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

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

REQUEST FOR RECONSIDERATION/OTHER

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

/Kristie D. Shingles/
Primary Examiner
Art Unit: 2448

Continuation of 3. NOTE: The independent claims have been amended with additional features that require further search and consideration.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant has amended the claims with additional features that require extended search and consideration by Examiner.

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Hulsey IP Intellectual Properly Lawyers, P.C.
Suite 919
919 Congress Avenue
Austin, TX 78701

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OFFICE OF PETITIONS

In re Application of Perkins :
Application No. 11/740,795 : Decision on Petition
Filing Date: April 26, 2007 :
Attorney Docket No. TTVN001 :

This is a decision on the petition under 37 CFR 1.181 filed August 3, 2011, which requests withdrawal of the holding of abandonment of the above-identified application.

The petition is **dismissed**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181."

Background

The Office mailed a final Office action on May 27, 2010. The Office action set a shortened statutory period for reply of three (3) months.

Petitioner filed papers pertaining to the instant application by facsimile transmission on August 27, 2010. For unknown reasons, the papers were not matched with the file for the instant application.

The Office mailed a Notice of Abandonment on December 22, 2010.

A petition under 37 CFR 1.181 requesting withdrawal of the holding of abandonment was filed January 25, 2011.

The Office mailed a decision dismissing the petition on January 25, 2011. The decision states,

> An extension of time to respond to the final Office action was not obtained and a proper reply was not timely filed in response to the final Office action. Therefore, the

> application became abandoned on August 28, 2010, and the holding of abandonment will not be withdrawn.

The instant renewed petition was filed August 3, 2011.

Discussion

Attorney Robert McLaughlin attempted to transmit a 17-page document to the Office on August 27, 2010.

The first page of the 17-page document is titled "Amendment/Request for Continued Examination" ("Amendment"). The first page states,

> Applicant respectfully requests the Examiner reconsider the rejections of the Claims in view of the following amendments to the Claims and the comments as set forth below.

A copy of an "Auto-Reply Facsimile Transmission" receipt ("Receipt") in the file indicates the Office received a total of *three* pages, including the cover page, at 12:50 pm on August 27, 2010. The Receipt states, "Please check to make sure that the number of pages listed as received ... matches what was intended to be sent."

The Receipt clearly indicates the Office only received three-pages on August 27, 2010. In other words, the Receipt is inconsistent with the assertion a 17-page Amendment was filed August 27, 2010.

The content of the first of the three pages filed August 27, 2010, is clear because the Receipt includes a copy of the page titled "Amendment/Request for Continued Examination." However, the content of the second page and the third page is unclear.

The renewed petition argues a proper reply to the May 27, 2010 final Office action was filed August 27, 2010.

The petition appears to assert the three-page Amendment was both an amendment and the petition asserts a request for continued examination ("RCE") and amendment were filed August 27, 2010.

The Office need not determine if the three-page Amendment should be treated as both an amendment and a RCE because the three-page document filed August 27, 2010, was not a proper reply to the May 27, 2010 final Office action even if the document was a RCE and an amendment.

The first page of the three-page document stated, "Applicant respectfully submits that no additional fee is required," and the document was not filed with any fees. However, the fee set forth in 37 CFR 1.17(e) must be submitted with a RCE. *See* 37 CFR 1.114. Therefore, the RCE was improper.

The Office recognizes page 17 of the 17-page includes a general authorization to charge any necessary fees to Deposit Account No. 50-3835. However, the record fails to prove page 17 of the 17-page Amendment was one of the three pages filed August 27, 2010.

Pursuant to 37 CFR 1.4(c), a RCE and an amendment may not be combined into a single physical document. Specifically, 37 CFR 1.4(c) states that each distinct subject must be contained in a separate paper since different matters may be considered by different branches of the United States Patent and Trademark Office. Since the RCE was impermissibly combined with the amendment, the RCE was improper.

In view of the prior discussion, the RCE filed August 27, 2010, was improper.

Since the RCE was improper, the application is abandoned unless the three-page document filed August 27, 2010, was a proper reply under 37 CFR 1.113.

Petitioner has failed to establish the identity of the second page and third page of the three-page document filed August 27, 2010. Evidence establishing the first page of the amendment and two unidentified pages were filed August 27, 2010, is not proof the three pages filed August 27, 2010, were a proper reply to the final Office action.

The Office recognizes arguments might be made that the second page and the third page filed August 27, 2010, are probably identical to the second page and the third page of the 17-page Amendment.

The May 27, 2010 final Office action rejected claims 1-14 and 16-22. The first three pages of the 17-page Amendment do not include a copy of claims 10-14 or 16-22, or include any discussion of those claims. Therefore, even if the record demonstrated the three pages filed August 27, 2010, were the first three pages of the 17-page amendment, the record would be insufficient to establish a proper reply was filed August 27, 2010.

In view of the prior discussion, the application is abandoned and the holding of abandonment will not be withdrawn.

Further correspondence with respect to this matter may be submitted as follows:

By Internet: A request for reconsideration may be filed electronically using EFS Web.[1] Document Code "PET.OP" should be used if the request is filed electronically.

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

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

[1] General Information concerning EFS Web can be found at http://www.uspto.gov/patents/process/file/efs/index.jsp.

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

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Hulsey IP Intellectual Properly Lawyers, P.C.
Suite 919
919 Congress Avenue
Austin, TX 78701

MAILED
JAN 10 2012
OFFICE OF PETITIONS

In re Application of Perkins :
Application No. 11/740,795 : Decision on Petition
Filing Date: April 26, 2007 :
Attorney Docket No. TTVN001 :

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

The petition is **granted**.

The above-identified application became abandoned for failure to reply in a timely manner to the final Office action mailed May 27, 2010, which set a shortened statutory period for reply of three (3) months. An extension of time under the provisions of 37 CFR 1.136(a) was not obtained. Accordingly, the above-identified application became abandoned on August 28, 2010. A Notice of Abandonment was mailed December 22, 2010.

The instant petition requests revival of the application.

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

(1) The reply required to the outstanding Office action or notice, unless previously filed,
(2) The petition fee, and
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.[1]

The petition satisfies the requirements of 37 CFR 1.137(b) in so far as petitioner has supplied (1) a reply in the form of a RCE and an amendment, (2) the required petition fee of $930, and (3) the required statement of unintentional delay. Therefore, the petition is granted and the application is revived.

[1] A terminal disclaimer is also necessary if the application is a design application or if the application was filed on or before June 8, 1995.

Technology Center Art Unit 2448 will be informed of the instant decision and the application will be further examined in due course.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

YOUNG LAW FIRM, P.C.
ALAN W. YOUNG
4370 ALPINE ROAD
SUITE 106
PORTOLA VALLEY CA 94028

MAILED
MAY 20 2011
OFFICE OF PETITIONS

In re Application of	:	
James W. Vetter et al.	:	
Application No. 11/740,855	:	DECISION ON PETITION
Filed: April 26, 2007	:	
Attorney Docket No. RUBI5947D2	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 11, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed August 20, 2008, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on November 21, 2008. A Notice of Abandonment was mailed on March 11, 2009.

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

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

This application is being referred to Technology Center AU 3739 for appropriate action by the Examiner in the normal course of business on the reply received April 11, 2011.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Jens E. Hoekendijk
P.O. Box 4787
Burlingame, CA 94011-4787

UNITED STATES 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.

PATTERSON THUENTE CHRISTENSEN PEDERSEN, P.A.
4800 IDS CENTER
80 SOUTH 8TH STREET
MINNEAPOLIS MN 55402-2100

MAILED

JAN 25 2011

OFFICE OF PETITIONS

In re Application of	:	
Hoegh et al.	:	
Application No. 11/740,972	:	DECISION ON PETITION
Filing Date: April 27, 2007	:	PURSUANT TO 37 C.F.R.
Attorney Docket Number:	:	§ 1.78(A)(6)
4297.01US01	:	
Title: KENNEL WITH	:	
AUTOMATICALLY OPENING DOOR	:	

This is a decision on the petition under 37 C.F.R. § 1.78(a)(6), filed November 19, 2010, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of priority to the prior-filed provisional application set forth in an amendment to the specification which has been submitted concurrently with this petition.

The petition is **GRANTED.**

A petition under 37 C.F.R. § 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 C.F.R. § 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 C.F.R. § 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 C.F.R. § 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 C.F.R. § 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.

37 C.F.R. § 1.78(a)(6)(iii) requires a statement that the entire delay between the date the claim was due under paragraph (a)(5)(ii) of this section and the date the claim was filed was unintentional. Since the statement contained in this petition varies from the language required by 37 C.F.R. § 1.78(a)(6)(iii), the statement contained in this petition is being construed as the statement required by 37 C.F.R. § 1.78(a)(6)(iii), and Petitioner must notify the Office if this is not a correct interpretation of the statement contained in this petition.

Petitioner has included the petition fee, an amendment to the specification, and a statement that is being construed as the proper statement of unintentional delay.

All of the above requirements having been satisfied, the late claim for priority pursuant to 35 U.S.C. § 119(e) is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(6) should not be construed as meaning that this application is entitled to the benefit of the filing date of the prior-filed application. In order for this application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 119(e) and 37 C.F.R. §§ 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that Applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether

the application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed provisional application, accompanies this decision on petition.

This application is being forwarded to Technology Center Art Unit 3644 for consideration by the examiner of Applicant's entitlement to claim benefit of priority under 35 U.S.C. § 119(e) to the prior-filed application.

Telephone inquiries regarding this decision should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.[1]

Chris Bottorff
Supervisor
Office of Petitions

Encl. Corrected Filing Receipt

1 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.

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
11/740,972	04/27/2007	3644	726	4297.01US01	24	2

CONFIRMATION NO. 2125

CORRECTED FILING RECEIPT

24113
PATTERSON THUENTE CHRISTENSEN PEDERSEN, P.A.
4800 IDS CENTER
80 SOUTH 8TH STREET
MINNEAPOLIS, MN 55402-2100

OC000000045645589

Date Mailed: 01/25/2011

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

Thomas Barry Hoegh, Edina, MN;
Timothy Harold Grafe, Edina, MN;

Power of Attorney: The patent practitioners associated with Customer Number 24113

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/745,910 04/28/2006

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 05/23/2007

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/740,972**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No
**** SMALL ENTITY ****

Title

Kennel with automatically opening door

Preliminary Class

119

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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APR 08 2011

OFFICE OF PETITIONS

ISIS PHARMACEUTICALS INC
1896 RUTHERFORD RD
CARLSBAD, CA 92008

In re Application of :
Stephen Hanessian et al :
Application No. 11/740,998 : ON PETITION
Filed: April 27, 2007 :
Attorney Docket No. IBIS-0043US.C1 :

This is a decision on the petition filed March 8, 2011 under 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to submit the Issue fee and Publication Fee in a timely manner in reply to the Notice of Allowance mailed November 12, 2010, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on February 13, 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 payment of the Issue fee and Publication Fee; (2) the petition fee; (3) the required statement of unintentional delay have been received. Accordingly, the issue fee is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3210.

This matter is being referred to the Office of Data Management for further processing.

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

MCHALE & SLAVIN, P.A.
2855 PGA BLVD
PALM BEACH GARDENS FL 33410

MAILED

APR 19 2012

OFFICE OF PETITIONS

In re Application of
Bret O. Baynham et al.
Application No. 11/741,257
Filed: April 27, 2007
Attorney Docket No: 2380.017

ON PETITION

This is a decision on the petition filed March 23, 2012 under 37 CFR 1.137(b),[1] to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned May 3, 2011 for failure to timely reply to the non-Final Office Action mailed February 2, 2011 within the shortened statutory period of three months set for reply. Accordingly, a Notice of Abandonment was mailed September 7, 2011.

This matter is being referred to Technology Center 3711 for appropriate action on the amendment filed March 23, 2012.

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

[1]Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

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BROOKHAVEN SCIENCE ASSOCIATES/
BROOKHAVEN NATIONAL LABORATORY
BLDG. 490C - P.O. BOX 5000
UPTON NY 11973

MAILED
MAR 22 2011
OFFICE OF PETITIONS

In re Application of :
Studier : DECISION ON PETITION
Application No. 11/741,282 :
Filed: April 27, 2007 :
Atty. Dkt. No.: BSA 07-26 :

This is a decision on the petition under 37 CFR 1.137(b), filed February 11, 2011, to revive the above-identified application.

The petition is GRANTED.

This application became abandoned January 13, 2011 for failure to timely file a proper response to the final Office action mailed July 12, 2010. A response was submitted January 7, 2011, however it failed to place the application in condition for allowance. Thereafter, an Advisory Action was mailed January 26, 2011. This decision precedes Notice of Abandonment.

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 reviewed and found in compliance with the provisions of 37 CFR 1.137(b). Accordingly, the failure to timely submit a proper reply to the final Office action is accepted as having been unintentionally delayed.

This application will be forwarded to Technology Center GAU 1636 to await submission of the appeal brief.

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.

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _20100831_

DATE : March 29, 2010

TO SPE OF : ART UNIT 2863

SUBJECT : Request for Certificate of Correction for Appl. No.: 11741412
Patent No.: 7668694

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D40-C
Palm Location 7580

Mary Diggs
Certificates of Correction Branch
703-756-1573

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: The changes requested by applicant's representative are all approved. There was a misunderstanding when applicant originally requested the correction to page 1. When initially reviewed & approved in part on 6/4/10, we looked at column 1 in the patent and denied entry. After speaking with applicant's rep, our mistake was clear and we should have looked at page 1, the cover, where the correction should be made.

PLEASE REPLACE THE ISSUED CoC on 7/20/2010 w/ A FULL ISSUED CoC w/R/T BOTH ITEMS #1 & #2. DAD

DREW A. DUNN
SUPERVISORY PATENT EXAMINER

SPE

2863
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450

National Institutes of Health
c/o Polsinelli Shugart PC
161 N. Clark Street
Suite 4200
Chicago IL 60601

MAILED
OCT 28 2011
OFFICE OF PETITIONS

In re Application of :
Jay P. SHAH et al. : ON PETITION
Application No. 11/741,451 :
Filed: April 27, 2007 :
Atty. Docket No.: E-024-2006/0-US-02

This is a decision on the petition under 37 CFR 1.137(b), filed October 12, 2011, to revive the above-identified application.

The petition is **GRANTED.**

The application became abandoned for failure to respond in a timely manner to the final Office action mailed November 24, 2010 (Office action), 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. The application became abandoned February 25, 2010. A Notice of Abandonment was mailed June 22, 2010.

The petition satisfies the conditions for revival pursuant to 37 CFR 1.137(b) by including (1) a reply in the form of a Request for Continued Examination (RCE) and RCE fee, and submission under 37 CFR 1.114, (2) a petition fee of $1860, and (3) a statement of unintentional delay. The reply to the Office action is accepted as having been 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 $1270 extension of time fee submitted with the petition on October 12, 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 relating to this decision should be directed to Robert DeWitty, Petitions Attorney, Office of Petitions (571-272-8427).

The application will be referred to Technology Center Art Unit 3763 for further consideration of the filed submission.

Anthony Knight
Director
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAILED
JUN 10 2011
OFFICE OF PETITIONS

Stephen B. Salai, Esq.
Harter Secrest & Emery LLP
1600 Bausch & Lomb Place
Rochester NY 14604-2711

In re Application of :
Wicker et al. :
Application No. 11/741513 : ON PETITION
Filing or 371(c) Date: 04/27/2007 :
Attorney Docket Number: 91838.000126 :

This is a decision on the "Petition under 37 CFR 1.47 Refusal of Joint Inventor to Sign Substitute Declaration," filed April 8, 2011. The petition is properly treated under 37 CFR 1.183, to waive the requirement under 37 CFR 1.67 that all of the inventors sign a supplemental declaration.

The petition under 37 CFR 1.183 is **GRANTED**.

The original application as filed listed as inventors Thomas M. Wicker, David Michael Wicker and Michael Scott Caton. An oath/declaration signed by all three inventors was filed on May 15, 2007. In a Notice of Allowance and Notice of Allowability, mailed January 10, 2011, the Examiner required a substitute declaration or oath.

Petitioner files the present petition and a Declaration executed by inventors David Michael Wicker and Michael Scott Caton only. Petitioner provides that on February 17, 2011, a letter requesting inventor Thomas M. Wicker execute a substitute declaration was sent to inventor Thomas M. Wicker and included a copy of the amended application, the Notice of Allowance and a substitute declaration. Petitioner provides that despite receiving a return receipt signed by inventor Thomas M. Wicker, no other communication was forthcoming.

Petitioner provides further that upon learning that inventor Thomas M. Wicker was represented by counsel, a copy of the letter was sent to inventor Thomas M. Wicker's counsel, requesting Mr. Thomas Wicker review the documents and execute the substitute declaration. Mr. Wicker's counsel responded in an email that if and when Mr. Wicker chooses to execute the declaration is up to Mr. Wicker.

Applicable Law

37 CFR 1.67 states, in pertinent part:

> (a) The Office may require, or inventors and applicants may submit, a supplemental oath or declaration meeting the requirements of §1.63 or § 1.162 to correct any deficiencies or inaccuracies present in the earlier filed oath or declaration.

> (1) Deficiencies or inaccuracies relating to all the inventors or applicants (§§ 1.42, 1.43, or § 1.47) may be corrected with a supplemental oath or declaration signed by all the inventors or applicants.

Suspension of the rules under 37 CFR 1.183 may be granted in an "extraordinary situation, when justice requires."

With the present petition, petitioner has set forth the steps taken to secure joint inventor Thomas M. Wicker's signature on the Supplemental Declaration. Petitioner provides that a letter requesting inventor Thomas M. Wicker execute a substitute declaration was sent to inventor Thomas M. Wicker, and to inventor Wicker's counsel, and included a copy of the amended application, the Notice of Allowance and a substitute declaration. However inventor Wicker has not responded.

In order for a petition under 37 CFR 1.183 to be granted, petitioner must demonstrate that this is an extraordinary situation where justice requires waiver of the rules.

The supplemental declaration was required to be signed joint inventors Thomas M. Wicker, David Michael Wicker and Michael Scott Caton; however, only inventors David Michael Wicker and Michael Scott Caton executed the declaration. Petitioner has demonstrated that a *bona fide* effort was made to secure inventor Thomas M. Wicker's signature on the Supplemental Declaration. Accordingly, it is concluded that petitioner has demonstrated that this is an extraordinary situation, requiring waiver of the rules.

The newly executed Supplemental Declaration, filed on April 8, 2011, will be entered, despite the fact that the requirement set forth in 37 CFR 1.67(a)(1) that all the inventors sign a supplemental oath or declaration has not been satisfied.

The balance of the petition fee, $200.00, has been charged to petitioner's deposit account as authorized in the petition[1].

The application file is being referred to Technology Center Art Unit 3725 for further processing in the normal course of business.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

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[1] The fee for a petition under 37 CFR 1.183 is currently $400.00.

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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LAURA M. HAGAN
1025 STATE STREET
BOWLING GREEN KY 42101

MAILED
AUG 10 2011
OFFICE OF PETITIONS

In re Application of	:	
R. Darren Jarvis et al.	:	
Application No. 11/741,515	:	DECISION ON PETITION
Filed: April 27, 2007	:	
Attorney Docket No. **06-133**	:	

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 reply in a timely manner to the Notice of Non-Compliant amendment (Notice) mailed, August 24, 2010, which set a shortened statutory period for reply of one (1) month or thirty (30) days whichever is longer. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on September 25, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $810, and (3) an adequate statement of unintentional delay. Accordingly, the reply to the Notice of Non-Compliant Amendment Office action of August 24, 2010 is accepted as being unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at (571) 272-2783.

This application is being referred to Technology Center AU 3651 for appropriate action on the concurrently filed amendment.

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/741,548	04/27/2007	Mark N. Bobrow	NEN-19304/16	3173

37742 7590 11/29/2011
GIFFORD, KRASS, SPRINKLE, ANDERSON
& CITKOWSKI, P.C.
P.O. BOX 7021
TROY, MI 48007-7021

EXAMINER
FORMAN, BETTY J

ART UNIT	PAPER NUMBER
1634	

MAIL DATE	DELIVERY MODE
11/29/2011	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
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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November 29, 2011

GIFFORD, KRASS, SPRINKLE, ANDERSON
& CITKOWSKI, P.C.
P.O. BOX 7021
TROY MI 48007-7021

In re Application of	:	
Mark N. Bobrow et al.	:	**DECISION ON PETITION**
Application No. 11741548	:	
Filed: 4/27/2007	:	
Attorney Docket No. NEN-19304/16	:	

This is a decision on the Petition to Accept Color Drawings under 37 C.F.R 1.84(a)(2), received in the United States Patent and Trademark Office (USPTO) April 27, 2007.

The petition is **DISMISSED.**

A grantable petition under 37 C.F.R. 1.84(a)(2) must be accompanied by the following.

1. The fee set forth under 37 C.F.R. 1.17(h),
2. Three (3) sets of the color drawings in question, (One (1) set for EFS filings), and
3. The specification containing the following language as the first paragraph in that portion of the specification relating to the brief description of the drawings.

"The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee."

The petition did not meet the following requirement(s). 1 ☐ 2 ☐ 3 ☑

A renewed petition filed under 37 C.F.R. 1.84(a)(2) must be filed within TWO (2) MONTHS of this decision. If a renewed petition is not filed within the TWO (2) Months of this decision the drawings will be printed in black and white.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

/Don Fairchild/
Office of Data Management
Publications Branch

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

February 23, 2012

GIFFORD, KRASS, SPRINKLE, ANDERSON
& CITKOWSKI, P.C.
P.O. BOX 7021
TROY MI 48007-7021

In re Application of	:	
Mark N. Bobrow et al.	:	**DECISION ON PETITION**
Application No. 11741548	:	
Filed: 4/21/2007	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. NEN-19304/16	:	***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 24, 2012.

The petition is **GRANTED**.

A grantable petition under 37 C.F.R. 1.84(a) (2) must be accompanied by the following.

1. The fee set forth under 37 C.F.R. 1.17(h),
2. Three (3) sets of the color drawings in question, or (1) set if filed via EFS, and
3. The specification contains appropriate language referring to the color drawings as the first paragraph in that portion of the specification relating to the brief description of the drawings.

The petition was accompanied by all of the required fees and drawings. The specification contains the appropriate language. Therefore, the petition is GRANTED.

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Data Management at 571-272-4200.

/Don Fairchild/
Office of Data Management
Publications Branch

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Wilson Ham & Holman / IBM YOR
175 S Main Street
Suite #850
Salt Lake City UT 84111

MAILED
NOV 18 2010
OFFICE OF PETITIONS

In re Application of	:	
Pankaj Dhoolia et al.	:	
Application No. 11/741,555	:	DECISION ON PETITION
Filed: April 27, 2007	:	
Attorney Docket No. **111.04.2**	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 1, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Notice to File Corrected Application Papers (Notice), mailed July 7, 2010. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on September 8, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form an Application Data Sheet (ADS), (2) the petition fee of $1,620, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to JoAnne Burke at (571)272-4584.

This application is being referred to the Office of Data Management for processing into a patent.

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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Wilson Ham & Holman / IBM YOR
1361 N Hwy 89
Suite 9
Farmington UT 84025

MAILED

FEB 04 2011

OFFICE OF PETITIONS

In re Application of	:	
Pankaj Dhoolia et al.	:	
Application No. 11/741,555	:	DECISION ON PETITION
Filed: April 27, 2007	:	
Attorney Docket No.	:	
IN920060031US1		

This is a **corrected decision** on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 1, 2010, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned for failure to timely pay the issue fee on or before August 27, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed May 27, 2010. Also petitioner was required to respond to the Notice to File Corrected Application Papers (Notice), mailed July 7, 2010. Accordingly, the date of abandonment of this application is August 28, 2010.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item(s) (1).

As to item 1

Petitioner was required to respond to two different issues in this application; (1) a timely reply to the Notice to File Corrected Application Papers which required petitioner to correct the defective Oath or Declaration on or before August 7, 2010, and (2) to pay the issue and publication fee required by the Notice of Allowance. Petitioner has not satisfied either issue (1) or issue (2) above. In regard to issue (1), the Application Data Sheet (ADS) filed September 1, 2010, is not acceptable as it is not entitled "Supplemental Application Data Sheet," as required by 37 CFR 1.76(C)(2). Additionally, petitioner failed to satisfy item (2) as the Office has not yet received Issue and publication fees. Therefore, the petition cannot be granted until petitioner pays the Issue and publication fees.

The application has been placed back into the abandoned status for the reasons stated above. Any inconvenience to the petitioner is regretted.

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 JoAnne Burke at (571) 272-4584.

JoAnne Burke
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Wilson Ham & Holman / IBM YOR
1361 N Hwy 89
Suite 9
Farmington UT 84025

MAILED
MAR 28 2011
OFFICE OF PETITIONS

In re Application of	:	
Pankaj Dhoolia et al.	:	
Application No. 11/741,555	:	DECISION ON PETITION
Filed: April 27, 2007	:	
Attorney Docket No.	:	
IN920060031US1		

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed March 8, 2011, 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 payment of the supplemental application data sheet (ADS), issue fee of $1,510 and the publication fee of $300, (2) the petition fee of $1,620; and (3) a proper statement of unintentional delay.

The petition is hereby **GRANTED**.

Telephone inquiries concerning this decision should be directed to JoAnne Burke at (571) 272-4584.

This application is being referred to the Office of Data Management for processing into a patent.

JoAnne Burke
Petitions Examiner
Office of Petitions

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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FOLEY & LARDNER LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON, WI 53701-1497

MAILED
MAR 14 2012
OFFICE OF PETITIONS

In re Application of	:	
Abhishek Patil, et al.	:	
Application No. 11/741,630	:	DECISION ON PETITION
Filed: April 27, 2007	:	
Attorney Docket No. 098888-5296	:	

This is a decision on the petition under 37 CFR 1.182, filed March 20, 2006, which is being treated as a request to withdraw the petition to accept an unintentionally delayed benefit claim under 37 CFR 1.78(a)(3).

The petition under 37 CFR 1.78(a)(3) filed October 9, 2008 is **DISMISSED** as moot in view of the request filed February 20, 2012, withdrawing the petition to accept an unintentionally delayed priority claim under 37 CFR 1.78(a)(3).

The fee for the request filed February 20, 2012 and the petition fee for the petition filed October 9, 2008 have been deemed unnecessary and will be refunded to petitioner in due course.

Telephone inquiries related to this decision should be addressed to April M. Wise at (571) 272-1642

/dab/
David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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PATTERSON & SHERIDAN, LLP/IBM SVL
3040 POST OAK BLVD.
SUITE 1500
HOUSTON TX 77056-6582

MAILED
JAN 03 2012
OFFICE OF PETITIONS

In re Application of

Ahadian, et al.

Application No. 11/741,631

Filed: April 27, 2007

Attorney Docket No. **SVL920070042US1**

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed December 19, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to file a proper response to the Notice of Allowance and Issue Fee Due mailed September 16, 2011, which set a non-extendable period for reply of three months of its mailing date. A proper response was received, and the application became abandoned on December 17, 2011.

The Request for Continued Examination filed December 19, 2011, is noted.

The address cited on the petition differs from the address of record. A courtesy copy of the decision will be mailed to the address cited on the petition; all future correspondence will be mailed to the address of record until appropriate written instructions to the contrary are received.

The application file is being forwarded to Technology Center 2100, GAU 2191 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Cc:
Gero G. McClellan
Patterson & Sheridan LLP
1150 Revolution Mill Drive, Studio 5
Greensboro, NC 27405

UNITED STATES PATENT AND TRADEMARK OFFICE

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DIW Jun-11

CHEVRON CORPORATION
P.O. BOX 6006
SAN RAMON CA 94583-0806

MAILED
JUN 20 2011
OFFICE OF PETITIONS

In re Application of :
Campbell et al. :
Application Number: 11/741,687 :
Filed: 04/27/2007 :
Attorney Docket Number: T-6780 :
:

ON PETITION

This is a decision in response to the petition under 37 CFR 1.137(b) filed on May 9, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on July 29, 2010, for failure to timely respond to the final Office action mailed on April 28, 2010, which set a three (3)-month shortened statutory time period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on December 15, 2010.

Receipt of the Request for Continued Examination (RCE) and submission under 37 CFR 1.114 is acknowledged.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay.[1] In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

---

[1] See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1208 Off. Gaz. Pat. Office 63, 103 (October 21, 1997).

There is no indication that petitioner herein was ever empowered to prosecute the instant application. If petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney documentation must be mailed. 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.

The application is referred to Technology Center Art Unit 1621 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: MICHAEL E. CARMEN
1201 RXR PLAZA
UNIONDALE NY 11556

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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WONG, CABELLO, LUTSCH, RUTHERFORD & BRUCCULERI, L.L.P.
20333 SH 249 6th Floor
HOUSTON TX 77070

MAILED
MAY 24 2011
OFFICE OF PETITIONS

In re Application of :
Kia Behnia et al. :
Application No. 11/741,709 :
Filed: April 27, 2007 :
Attorney Docket No. **149-0184US** :

DECISION ON PETITION TO WITHDRAW FROM RECORD

This is a decision on the request to withdraw as attorney of record under 37 CFR § 1.36(b), filed May 16, 2011.

The request is **NOT APPROVED**.

The request cannot be approved because it lacks the name of the first inventor or the assignee of record that is associated with the address listed in the request. Therefore, the change of correspondence address is considered improper.

The Office will only accept correspondence address changes to the most current address information provided for the assignee of the entire interest *who properly became of record under 37 CFR 3.71,* or, if no assignee of the entire interest has properly been made of record, the most current address information provided for the first named inventor. 37 CFR 3.71(c) states:

> *An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.*

The assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, the statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (*e.g.*, reel and frame number).

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-4584.

JoAnne Burke
Petitions Examiner
Office of Petitions

OK TO ENTER: /JM/
02/27/2012

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. : 7,629,881

APPLICATION NO.: 11/741,756

ISSUE DATE : December 8, 2009

INVENTOR(S) : Tia Gao, William E. Bishop, Radford R. Juang, Alexander M. Alm, David M. White, David A. Crawford, Steven M. Babin, Jeffrey S. Chavis

It is certified that an error appears or errors appear in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the front page, to the listing of Inventors (75), immediately following "Jeffrey S. Chavis, Ellicott City, MD (US)", add -; Tammara M. Massey, Chevy Chase, MD (US)-.

MAILING ADDRESS OF SENDER (Please do not use customer number below):

The Johns Hopkins University Applied Physics Laboratory Office Of Counsel (IP)
11100 Johns Hopkins Road, Mail Stop 7-151
Laurel, MD 20723-6099

This collection of information is required by 37 CFR 1.322, 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

THE JOHNS HOPKINS UNIVERSITY
APPLIED PHYSICS LABORATORY
11100 Johns Hopkins Road
Laurel, MD 20723-6099

In re Patent No. 7,629,881
Issue Date: December 8, 2009
Appl. No: 11/741,756
Filed: April 29, 2007
For: Correction of Inventorship

This is a decision on the petition filed February 16, 2012, 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.

/Jennifer Mehmood/

Jennifer Mehmood
Assistant Supervisory Patent Examiner Art Unit 2612
Technology Center 2600

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE

Patent No. 7,629,881
Patented: December 8, 2009

On petition requesting issuance of a certificate for correction of inventorship pursuant to 35 U.S.C. 256, it has been found that the above-identified patent, through error and without deceptive intent, improperly sets forth the inventorship. Accordingly, it is hereby certified that the correct inventorship of this patent is:

Tia Gao, of Ellicott City, MD; William E. Bishop, of Baltimore, MD; Radford R. Juang, of Irvine, CA; Alexander M. Aim, of Rockville, MD; David M. White, of Silver Spring, MD; David A. Crawford, of Silver Spring, MD; Steven M. Babin, of Greenbelt, MD; Jeffrey S. Chavis, of Ellicott City, MD; Tammara M. Massey, of Chevy Chase, MD.

Jennifer Mehmood
Assistant Supervisory Patent Examiner
Art Unit 2612
Technology Center 2600

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 12/17/10

TO SPE OF : ART UNIT 1614

SUBJECT : Request for Certificate of Correction for Appl. No.: 11741803 Patent No.: 7700585

CofC mailroom date: 12/03/10

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
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: _____

ARDIN H. MARSCHEL
SUPERVISORY PATENT EXAMINER
AU1614

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United States Patent and Trademark Office
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Dykema Gossett PLLC
Comerica Bank Tower
1717 Main Street, Suite 4000
Dallas TX 75201

MAILED
APR 08 2011
OFFICE OF PETITIONS

In re Application of	:	
Anthony D. Minervini	:	
Application Number: 11/741881	:	DECISION
Filing or 371(c) Date: 04/30/2007	:	ON PETITION
Attorney Docket Number: 092271-0038	:	

This is a decision on the "Petition Under 37 CFR § 1.182 to Withdraw Terminal Disclaimer Filed January 12, 2011," filed February 4, 2011.

The petition is **granted**.

Petitioner files the present petition and requests withdrawal of the Terminal Disclaimer. Petitioner provides that the Terminal Disclaimer filed January 12, 2011 is in error, and Petitioner files a replacement Terminal Disclaimer with the present petitioner.

The Manual of Patent Examining Procedure ("MPEP") 1490, which states:

> While the filing and recordation of an unnecessary terminal disclaimer has been characterized as an "un-happy circumstance" in In re Jentoft, 392 F.2d 633, 157 USPQ 363 (CCPA 1968), there is no statutory prohibition against nullifying or otherwise canceling the effect of a recorded terminal disclaimer which was erroneously filed before the patent issues. Since the terminal disclaimer would not take effect until the patent is granted, and the public has not had the opportunity to rely on the terminal disclaimer, relief from this unhappy circumstance may be available by way of petition or by refiling the application (other than by refiling it as a CPA).

As the Examiner has agreed to the withdrawal of the Terminal Disclaimer, the petition is granted.

The application is being referred to Technology Center Art Unit 2892 for withdrawal of the Terminal Disclaimer, filed January 12, 2011.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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.
11/742,019	04/30/2007	Luis Chardon	200700399-1	4110

22879 7590 10/20/2010
HEWLETT-PACKARD COMPANY
Intellectual Property Administration
3404 E. Harmony Road
Mail Stop 35
FORT COLLINS, CO 80528

EXAMINER
SCOTT, MICHAEL E

ART UNIT	PAPER NUMBER
2178	

NOTIFICATION DATE	DELIVERY MODE
10/20/2010	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):

JERRY.SHORMA@HP.COM
ipa.mail@hp.com
laura.m.clark@hp.com

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

HEWLETT-PACKARD COMPANY
Intellectual Property Administration
Legal Dept., M/S 35
3404 E. Harmony Road
Fort Collins CO 80528

In re Application of:
CHARDON, Luis et al.
Application No. 11/742,019
Filed: April 30, 2007
For: **DATA VISUALIZATION OF A DATACENTER**

DECISION ON PETITION UNDER 37 C.F.R. § 1.84(a)(2) TO ACCEPT COLOR DRAWINGS

This is a decision on the petition under 37 C.F.R. § 1.84(a)(2), filed on August 16, 2010, requesting acceptance of color drawings.

The petition requests that the color drawings of Figures 1 and 5 be accepted in lieu of black and white drawings.

A grantable petition under 37 C.F.R. § 1.84(a)(2) must be accompanied by a fee set forth under 37 C.F.R. § 1.17(h), 3 (three) sets of the color drawings in question, and the specification must contain, or be amended to contain, the following language as the first paragraph in that portion of the specification relating to the brief description of the drawings:

"The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawings will be provided by the U.S. Patent and Trademark Office upon request and payment of the necessary fee."

The petition was filed with the required fee and was filed with three (3) copies of color drawings of Figures 3, 4 and 9-23. Paragraph [0004] of the specification contains the required notification described above.

Accordingly, the petition is **GRANTED**.

Any inquiry regarding this decision should be directed to Eddie C. Lee at (571) 272-1732.

/Eddie C. Lee/

Eddie C. Lee
Quality Assurance Specialist, TC 2100

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : January 26, 2011

TO SPE OF : ART UNIT 2435 SPE Kim Y. Vu

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/742,080 Patent No.: 7,849,507 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 U.S. Related Application Date be added to title page of patent as requested by applicant?
See COCIN dated 01-13-2011

Antonio Johnson

Certificates of Correction Branch

(571)272-0483

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

SPE /Kimyen Vu/ **Art Unit** 2435

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FOLEY & LARDNER LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON WI 53701-1497

MAILED
JUN 17 2011
OFFICE OF PETITIONS

In re Application of :
Knight et al. :
Application No. 11/742,137 :
Filed: April 30, 2007 :
Attorney Dkt. No. 070156-0216 :
For: AUDIO CONTENT SEARCH :
ENGINE :

ON APPLICATION FOR
PATENT TERM ADJUSTMENT

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(b)" filed June 13, 2011. Applicants request that the determination of patent term adjustment be corrected from seven hundred twenty-two (722) days to one thousand two hundred twelve (1,212) days. Applicants request this correction solely on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

The $200.00 petition fee set forth in 37 CFR 1.18(e) has been assessed. No additional fees are required. The fee set forth in 37 CFR 1.18(e) is required and will not be refunded.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the

actual date of issuance of the patent has been determined. As such, the Office cannot make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and **must** include payment of the required fee under 37 CFR 1.18(e).

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[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3215.

Charlema Grant
Attorney
Office of Petitions

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United States Patent and Trademark Office
P.O. Box 1450
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FISH & RICHARDSON P.C.
P.O. BOX 1022
MINNEAPOLIS MN 55440-1022

MAILED
FEB 03 2012
OFFICE OF PETITIONS

In re Patent No. 8,065,603	:
Gossweiler et al.	: DECISION ON REQUEST FOR
Issue Date: November 22, 2011	: RECONSIDERATION OF
Application No. 11/742,142	: PATENT TERM ADJUSTMENT
Filed: April 30, 2007	:
Attorney Docket No. 16113-	:
304001 / GP-1103-02	:

This is a decision on the petition filed on January 23, 2012, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by eight hundred seventy-two (872) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **DISMISSED**.

Receipt of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

BACKGROUND

On November 22, 2011, the above-identified application matured into U.S. Patent No. 8,065,603, with a revised patent term adjustment of 766 days. On (Monday) January 23, 2012, patentee timely submitted this request for reconsideration of patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 872 days. Patentee maintains that the Office incorrectly calculated Office delay pursuant to 37 CFR 1.702(b). Patentee contends that the Office erred in subtracting from the "B delay" a period of time that was not "consumed by continued examination of the

application." Specifically, Patentee argues that (after the filing of the request for continued examination on November 5, 2010) the Office mailed a Notice of Allowance on August 8, 2011, thereby closing examination of the application on that date. Thus, Patentees argue no continued examination took place during the 107 day period from August 8, 2011 (the mailing date of the Notice of Allowance) until November 22, 2011 (the date the patent was issued). As such, Patentee maintains that the "B delay" should include the 107 days and be increased from 188 to 295 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 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" as 188 days pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) in based on the application being filed under 35 U.S.C. 111(a) on April 30, 2007, and the patent not having issued as of the day after the three year date, May 1, 2010, and a request for continued examination under 132(b) having been filed on November 5, 2010. In other words, the entire 383-day period (including the 107 day period beginning on August 8, 2011) from the date of filing of the request for continued examination to the date of issuance of the patent 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

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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.

applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Further, counting the period of time excluded from the three-year period for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56365, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not

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(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.

supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," meaning that the limitations of paragraph 2 apply to this paragraph's extension of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issuance of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period is not counted continuously from the date of filing of the application to the day 3 years after the

filing date of the application, but rather the three-year period for the Office to issue a patent is counted not beginning on the date of filing of the application in the United States but not including "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 2008 U.S. Dist. LEXIS 76063 (D.D.C., September 30, 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants extensions of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent. Thus, not including "any time consumed by" means not including in "that 3-year period" any days it takes to prosecute the application as specified in clauses (i)-(ii). The "any" signifies that the days taken up are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. The "time consumed by" refers to the days taken up with 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, 4) appellate review or 5) any delay in processing requested by applicant, except as permitted by paragraph (3)(C), which allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days taken up with or any time

consumed by clauses (i)-(iii), including filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or taken up with the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the American Inventors Protection Act of 1999, as 35 U.S.C. 154(b).

By nature, the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a

notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed.

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request.

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, a request for continued examination was filed on November 5, 2010, and the patent issued by virtue of that request on November 22, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on November 5, 2010 and ending on November 22, 2011 is not included in calculating Office delay.

CONCLUSION

In view thereof, the patent term adjustment in the above-identified patent remains 766 days.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Doc Code: PET.AUTO Document Description: Petition automatically granted by EFS-Web	PTO/SB/140 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	**PETITION TO WITHDRAW AN APPLICATION FROM ISSUE AFTER PAYMENT OF THE ISSUE FEE UNDER 37 CFR 1.313(c)**
Application Number	11742155
Filing Date	30-Apr-2007
First Named Inventor	Mitsuaki Hino
Art Unit	2187
Examiner Name	MATTHEW BRADLEY
Attorney Docket Number	06-40149
Title	CACHE MEMORY CONTROL METHOD AND CACHE MEMORY APPARATUS

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 2012.03.14

☐ 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	/Tiep Nguyen/
Name	Tiep Nguyen
Registration Number	44465

UNITED STATES 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 14, 2012

In re Application of :

Mitsuaki Hino

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11742155

Filed : 30-Apr-2007

Attorney Docket No : 06-40149

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed March 14, 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 2187 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
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Minneapolis MN 55440

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OFFICE OF PETITIONS

In re Patent No. 8,005,826	:
Sahami et al.	: DECISION ON REQUEST FOR
Issue Date: August 23, 2011	: RECONSIDERATION OF
Application No. 11/742,258	: PATENT TERM ADJUSTMENT
Filed: April 30, 2007	:
Atty Docket No. 16113-0311001	:
	:

This is a decision on the petition filed on October 24, 2011, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by three hundred thirty-one (331) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **DISMISSED.**

BACKGROUND

On August 23, 2011, the application matured into U.S. Patent No. 8,005,826, with a revised patent term adjustment of 252 days. On Monday, October 24, 2011, patentee timely submitted this request for reconsideration of patent term adjustment (with required fee), asserting that the correct number of days of Patent Term Adjustment is 331 days. Patentee states that as intended by 35 U.S.C. § 154(b)(2)(C)(ii), the three-month date should be calculated from September 8, 2009, instead of September 5, 2009, as September 5, 2009, falls over a weekend,

and September 7, 2009, falls on a federal holiday. Moreover, given this patentee maintains that the filing of their response on December 4, 2009, should be based on the September 8, 2009 date and should be calculated as 87 days, not 90 days.

Further, Patentee maintains that the Office incorrectly calculated Office delay pursuant to 35 U.S.C. 154(b)(1)(B) and 37 CFR 1.702(b). Patentee contends that the Office erred in subtracting from the "B delay" a period of time that was not "consumed by continued examination of the application." Specifically, Patentee argues that after the filing of requests for continued examination on July 2, 2010 and April 15, 2011, the Office mailed a Notice of Allowance on June 6, 2011, thereby closing examination of the application on that date. Thus, Patentees argue no continued examination took place during the 79 day period from June 6, 2011 (the mailing date of the Notice of Allowance) until August 23, 2011 (the date the patent was issued). As such, Patentee maintains that the "B delay" should include the 79 days and be increased from 62 to 141 days. Patentee concludes that the correct patent term adjustment is 331 days (the sum of 340 days of "A delay" and 141 days of "B delay" minus 0 days of overlap between "A delay" and "B delay" and minus 147 days of applicant delay).

RELEVANT STATUTE AND REGULATIONS

With respect to applicant delay, 35 U.S.C. § 154(b)(2)(C)(ii) provides that:

> With respect to adjustments to patent term made under the authority of paragraph (1)(B), an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of 3 months that are taken to respond to a notice from the Office making any rejection, objection, argument, or other request, measuring such 3-month period from the date the notice was given or mailed to the applicant.

37 CFR 1.704(b) provides in pertinent part that:

> … , an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any

> periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed.

35 U.S.C. 21(b) provides that:

> When the day, or the last day, for taking any action or paying any fee in the United States Patent and Trademark Office falls on Saturday, Sunday, or a Federal holiday within the District of Columbia, the action may be taken, or fee paid, on the next succeeding secular or business day.

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including —

(i) any time consumed by continued examination of the application requested by the applicant under section 132(b);
(ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or
(iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 CFR 1.702(b) provides that:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:

(1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);

(2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);

(3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;

(4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or

(5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

Patentee's arguments have been considered, but not found persuasive. Patentee is incorrect that this period of reduction, pursuant to 35 U.S.C. § 154(b)(2)(C) and 37 CFR 1.704(b), is incorrectly calculated as 90 days. The weekend/holiday exception does not apply to the period of applicant delay at issue. The Office action was mailed on June 5, 2009, with a shortened statutory period for reply of three (3) months, with extensions of time obtainable under §1.136(a). It is recognized that the three-month deadline, September 5, 2009, ended on a Saturday and the subsequent weekday, September 7, 2009, was a federal holiday. However, in this instance, applicant did not exercise the §21(b) weekend/holiday exception to file a timely response under §133 on the following business day. Applicant timely filed a reply on December 4, 2009, with an extension of time for response within 3 months. In other words, the reply filed December 4, 2009 was not timely filed pursuant to 35 U.S.C. §21(b). Thus, the period of reduction was properly calculated as 90 days counting the number of days beginning on the day after the date that is three months after the date of mailing of the Office action, September 6, 2009 and ending on the date the reply was filed, December 4, 2009. Accordingly, the period of reduction of 90 days will be retained.

Consideration now turns to patentee's arguments with respect to the calculation of Office delay. The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B) and 37 CFR 1.702(b) as 0 days based on the application having been filed under 35 U.S.C. 111(a) on May 18, 2007 and the patent not having issued as of the day after the three year date, May 19, 2010, but a request for continued examination under 132(b) having been filed on July 2, 2010. In other words, the period from the date of filing of the request for continued examination to the date of issuance of the patent was not included in calculating 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). So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued

examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See *Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term*, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 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, 139, 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) . 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. Webster's Collegiate Dictionary, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.
The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the

law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor. As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of

allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, requests for continued examination were filed on July 2, 2010 and April 15, 2011, and the patent issued by

virtue of those requests on August 23, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on July 2, 2010 and ending on August 23, 2011 is not included in calculating Office delay.

CONCLUSION

In view thereof, it is concluded that the patent term adjustment of 252 days indicated on 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.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 4/27/11

TO SPE OF : ART UNIT 3742

SUBJECT : Request for Certificate of Correction for Appl. No.: 11742294 Patent No.: 7750269

CofC mailroom date: 04/08/11

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

You can fax the Directors/SPE response to 571-270-9990

Lamonte Newsome

Certificates of Correction Branch

571-272-3421

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

XApproved	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: _____

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

/TU Hoang/

SPE

Art Unit

3742

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.
11/742,426	04/30/2007	Frank Johann Schwab	P33883.00	4847

62644 7590 09/17/2010
MEDTRONIC
Attn: Noreen Johnson - IP Legal Department
2600 Sofamor Danek Drive
MEMPHIS, TN 38132

EXAMINER
NEGRELLI, CHRISTINA L

ART UNIT	PAPER NUMBER
3733	

MAIL DATE	DELIVERY MODE
09/17/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Alexandria, VA 22313-1450
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MEDTRONIC
Attn: Noreen Johnson - IP Legal Department
2600 Sofamor Danek Drive
MEMPHIS TN 38132

In re Application of:
SCHWAB, FRANK JOHANN
Serial No. 11/742,426
Filed: April 30, 2007
Docket: P33883.00
Title: VARIABLE CONNECTOR

DECISION ON PETITION
UNDER 37 CFR § 1.181

This is a decision on the petition filed September 9, 2010 under 37 CFR 1.181 requesting withdrawal of the finality of the last Office action mailed on June 11, 2010.

The petition is **granted.**

In finding petitioner's points of argument persuasive, the requested relief is granted. As such, the finality of the Office actions issued on June 11, 2010 is premature and the finality of the Office action is hereby withdrawn. The Office action mailed on June 11, 2010 will be designated as a non-final Office action. Since the finality is being withdrawn, any amendment filed in response to the Office action of June 11, 2010 will be treated as a 37 CFR § 1.111 amendment. The period to respond to the last Office action of June 11, 2010 remains unchanged.

The application is being forwarded to the examiner via the Supervisory Patent Examiner of the Art Unit 3733 awaiting the applicant's response to the last Office action. Any inquiry regarding this decision should be directed to Henry C. Yuen, Special Programs Examiner, at (571) 272-4856.

PETITION GRANTED.

Angela D. Sykes, Director
Technology Center 3700

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.
11/742,605	05/01/2007	Hideyuki Sawada	ONKYP0129US	5142

43076 7590 01/10/2011
MARK D. SARALINO (GENERAL)
RENNER, OTTO, BOISSELLE & SKLAR, LLP
1621 EUCLID AVENUE, NINETEENTH FLOOR
CLEVELAND, OH 44115-2191

EXAMINER
SHIBRU, HELEN

ART UNIT	PAPER NUMBER
2484	

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.

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Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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MAILED

JAN 10 2011

DIRECTOR OFFICE
TECHNOLOGY CENTER 2400

MARK D. SARALINO (GENERAL)
RENNER, OTTO, BOISSELLE & SKLAR, LLP
1621 EUCLID AVENUE, NINETEENTH FLOOR
CLEVELAND, OH 44115-2191

In re Application of	:	
SWADA, HIDEYUKI et al.	:	DECISION ON REQUEST TO
Application No. 11/742,605	:	PARTICIPATE IN PATENT
Filed: May 1, 2007	:	PROSECUTION HIGHWAY
Attorney Docket No. **ONKYP0129US**	:	PROGRAM AND PETITION
	:	TO MAKE SPECIAL UNDER
	:	37 CFR 1.102(d)

This is a decision on the request to participate in the Patent Prosecution Highway (PPH) program and the petition under 37 CFR 1.102(d), filed November 5, 2010 to make the above-identified application special.

The request and petition are **GRANTED**.

A grantable request to participate in the PPH program and petition to make special require:

(1) The U.S. application must validly claim priority under 35 U.S.C. 119(a) to one or more applications filed in the JPO;
(2) Applicant must submit a copy of the allowable/patentable claim(s) from the JPO application(s) along with an English translation thereof and a statement that the English translation is accurate;
(3) All the claims in the U.S. application must sufficiently correspond or be amended to sufficiently correspond to the allowable/patentable claim(s) in the JPO application(s);
(4) Examination of the U.S. application has not begun;
(5) Applicant must submit a copy of all the office actions from each of the JPO application(s) containing the allowable/patentable claim(s) along with an English translation thereof and a statement that the English translation is accurate;
(6) Applicant must submit an IDS listing the documents cited by the JPO examiner in the JPO office action along with copies of documents except U.S. patents or U.S. patent application publications; and

The request to participate in the PPH program and petition comply with the above requirements. Accordingly, the above-identified application has been accorded "special" status.

Telephone inquiries concerning this decision should be directed to Mehrdad Dastouri at 571-272-7418.

All other inquiries concerning the examination or status of the application should be directed to Patent Application Information Retrieval (PAIR) system.

The application is being forwarded to the examiner for action on the merits commensurate with this decision.

/Mehrdad Dastouri/

Mehrdad Dastouri
Quality Assurance Specialist
Technology Center 2400

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

(Weatherford) Wong Cabello Lutsch Rutherford &
Brucculeri LLP
20333 Tomball Parkway, 6th floor
Houston, TX 77070

MAILED

AUG 16 2010

OFFICE OF PETITIONS

In re Patent of Turley et al. :
Patent No. 7,690,436 :
Issue Date: April 6, 2010 :
Application No. 11/742,835 :
Filing Date: May 1, 2007 :
Attorney Docket No. 205-0047US :

DECISION ON REQUEST
FOR RECONSIDERATION OF
PATENT TERM ADJUSTMENT

This is a decision on the petition filed April 27, 2010, which is being treated as a petition under 37 C.F.R. § 1.705(d) implicitly requesting the patent term adjustment indicated on the patent be corrected to indicate the term of the patent is extended or adjusted by two hundred eighty-six (286) days.

The petition is **dismissed**.

On April 6, 2010, the application matured into United States Patent No. 7,690,436 with a patent term adjustment of 286 days. This request for reconsideration was timely filed within two months of the issue date of the patent. See 37 C.F.R. § 1.705(d).

Prior to calculating the patent term adjustment set forth on the patent, the Office entered a 57-day reduction in patent term adjustment as a result of the information disclosure statement ("IDS") filed December 22, 2009.

Patentees state the Office appears to have acted improperly when the Office entered the 57-day reduction in patent term adjustment.

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 mailed the Notice of Allowance on November 18, 2009. The IDS was filed December 22, 2009. The number of days beginning, December 22, 2009, the date the IDS was filed, and ending on February 16, 2010, the date the Office mailed a response to the IDS, is 57 days.

Based on the facts above, a 57-day reduction is warranted for the IDS unless a statement under 37 C.F.R. § 1.704(d) was filed with the IDS. 37 C.F.R. § 1.704(d) states,

> A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.

A statement under 37 C.F.R. § 1.704(d) was not filed with the December 22, 2009 IDS. Therefore, the Office acted properly when the Office entered a 57-day reduction in patent term adjustment as a result of the IDS.

In view of the facts above, the petition fails to demonstrate the patent term adjustment indicated on the patent was incorrect.

Submission of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fee is required.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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KILPATRICK TOWNSEND & STOCKTON LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

MAILED

JUN 27 2011

OFFICE OF PETITIONS

In re Application of
Eugene McGuinness
Application No. 11/742,869
Filed: May 1, 2007
Attorney Docket No. 028373-000100US

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 May 10, 2011.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others.

The request was signed by David A. Hall on behalf of all attorneys of record who are associated with customer No. 20350. All attorneys/agents associated with the Customer Number 20350 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

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 March 23, 2011 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: EUGENE MCGUINNESS
4120 TERESA STREET
OCEANSIDE, CA 92056

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
11/742,869	05/01/2007	Eugene McGuinness	028373-000100US

CONFIRMATION NO. 5632

POWER OF ATTORNEY NOTICE

20350
KILPATRICK TOWNSEND & STOCKTON LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

OC000000048283413

Date Mailed: 06/17/2011

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 05/10/2011.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/amwise/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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RAZOR SPORTS, INC.
39 BROADWAY ROAD
WARREN NJ 07059

MAILED

AUG 24 2010

OFFICE OF PETITIONS

In re Application of :
Hannan, et al. :
Application No. 11/742,921 :
Filed: 1 May, 2007 :
Attorney Docket No. (None) :

DECISION

This is a decision on the petition filed on 22 July, 2010, for revival of an application abandoned due to unavoidable delay pursuant to 37 C.F.R. §1.137(a) .

NOTE:

It appears that the application now is being prosecuted *pro se*.

In such case, all inventors must sign all papers submitted.

The petition pursuant to 37 C.F.R. §1.137(a) is **DISMISSED**.

As to Allegation of
Unavoidable Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(a) are the petition and fee therefor, a reply, a proper showing of unavoidable delay under the regulation, and, where applicable, a terminal disclaimer and fee.

Petitioner does not appear to have satisfied showing requirements (as to unavoidable delay) under the Rule.

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c) as to the showing regarding unavoidable delay and a petition pursuant to 37 C.F.R. §1.137(a).

BACKGROUND

The record reflects as follows:

(On 21 January former Counsel requested authorization to withdraw, which authorization was granted on 9 April, 2010.)

The Examiner mailed a Requirement for Restriction on 22 January, 2010, with reply due absent extension of time on or before 22 February, 2010.

It does not appear that a Notice of Abandonment was mailed before a petition was filed.

Following a 27 May, 2010, Interview, with Summary mailed on 2 June, 2010, on 22 July, 2010, Petitioner/Applicant (Petitioner) filed, *inter alia*: a request and fee for an extension of time, which request extended the date of abandonment until after midnight 22 July, 2010, a petition with fee, averring unavoidable delay pursuant to 37 C.F.R. §1.137(a), with reply. It is noted that:

- Neither the petition nor other papers submitted, including therein the Election, is signed by all inventors as required of all papers when the application is prosecuted *pro se*—thus, the papers are construed by the Office as unsigned;

- The petition is signed by one other than the inventors or one registered to practice before the Office—this is improper; such constitutes improper practice before the Office and is contrary to federal law (*see*: 37 C.F.R. §1.2, §1.4, 37 C.F.R. Part 10); and

- Petitioner submitted both the request/fee for extension of time and the petition to revive—such a submission is inappropriate: One may only request an extension of time until the expiration of the maximum statutory period (six (6) months, and thereafter one may only seek to return the application to pending status from abandoned status;

- Because of the timely request/fee for extension of time, the application did not go abandoned.

It is noted that the guidance in the Commentary at MPEP §714.01(a) provides in pertinent part:

> **714.01(a)Unsigned or Improperly SignedAmendment [R-3]**
> *37 C.F.R. 1.33. Correspondence respecting patent applications, reexamination proceedings, and other proceedings.*
> ***>
> (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 attorney or agent not of record who acts in a representative capacity under the provisions of § 1.34;<
> (3)An assignee as provided for under § 3.71(b) of this chapter; or

(4)All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

***

An unsigned amendment or one not properly signed by a person having authority to prosecute the application is not entered. This applies, for instance, where the amendment is signed by only one of two applicants and the one signing has not been given a power of attorney by the other applicant.

***

When an unsigned or improperly signed amendment is received the amendment will be listed in the contents of the application file, but not entered. The examiner will notify applicant of the status of the application, advising him or her to furnish a duplicate amendment properly signed or to ratify the amendment already filed. In an application not under final rejection, applicant should be given a 1-month time period in which to ratify the previously filed amendment (37 C.F.R. 1.135(c)).

Applicants may be advised of unsigned amendments by use of form paragraph 7.84.01.

***

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c) as to the showing regarding unavoidable delay and a petition pursuant to 37 C.F.R. §1.137(a).

Thus, it is noted that the guidance in the Commentary at MPEP §711.03(c)(II) for the showing required pursuant to 37 C.F.R. §1.137(a) provides in pertinent part:

***

...Unavoidable Delay

As discussed above, "unavoidable" delay is the epitome of "unintentional" delay. Thus, an intentional delay precludes revival under 37 C.F.R..§137(a) ("unavoidable" delay) or 37 C.F.R. §1.137(b) ("unintentional" delay). See Maldague, *10 USPQ2d at 1478.*

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies

> and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.

In re Mattullath, *38 App. D.C. 497, 514-15 (1912)(quoting* Pratt, *1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also* Winkler v. Ladd, *221 F. Supp. 550, 552, 138 USPQ 666, 667-68 (D.D.C. 1963),* aff'd, *143 USPQ 172 (D.C. Cir. 1963);* Ex parte Henrich, *1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account."* Smith v. Mossinghoff, *671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable."* Haines v. Quigg, *673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).*

A delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis for a showing of "unavoidable" delay, provided it is shown that:

> *(A)the error was the cause of the delay at issue;*
>
> *(B)there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance; and*
> *(C)the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care.*

See In re Egbers, *6 USPQ2d 1869, 1872 (Comm'r Pat. 1988),* rev'd on other grounds sub nom., Theodor Groz & Sohne & Ernst Bechert Nadelfabrik KG v. Quigg, *10 USPQ2d 1787 (D.D.C. 1988);* In re Katrapat, *6 USPQ2d 1863, 1867-68 (Comm'r Pat. 1988). For example, where an application becomes abandoned as a consequence of a change of correspondence address (the Office action being mailed to the old, uncorrected address and failing to reach the applicant in sufficient time to permit a timely reply) an adequate showing of "unavoidable" delay will require a showing that due care was taken to adhere to the requirement for prompt notification in each concerned application of the change of address (see MPEP § 601.03), and must include an adequate showing that a timely notification of the change of address was filed in the application concerned, and in a manner reasonably calculated to call attention to the fact that it was a notification of a change of address. The following do not constitute proper notification of a change in correspondence address:*

> *(A)the mere inclusion, in a paper filed in an application for another purpose, of an address differing from the previously provided correspondence address, without mention of the fact that an address change was being made;*
>
> *(B)the notification on a paper listing plural applications as being affected (except as provided for under the Customer Number practice - see MPEP § 403); or*

(C)the lack of notification, or belated notification, to the U.S. Patent and Trademark Office of the change in correspondence address.

Delay resulting from the lack of knowledge or improper application of the patent statute, rules of practice or the MPEP, however, does not constitute "unavoidable" delay. See Haines, *673 F. Supp. at 317, 5 USPQ2d at 1132;* Vincent v. Mossinghoff, *230 USPQ 621, 624 (D.D.C. 1985);* Smith v. Diamond, *209 USPQ 1091 (D.D.C. 1981);* Potter v. Dann, *201 USPQ 574 (D.D.C. 1978);* Ex parte Murray, *1891 Dec. Comm'r Pat. 130, 131 (1891). For example, as 37 C.F.R. 1.116 and 1.135(b) are manifest* that proceedings concerning an amendment after final rejection will not operate to avoid abandonment of the application in the absence of a timely and proper appeal, a delay is not "unavoidable" when the applicant simply permits the maximum extendable statutory period for reply to a final Office action to expire while awaiting a notice of allowance or other action.

Likewise, as a "reasonably prudent person" would file papers or fees in compliance with 37 C.F.R. §1.8 or §1.10 to ensure their timely filing in the USPTO, as well as preserve adequate evidence of such filing, a delay caused by an applicant's failure to file papers or fees in compliance with 37 C.F.R. §1.8 and §1.10 does not constitute "unavoidable" delay. See *Krahn*, 15 USPQ2d at 1825. Finally, a delay caused by an applicant's lack of knowledge or improper application of the patent statute, rules of practice or the MPEP is not rendered "unavoidable" due to: (A) the applicant's reliance upon oral advice from USPTO employees; or (B) the USPTO's failure to advise the applicant of any deficiency in sufficient time to permit the applicant to take corrective action. See *In re Sivertz*, 227 USPQ 255, 256 (Comm'r Pat. 1985).

35 U.S.C. §133 and §151 each require a showing that the "delay" was "unavoidable," which requires not only a showing that the delay which resulted in the abandonment of the application was unavoidable, but also a showing of unavoidable delay until the filing of a petition to revive. See *In re Application of Takao*, 17 USPQ2d 1155 (Comm'r Pat. 1990).

The burden of continuing the process of presenting a grantable petition in a timely manner likewise remains with the applicant until the applicant is informed that the petition is granted. *Id.* at 1158. Thus, an applicant seeking to revive an "unavoidably" abandoned application must cause a petition under 37 C.F.R. §1.137(a) to be filed without delay (i.e., promptly upon becoming notified, or otherwise becoming aware, of the abandonment of the application).
An applicant who fails to file a petition under 37 C.F.R. §1.137(a) "promptly" upon becoming notified, or otherwise becoming aware, of the abandonment of the application will not be able to show 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(a) was unavoidable. The removal of the language in 37 C.F.R. §1.137(a) requiring that any petition thereunder be "promptly filed after the applicant is notified of, or otherwise becomes aware of, the abandonment" should **not** be viewed as: (A) permitting an

applicant, upon becoming notified, or otherwise becoming aware, of the abandonment of the application, to delay the filing of a petition under 37 C.F.R. §1.137(a); or (B) changing (or modifying) the result in *In re Application of S*, 8 USPQ2d 1630 (Comm'r Pat. 1988), in which a petition under 37 C.F.R. §1.137(a) was denied due to the applicant's deliberate deferral in filing a petition under 37 C.F.R. § 1.137. An applicant who deliberately chooses to delay the filing of a petition under 37 C.F.R. §1.137 (as in *Application of S*, 8 USPQ2d at 1632) will not be able to show 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(a)] was unavoidable" or even make an appropriate 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."

The dismissal or denial of a petition under 37 C.F.R. §1.137(a) does not preclude an applicant from obtaining relief pursuant to 37 C.F.R. 1. §137(b) on the basis of unintentional delay (unless the decision dismissing or denying the petition under 37 C.F.R. 1.137(a) indicates otherwise). In such an instance, a petition under 37 C.F.R. 1.137(b) may be filed accompanied by the fee set forth in 37 C.F.R. §1.17(m), the required reply, 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 any terminal disclaimer required by 37 C.F.R. §1.137(c). Form PTO/SB/61 or PTO/SB/61PCT may be used to file a petition for revival of an unavoidably abandoned application.

***

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[1]

STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).

[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).

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.[2]

Again, Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c).

As to Allegations of
Unavoidable Delay

The requirements under 37 C.F.R. §1.137(a) are the petition and fee therefor, a reply, a proper showing of unavoidable delay under the regulation, and, where applicable, a terminal disclaimer and fee.

As of this writing it appears that the application did not go into abandoned status, and the matter is moot—papers submitted must be properly signed by all inventors as required for submissions in matters prosecuted *pro se*.

ALTERNATIVE VENUE

Petitioners wishing to revive an application but unable to satisfy the requirements of the regulations at 37 C.F.R. §1.137(a) may do so by properly filing a petition to the Commissioner requesting revival of an application abandoned due to unintentional delay pursuant to 37 C.F.R. §1.137(b). (*See*: http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c and http://www.uspto.gov/web/forms/sb0064.pdf)

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[2] In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

A petition to revive on the grounds of unintentional delay must be filed promptly and such petition must be accompanied by the proper reply, the petition fee, 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," and a terminal disclaimer and fee where appropriate. (The statement is in the form available online.)

CONCLUSION

Accordingly, the petition under 37 C.F.R. §1.137(a) is **dismissed as moot**.

The instant application is released to Technology Center/AU 3714 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[3]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

[3] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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REMBRANDTPLEIN 35
AMSTERDAM CT-10-17 NL NETHERLANDS

MAILED
FEB 15 2011
OFFICE OF PETITIONS

In re Application of	:	
Gil Fuchs et al.	:	
Application No. 11/742,937	:	DECISION ON PETITION
Filed: May 1, 2007	:	
Attorney Docket No. 2027/1/US (TELA-07748US1)	:	

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 reply in a timely manner to the final Office action mailed, December 10, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on March 11, 2010. A Notice of Abandonment was mailed on July 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 RCE (Request for Continued Examination, with the required fee of $810, (2) the petition fee of $1,620, and (3) a proper statement of unintentional delay. Accordingly, the RCE is accepted as being unintentionally delayed.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

This application is being referred to Technology Center AU 2165 for appropriate action by the Examiner in the normal course of business on the reply received October 5, 2010.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

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TORONTO ON M5L 1A9 CA CANADA

In re Application of
MACALLEN, TODD P. et al. :
Application No. 11/742,984 :
Filed: May 1, 2007 :
Attorney Docket No.: 69350/0011 :

OCT 28 2010

DECISION ON PETITION

This is a decision on the Petition To Withdraw Holding Of Abandonment Based On Failure To Receive Office Action, received in the United States Patent and Trademark Office (USPTO) on June 30, 2010.

The petition is **GRANTED**.

The application was held abandoned for failure to timely file a proper reply to the Office letter — Notice to File Corrected Application Papers — mailed on February 23, 2010, which set a two-month time period to reply (not extendable). Accordingly, the Notice of Abandonment was mailed on May 10, 2010.

In absence of any irregularity in the mailing of the Notice, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the practitioner did not receive the Office action, and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Action Are Not Received" MPEP 711.03(c) II

Petitioner has met the above-stated conditions. Accordingly, the holding of abandonment is hereby withdrawn.

The Notice to File Corrected Application Papers with the attached Notice Identification of Drawing Deficiencies will be re-mailed. The applicant will be given two-month time period from the mailing of the Notice in which to correct the informalities noted thereon.

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 756-1547.

Kay D. Pinkney
Application Assistance Unit
Office of Data Management

attachments

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MINNEAPOLIS MN 55440-1022

In re Patent No. 8,055,664 : DECISION ON REQUEST
Baluja, et al. : FOR
Issue Date: November 8, 2011 : RECONSIDERATION OF
Application No. 11/742,995 : PATENT TERM ADJUSTMENT
Filed: May 1, 2007 : and
Atty Docket No. 16113-0468001 : NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on January 6, 2012, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by six hundred and twenty (620) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by **four hundred and ninety-five(495)days** is **GRANTED to the extent indicated herein.**

The instant petition was filed January 6, 2012. Patentees state, in pertinent part:

> Section 154(b)(1)(B)(i) of Title 35 excludes from the calculation of B Delay "any time consumed by continued examination of the application." In the present matter, a Request for Continued Examination was filed on July 28, 2010. The Director erred in the calculation of the patent term adjustment by subtracting from B Delay a period of time that was not "consumed by continued examination of the application." The PTO mailed a Notice of Allowance on July 7, 2011, thereby closing examination of the application on that date. Thus, no continued examination took place during 125 day period July 7, 2011 (the mailing date of the Notice of Allowance) until November 8, 2011 (the date the

patent was issued). Accordingly, 125 days of "B Delay" should have been included in addition to the 87 days accorded by the Director, for a total "B Delay" of 212 days.

Excerpt taken from "Application for Patent Term Adjustment under 37 CFR 1.705(d)", filed January 6, 2012, pg.3.

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.

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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.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay"

that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F. Supp.2d 138(D.D.C., September 30, 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the

statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)[2]. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. *Websters Collegiate Dictionary*, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

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[2] 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.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such

information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[3]

[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.

permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, a request for continued examination was filed on July 28, 2010, and the patent issued by virtue of that request on November 8, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on July 28, 2010, and ending on November 8, 2011, is not included in calculating Office delay.

Patentees dispute the period of reduction of 26 days entered for applicant delay, pursuant to 35 U.S.C. § 154(b)(2)(C) and 37 CFR 1.704(b). Specifically, patentees' state:

> [a] reply to an Office Action was due on or before November 23, 2009 (the date that is three months after August 21,

> 2009, the date on which the Office Action was mailed). Patentees filed a response to the Office Action on December 18, 2009. Patentees were accorded a delay of 27 days for a late response...the three month due date should be calculated from November 23, 2009, as November 21, 2009, falls over a weekend, and Patentees request that the Office recalculate this period of Applicant Delay as 25 days, for delay from November 24, 2009 to December 18, 2009.

Excerpt taken from "Application for Patent Term Adjustment under 37 CFR 1.705(d)", filed January 6, 2012, pgs. 1-2.

Patentees' argument has been considered and is persuasive. It is noted that a non-final Office action was mailed August 21, 2009, to which applicants did not response until December 18, 2009. As November 21, 2009, the date that is three months from the date the Office action was mailed, was a Saturday, the reduction to the patent term adjustment under 37 CFR 1.704(b) is calculated beginning (and including) Monday November 24, 2009, and ending December 18, 2009, and is 25 days. **The reduction of 27 days is being removed and a reduction of 25 days is being entered.**

Accordingly, the revised patent term adjustment is 495 days (457 days "A" delay +87 days "B" delay - 0 days of overlap - 49 days of applicant delay.)

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating

that the term of the above-identified patent is extended or adjusted by **four hundred and ninety-five (495)** days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 8,055,664 B2

DATED : Nov. 8, 2011

INVENTOR(S) : Baluja 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 (493) days

Delete the phrase "by 493 days" and insert – by 495 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Patent No. 7,363,090	:	
Issue Date: April 22, 2008	:	
Application No. 11/743,000	:	ON PETITION
Filed: May 1, 2007	:	
Attorney Docket: CM-TF-0128	:	

This is a decision on the petition under 37 CFR 1.182, filed, June 3, 2010, seeking to correct the relationship of a benefit claim by way of a Certificate of Correction.

The petition is **DISMISSED AS MOOT**.

Petitioner requests that a Certificate of Correction be issued changing the relationship of the benefit claim in above-mentioned patent application to its parent application 11/423,073, from continuation to divisional. Additionally, petitioner requests to enter an amendment in the instant patent noting the change in the relationship of the benefit claim to its parent application 11/423,073.

As stated in MPEP 201.11, a petition is not necessary when changing the relationship of the applications (e.g. changing from "continuation" or "divisional" to "continuation-in-part" or from "continuation-in-part" to "continuation" or "divisional.")

In view of the above, the petition under 37 CFR 1.182 is unnecessary and therefore a certificate of correction is the appropriate avenue of relief. The petition fee of $400 will be refunded to petitioner's credit card account.

Any questions concerning this matter may be directed to Alicia Kelley at (571) 272-6059. Any other inquiries concerning this matter should be directed to the Certificates of Correction Branch.

This application is being referred to the Certificates of Correction Branch for processing of the Certificate of Correction submitted on October 19, 2010.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : March 25, 2011

TO SPE OF : ART UNIT 3766

SUBJECT : Request for Certificate of Correction for Appl. No.: 11743000 Patent No.: 7363090

CofC mailroom date: Mar. 16, 2011

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Certificates of Correction Branch

703-756-1814 _____

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☑ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: CONVERSION TO DIVISION APPROVED.

Carl H. Layno AU 3766 3/28/11

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

KILPATRICK TOWNSEND & STOCKTON LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO CA 94111-3834

MAILED

MAR 11 2011

OFFICE OF PETITIONS

In re Application of
Marty Jones
Application No. 11/743,138
Filed: May 1, 2007
Attorney Docket No. 028558-000300US

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed December 16, 2010, to revive the above-identified application.

It is not apparent whether the statement of unintentional delay was signed by a person who would have been in a position of knowing that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Nevertheless, in accordance with 37 CFR 10.18, the statement is accepted as constituting a certification of unintentional delay. However, in the event that petitioner has no knowledge that the delay was unintentional, petitioner must make such an inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay was intentional, petitioner must so notify the Office[1].

The application became abandoned for failure to file a reply to the Notice to File Missing Parts of Nonprovisional Application (Notice) mailed on May 25, 2007. A Notice of Abandonment was mailed February 5, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of $330 for the filing fee, $540 for search fee, $220 for the examination fee and the $130 surcharge; (2) the petition fee of $1,620; and (3) a proper statement of unintentional delay. Therefore, the petition is **GRANTED**[2].

---

[1] The Power of Attorney or Revocation of Power of Attorney with New Power of Attorney and Change of Correspondence Address filed on February 22, 2011, has been accepted and made of record.

[2] The above-identified application has been abandoned for an extended period of time. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting the statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178; 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109) (applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the Patent and Trademark Office).

This application file is being referred to the Office of Patent Application Processing for further processing in accordance with this decision.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petition

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

AEON LAW
1525 4TH AVE, STE 800
SEATTLE WA 98101-1648

MAILED

AUG 04 2010

OFFICE OF PETITIONS

In re Application of
Maria Gaos, et al.
Application No. 11/743,142
Filed: May 1, 2007
Attorney Docket No. GAOS-2007019

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed July 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.

The request cannot be approved because the practitioner(s) requesting the withdrawal have not certified that they have delivered to the client or duly authorized representative of the client papers and property (including funds) to which the client is entitled or notified the client of any responses that may be due and the time frame within which they must respond. The failure to do so may subject the practitioner to discipline. It is also noted that false certification may violate a practitioners' duty under 37 CFR 10.23(b)(4) and (b)(5).

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquiries concerning this decision should be directed to undersigned at 571-272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

cc: MARIA GAOS
22104 4TH PL W
BOTHELL, WA 98021

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

AEON LAW
1525 4TH AVENUE, STE, 800
SEATTLE, WA 98101-1648

MAILED

AUG 30 2010

OFFICE OF PETITIONS

In re Application of
Maria Gaos, et al.
Application No. 11/743,142
Filed: May 1, 2007
Attorney Docket No. GAOS-2007019

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 August 10, 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 Adam L. K. Philipp on behalf of all attorneys of record who are associated with customer No. 46345. All attorneys/agents associated with the Customer Number 46345 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 July 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: MARIA GAOS
22104 4TH PL W.
BOTHELL, WA 98021

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
11/743,142	05/01/2007	Maria Gaos	GAOS-2007019

CONFIRMATION NO. 6214

POWER OF ATTORNEY NOTICE

46345
AEON LAW
1525 4TH AVE, STE 800
SEATTLE, WA 98101-1648

OC000000043215299

Date Mailed: 08/25/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 08/10/2010.

- 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

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.
11/743,149	05/02/2007	Jung Jae Yu	110YI-001600US	6234

7590 11/08/2011
AMPACC Law Group, PLLC
6100 219th Street SW, Suite 580
Mountlake Terrace, WA 98043

EXAMINER
PARK, EDWARD

ART UNIT	PAPER NUMBER
2624	

NOTIFICATION DATE	DELIVERY MODE
11/08/2011	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

November 8, 2011

AMPACC Law Group, PLLC
6100 219th Street SW, Suite 580
Mountlake Terrace WA 98043

In re Application of	:	
Jae Jung Yu et al.	:	**DECISION ON PETITION**
Application No. 11743149	:	
Filed: 5/2/2007	:	***ACCEPTANCE OF COLOR***
Attorney Docket No. 110YI-001600US	:	***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 25, 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.

/Don Fairchild/
Office of Data Management
Publications Branch

UNITED STATES PATENT AND TRADEMARK OFFICE

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MAILED
NOV 29 2011
OFFICE OF PETITIONS

AMPACC LAW GROUP, PLLC
6100 219TH STREET SW, SUITE 580
MOUNTLAKE TERRACE WA 98043

In re Application of	:	
Jung Jae Yu et al	:	
Application No. 11/743,149	:	DECISION ON PETITION
Filed: May 2, 2007	:	UNDER 37 CFR 1.313(c)
Attorney Docket No. 110YI-001600US	:	

This is a decision on the petition under 37 CFR 1.313(c), filed November 18, 2011, 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	EFS-web
By fax:	**(571) 273-0025** **Office of Petitions**

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

JONDLE & ASSOCIATES P.C.
858 HAPPY CANYON ROAD SUITE 230
CASTLE ROCK CO 80108

MAILED

AUG 3 1 2010

OFFICE OF PETITIONS

In re Patent No. 7,642,434	:	
Issued: January 5, 2010	:	
Application No. 11/743,205	:	NOTICE
Filed: May 2, 2007	:	
Attorney Docket No. 1472-004	:	

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 filed herewith is hereby **ACCEPTED**.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
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
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Bib Data Sheet

CONFIRMATION NO. 6364

SERIAL NUMBER	FILING OR 371(c) DATE	CLASS	GROUP ART UNIT	ATTORNEY DOCKET NO.
11/743,205	05/02/2007 RULE	800	1638	1472-004

APPLICANTS

Karen A.K. Moldenhauer, Stuttgart, AR;

**** CONTINUING DATA ****************************

**** FOREIGN APPLICATIONS ************************

IF REQUIRED, FOREIGN FILING LICENSE GRANTED
** 05/22/2007

		STATE OR COUNTRY	SHEETS DRAWING	TOTAL CLAIMS	INDEPENDENT CLAIMS
Foreign Priority claimed	☐ yes ☐ no	AR	0	43	7
35 USC 119 (a-d) conditions met	☐ yes ☐ no ☐ Met after Allowance				
Verified and Acknowledged	Examiner's Signature Initials				

ADDRESS
32905

TITLE

RICE CULTIVAR CL171-AR

FILING FEE RECEIVED		
1765	FEES: Authority has been given in Paper No. _____ to charge/credit DEPOSIT ACCOUNT No. _____ for following:	☐ All Fees ☐ 1.16 Fees (Filing) ☐ 1.17 Fees (Processing Ext. of time) ☐ 1.18 Fees (Issue) ☐ Other _____ ☐ Credit

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

ALSTON & BIRD LLP
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE NC 28280-4000

MAILED

DEC 21 2010

OFFICE OF PETITIONS

In re Application of	:	
Steve SHAFER	:	
Application No. 11/743,291	:	DECISION ON PETITION
Filed: May 2, 2007	:	
Attorney Docket No. 040350/311484	:	

This is a decision on the petition filed on June 1, 2010, requesting "waiver of the 3-month time extension fee paid with Applicant's concurrently filed Amendment responsive to the Office Action dated December 8, 2009."

The petition is **DISMISSED**.

Office records indicate that a Non-final Office action mailed to the Applicant at the correspondence address of record on December 8, 2009, was eventually returned to the Office as "undelivered." Petitioner acknowledges that "the Office Action had the undersigned firm's correct address on it." Petitioner further states that "PAIR does not indicate that the Office Action was ever remailed, but somehow the undersigned's firm received it in the mail for the first time on March 8, 2010." Concurrently with the instant petition, petitioner filed a response to the Office action along with "a petition for a 3-month time extension, and paid the requisite fee of $1050 for the extension."

Petitioner contends that as the "[a]pplicant was prejudiced by receiving the Office Action on the last day of the shortened 3-month period for reply," the $1050 fee paid for the 3-month extension of time be "waived and the fee be refunded."

As an initial matter, it is noted that the instant petition is combining two different requests. The request to waive the fee for extension of time is considered under 37 CFR 1.183, whereas the request for refund is governed by 35 USC 42(d), as implemented by 37 CFR 1.26. As the

request for refund of the extension of time fee can be considered if the requested waiver therefor is grantable, the request for waiver is taken up first under 37 CFR 1.183. The petition fee of $400 under 37 CFR 1.17(f), required for consideration of a petition under 37 CFR 1.183, has been charged to Deposit Account 16-0605, as authorized.

Petitioner acknowledges receipt of the Office action on March 8, 2010. However, no response was filed until June 1, 2010. Petitioner has not given any explanation as to the time period that elapsed between the receipt of the Office action on march 8, 2010, and the eventual filing of the response thereto on June 1, 2010. In particular, 37 CFR 1.183 states that only in an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, *sua sponte,* or on petition of the interested party, subject to such other requirements as may be imposed. Petitioner, has not, however, shown an extraordinary circumstance where justice requires suspension of the rules. Furthermore, by not filing a petition to restart the period of reply within two weeks of the receipt of the Office action, petitioner failed to avail himself of the relief available under the procedure set forth in MPEP § 710.06(I). It is brought to petitioner's attention that the USPTO will not normally consider an extraordinary remedy, when the rules already provide an avenue for obtaining the relief sought. See Cantello v. Rasmussen, 220 USPQ 664, 664 (Comm'r Pat. 1982). Since there is a specific mechanism in place to provide the requested relief, it is inappropriate for the USPTO to contemplate circumventing that mechanism by creating another remedy. The instant petition requesting a waiver for the fee paid for the 3-month extension of time is therefore **DISMISSED**.

In regard to the request for a refund, petitioner is encouraged to note MPEP 607.02 which states:

> Under 35 U.S.C. 42(d) and 37 CFR 1.26, the Office may refund: (1) a fee paid by mistake (e.g., fee paid when no fee is required); or (2) any fee paid in excess of the amount of fee that is required. See Ex parte Grady, 59 USPQ 276, 277 (Comm'r Pat. 1943) (the statutory authorization for the refund of fees under the "by mistake" clause is applicable only to a mistake relating to the fee payment).
>
> When an applicant or patentee takes an action "by mistake" (e.g., files an application or maintains a patent in force "by mistake"), the submission of fees required to take that action (e.g., a filing fee submitted with such application or a maintenance fee submitted for such patent) is **not** a "fee paid by mistake" within the meaning of 35 U.S.C. 42(d).

In the instant case, the extension of time request was required to prevent the application from going abandoned. Thus, the fee paid therefor is **not** a "fee paid by mistake" within the meaning of 35 U.S.C. 42(d). Accordingly, the fee paid for the 3-month extension of time request cannot be refunded.

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) 272-4914.

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

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JUL 01 2011

OFFICE OF PETITIONS

Paper No.

JOHN MEZZALINGUA ASSOCIATES, INC.
C/O SCHMEISER OLSEN & WATTS
22 CENTURY HILL DRIVE, SUITE 302
LATHAM NY 12110

In re Application of Shafer Application No. 11/743,291 Filed: May 2, 2007 Attorney Docket Number: PPC.91252-NY Title: CABLE SYSTEM WITH ACTIVE RF DEVICE POWERED BY RF ENERGY CONVERTED TO DC POWER, AND ASSOCIATED METHOD	DECISION ON PETITION PURSUANT TO 37 C.F.R. § 1.181(A)

This is a decision on the petition pursuant to 37 C.F.R. § 1.137(b) of April 13, 2011, which is being treated as a petition pursuant to 37 C.F.R. § 1.181, requesting that the holding of abandonment in the above-identified application be withdrawn.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed December 8, 2009, which set a shortened statutory period for reply of three months. An amendment was received on June 1, 2010 along with a three-month extension of time and a request for a refund of said three month-extension of time. The request for a refund of the three month-extension of time was dismissed via the mailing of a decision on December 21, 2010. Accordingly, the above-identified application became abandoned on March 9, 2010. A notice of abandonment was mailed on February 18, 2011.

However, it is noted that the three-month extension of time that was submitted on June 1, 2010 made timely the submission of June

1, 2010, as it extended the period for responding to the non-final Office action of December 8, 2009 out to June 8, 2010.

Accordingly, the petition under 37 C.F.R. § 1.181(a) is **GRANTED**. The holding of abandonment is **WITHDRAWN**.

The $1,620 fee that is associated with the filing of a petition pursuant to 37 C.F.R. § 1.137(b) will be refunded to Petitioner's credit card in due course.

The Technology Center will be notified of this decision, and jurisdiction over this application is transferred to the Technology Center, so that the application may receive further processing. The Technology Center's support staff will notify the Examiner of this decision, so that the present application can receive further processing in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the present decision to ensure that the withdrawal of the holding of abandonment has been acknowledged by the Technology Center in response to this decision. It is noted that all inquiries with regard to any failure of that change in status should be directed to the Technology Center where that change of status must be effected - **the Office of Petitions cannot effectuate a change of status.**

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[1] All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

/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).

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Date August 24, 2011

Patent No. :7854142
Inventor(s) :Koju Hatano et al
Issued :December 21, 2010
Title :A DUAL AIR CONDITIONER SYSTEM SHARED CAPACITORS

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above identified patent.

Applicants' proposed request to change data on the Title Page; Item [54] Title is not warranted correction. The changes as presented in the Letters Patent is the result of a style change where certain words such as "A, Improvement etc.. are not included as the first word of the title.

In view of the forgoing applicants' request in this matter is hereby denied.

Any inquiry concerning this communication should be directed to Ms. A. Green at (571) 272-9005

Mary Diggs, Supervisor
Decisions & Certificates
of Correction Branch
(703) 756--1580 or (571) 272-9005

Lawrence E. Ashery
P.O. Box 980
Valley Forge, PA 19482

/arg

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Decision Date : December 9, 2011

In re Application of :

Nicholas Medendorp

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11743324

Filed : 02-May-2007

Attorney Docket No : 1485/84/2 CIP

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed December 9, 2011, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid in this application cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

This application file is being referred to Technology Center AU 2889 for processing of the request for continuing examination under 37 CFR 1.114 .

Office of Petitions

Doc Code: PET.AUTO Document Description: Petition automatically granted by EFS-Web	PTO/SB/140 U.S. Patent and Trademark Office Department of Commerce

Electronic Petition Request	**PETITION TO WITHDRAW AN APPLICATION FROM ISSUE AFTER PAYMENT OF THE ISSUE FEE UNDER 37 CFR 1.313(c)**
Application Number	11743324
Filing Date	02-May-2007
First Named Inventor	Nicholas Medendorp
Art Unit	2889
Examiner Name	KARABI GUHARAY
Attorney Docket Number	1485/84/2 CIP
Title	MULTI-CHIP LIGHT EMITTING DEVICE LAMPS FOR PROVIDING HIGH-CRI WARM WHITE LIGHT AND LIGHT FIXTURES INCLUDING THE SAME

An application may be withdrawn from issue for further action upon petition by the applicant. To request that the Office withdraw an application from issue, applicant must file a petition under this section including the fee set forth in § 1.17(h) and a showing of good and sufficient reasons why withdrawal of the application from issue is necessary.

APPLICANT HEREBY PETITIONS TO WITHDRAW THIS APPLICATION FROM ISSUE UNDER 37 CFR 1.313(c).

A grantable petition requires the following items:
(1) Petition fee; and
(2) One of the following reasons:
(a) Unpatentability of one or more claims, which must be accompanied by an unequivocal statement that one or more claims are unpatentable, an amendment to such claim or claims, and an explanation as to how the amendment causes such claim or claims to be patentable;
(b) Consideration of a request for continued examination in compliance with § 1.114 (for a utility or plant application only); or
(c) Express abandonment of the application. Such express abandonment may be in favor of a continuing application, but not a CPA under 37 CFR 1.53(d).

Petition Fee

☐ Applicant claims SMALL ENTITY status. See 37 CFR 1.27.

☐ Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

☐ Applicant(s) status remains as SMALL ENTITY.

☒ Applicant(s) status remains as other than SMALL ENTITY

Reason for withdrawal from issue

○ One or more claims are unpatentable

◉ Consideration of a request for continued examination (RCE) (List of Required Documents and Fees)

○ Applicant hereby expressly abandons the instant application (any attorney/agent signing for this reason must have power of attorney pursuant to 37 CFR 1.32(b)).

RCE request,submission, and fee.

☐ I certify, in accordance with 37 CFR 1.4(d)(4) that : The RCE request ,submission, and fee have already been filed in the above-identified application on

☒ Are attached.

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

I certify, in accordance with 37 CFR 1.4(d)(4) that I am:

◉ An attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application.

○ An attorney or agent registered to practice before the Patent and Trademark Office, acting in a representative capacity.

○ A sole inventor

○ A joint inventor; I certify that I am authorized to sign this submission on behalf of all of the inventors

○ A joint inventor; all of whom are signing this e-petition

○ The assignee of record of the entire interest that has properly made itself of record pursuant to 37 CFR 3.71

Signature	/vincent k. gustafson/
Name	Vincent K. Gustafson
Registration Number	46182

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

LEVINE BAGADE HAN LLP
2400 GENG ROAD, SUITE 120
PALO ALTO CA 94303

MAILED
MAR 14 2011
OFFICE OF PETITIONS

In re Application of :
RUSSELL A. HOUSER, ET AL. :
Application No. 11/743,343 : NOTICE
Filed: May 2, 2007 :
Attorney Docket No. **HNMDNN00105** :

This is a notice regarding your request filed January 25, 2011, for acceptance of a fee deficiency submission under 37 CFR 1.28.

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-4584.

JoAnne Burke
Petitions Examiner
Office of Petitions

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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SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. BOX 2938
MINNEAPOLIS, MN 55402

MAILED

AUG 25 2010

OFFICE OF PETITIONS

In re Application of	:	
Thomas Kern	:	DECISION ON PETITION
Application No. 11/743,407	:	TO WITHDRAW
Filed: May 2, 2007	:	FROM RECORD
Attorney Docket No. 2337.049US1	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b) filed July 19, 2010, which is being treated as a request to withdraw from employment in a proceeding before the Office under 37 C.F.R. § 10.40.

The request is **DISMISSED**.

A review of the file record indicates that Schwegman, Lundberg & Woessner, P.A. does not have power of attorney in this patent application. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is not applicable.

The request to change the correspondence address of record is not accepted in view of Schwegman, Lundberg & Woessner, P.A. not having power of attorney. See MPEP §§ 601.03 and 405.

All future communications from the Office will continue to be directed to the below-listed address until otherwise notified by applicant.

Currently, there is no outstanding Office action that requires a reply.

Telephone inquires concerning this decision should be directed to the undersigned at 571-272-7751.

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: ESCHWEILER & ASSOCIATES LLC
629 EUCLID AVENUE, SUITE 1000
NATIONAL CITY BUILDING
CLEVELAND OH 44114

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

HEENAN BLAIKIE LLP
BAY ADELAIDE CENTRE
333 BAY STREET, SUITE 2900, P.O. BOX 2900
TORONTO ON M5H 2T4
CANADA

MAILED
JAN 25 2011
OFFICE OF PETITIONS

In re Application of	:	
Adams	:	
Application No.: 11/743,487	:	
Filed: May 2, 2007	:	ON PETITION
Attorney Docket No.: 038560-0122US	:	
For: METHOD AND SYSTEM OF TRANSPORT	:	
MODE NOTIFICATION ON MULTI-MODE	:	
HANDHELD COMMUNICATION DEVICE	:	

This is a decision on the petition under 37 CFR 1.137(b), filed November 12, 2010, to revive the above-identified application.

The petition is **granted**.

This application became abandoned for failure to timely file a proper reply within the meaning of 37 CFR 1.113 to the final Office action of April 6, 2010. An amendment, filed July 13, 2010, failed to place this application in *prima facie* condition for allowance, as was explained in the July 21, 2010 Advisory action. A one month extension of time were obtained pursuant to 37 CFR 1.136(a). Therefore, this application became abandoned on August 7, 2010. A Notice of Abandonment was mailed on November 15, 2010.

The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2).

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Notice of Appeal and $540.00 fee; (2) the petition fee of $1,620.00; and (3) a proper statement of unintentional delay.

After the mailing of this decision, the file will be forwarded to Technology Center AU 2617 for consideration of the Pre-Appeal Brief Request for Review, filed concurrently with the Notice of Appeal, on November 12, 2010.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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STEVEN E. DICKE
DICKE, BILLIG & CZAJA, PLLC
SUITE 2250
100 SOUTH 5TH STREET
MINNEAPOLIS MN 55402

MAILED
FEB 23 2011
OFFICE OF PETITIONS

In re Application of	:	
Faiz Dahmani	:	
Application No. 11/743,488	:	DECISION ON PETITION
Filed: May 2, 2007	:	
Attorney Docket No.	:	
Q600.109.101/2006P52719		

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 17, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the final Office action mailed, June 2, 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 September 3, 2010. A Notice of Abandonment was mailed December 10, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810.00 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.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This matter is being referred to Technology Center AU 2894 for processing of the Request for Continued Examination under 37 CFR 1.114 and the Amendment filed with the instant petition.

Joan Olszewski
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Paper No.

LIFE TECHNOLOGIES CORPORATION
C/O INTELLEVATE
P.O. BOX 52050
MINNEAPOLIS MN 55402

MAILED

DEC 01 2010

OFFICE OF PETITIONS

In re Application of	:	
Ruff et al.	:	DECISION ON PETITION
Application No. 11/743,517	:	
Filed: May 2, 2007	:	
Atty Docket No. 6131 US	:	

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT APPLICATION UNINTENTIONALLY ABANDONED UNDER 37 CFR 1.137(b) filed September 21, 2010. This decision is made in light of the petition filed November 19, 2010.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely file a proper reply to the final Office action mailed August 11, 2009. This Office action set a shortened statutory period for reply of three (3) months, with extensions of time obtainable under § 1.136(a). A request for continued examination (RCE) was filed on February 11, 2010, along with an Information Disclosure Statement. This reply was made timely by an extension of time for response within the third month.

However, the RCE was improper (See NOTICE OF IMPROPER RCE mailed June 23, 2010). An improper RCE will not operate to toll the running of any time period set in the previous Office action for reply to avoid abandonment of the application. No further reply received, the application became abandoned effective February 12, 2010. A courtesy Notice of Abandonment was mailed on July 21, 2010.

The petition includes the statement of unintentional delay and payment of the petition fee. No terminal disclaimer is

required. The petition as filed on September 21, 2010 did not include the required reply as it included only an improper RCE. However, on November 19, 2010, applicant submitted an RCE with a submission in compliance with § 1.114. The requirements of 37 CFR 1.137(b) have been met.

Technology Center AU 1641 has been advised of this decision. The application is, thereby, forwarded to the Technology Center's technical support staff for processing of the RCE and to the examiner for consideration of the amendment submitted on petition filed November 19, 2010.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED
MAR 10 2011
OFFICE OF PETITIONS

In re Application of	:
Rodgers et al.	:
Application No. 11/743,533	: DECISION ON PETITION
Filed: May 2, 2007	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 17952US02	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed January 14, 2011, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed concurrently with the instant petition.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application(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 nonprovisional Application No. 10/769,173 since there are no common inventors with the instant application. As discussed in MPEP 201.11, the later-filed application must be filed by an inventor or inventors named in the prior-filed application for a benefit claim under 35 U.S.C. 120. There are no common inventors in the instant application and Application No. 10/769,173.

Accordingly, before the petition under 37 CFR 1.78(a)(3) can be granted, a substitute amendment[1] correcting the above matters, along with a renewed petition under 37 CFR 1.78(a)(3), is required. No further petition fee is necessary.

---

[1] *Note* 37 CFR 1.121

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 Joan Olszewski at (571) 272-7751.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

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500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

MAILED

MAY 06 2011

OFFICE OF PETITIONS

In re Application of	:	
Rodgers et al.	:	
Application No. 11/743,533	:	DECISION GRANTING PETITION
Filed: May 2, 2007	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 17952US02	:	

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed April 15, 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.

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 2438 for appropriate action on the amendment filed April 15, 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

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
11/743,533	05/02/2007	2438	1600	17952US02	28	4

CONFIRMATION NO. 7035

CORRECTED FILING RECEIPT

23446
MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO, IL 60661

OC000000047508730

Date Mailed: 05/05/2011

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

Stephane Rodgers, San Diego, CA;
Andrew Dellow, Minchinhampton, UNITED KINGDOM;

Power of Attorney: The patent practitioners associated with Customer Number 23446

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/828,585 10/06/2006
and is a CIP of 10/769,173 01/30/2004

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 05/24/2007

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/743,533**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

METHOD AND SYSTEM FOR PREVENTING REVOCATION DENIAL OF SERVICE ATTACKS

Preliminary Class

380

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 21 2011

OFFICE OF PETITIONS

In re Application of
Rohit Kapoor
Application No. 11/743,577
Filed: May 2, 2007
Attorney Docket No. 060403

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 2, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The 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 the issue and publication fees; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice of Allowance mailed October 19, 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 the Office of Data Management to be processed into a patent.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 7/14/2011

TO SPE OF : ART UNIT 2432

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/743590 Patent No.: 7917938 B2

CofC mailroom date: 7/8/2011

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Note: _____

Virginia Tolbert

Certificates of Correction Branch

(571) 272-0460

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☐ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: All APPROVED

/GILBERTO BARRON JR./ — **SPE**

2432 — **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
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MILLER, CANFIELD, PADDOCK AND STONE
Robert K. Roth, Esq.
150 W. Jefferson, Suite 2500
Detroit, MI 48226

MAILED

OCT 25 2010

OFFICE OF PETITIONS

In re Application of	:	
Joseph Miskovich	:	
Application No. 11/744,016	:	DECISION ON PETITION
Filed: May 3, 2007	:	TO WITHDRAW
Attorney Docket No. 134066-00001	:	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 30, 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 Robert A. Gaffin 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 Joseph Miskovich at the address indicated below.

There is an outstanding Office action mailed June 8, 2010 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to Terri Johnson at 571-272-2991.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

cc: **Joseph Miskovich**
JM Sales Associates
9864 East Grand River, Suite 110
#176
Brighton, MI 48116

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/744,016	05/03/2007	Joseph Miskovich	134066-00001

CONFIRMATION NO. 7976

POWER OF ATTORNEY NOTICE

6470
MILLER, CANFIELD, PADDOCK AND STONE
ROBERT K. ROTH, ESQ.
150 W. JEFFERSON, SUITE 2500
DETROIT, MI 48226

OC000000044157678

Date Mailed: 10/22/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/30/2010.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/tsjohnson/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

UNITED STATES PATENT AND TRADEMARK OFFICE

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CHADBOURNE & PARKE LLP
30 ROCKEFELLER PLAZA
NEW YORK NY 10112

MAILED

JAN 18 2011

OFFICE OF PETITIONS

In re Application of	:	
James Downes, et al.	:	DECISION ON PETITION
Application No. 11/744,129	:	TO WITHDRAW
Filed: May 3, 2007	:	FROM RECORD
Attorney Docket No. 17337-008US1	:	

This is a decision on the request to withdraw as attorney of record under 37 CFR § 1.36, filed December 13, 2010.

The request is **NOT APPROVED**.

The request cannot be approved because it lacks a forwarding correspondence address of the first named inventor or a properly intervening assignee.

If the forwarding correspondence address is to the assignee, the Office will only accept correspondence address changes to the most current address information provided for the assignee of the entire interest *that properly became of record under 37 CFR 3.71.* 37 CFR 3.71(c) states:

> *An assignee becomes of record either in a national patent application or a reexamination proceeding by filing a statement in compliance with § 3.73(b) that is signed by a party who is authorized to act on behalf of the assignee.*

The assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, the statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (*e.g.*, reel and frame number).

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-2991.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/744,266	05/04/2007	Chester J. Szymanski	2207A1	8464

24959 7590 12/01/2010
PPG INDUSTRIES INC
INTELLECTUAL PROPERTY DEPT
ONE PPG PLACE
PITTSBURGH, PA 15272

EXAMINER
KARST, DAVID THOMAS

ART UNIT	PAPER NUMBER
1767	

MAIL DATE	DELIVERY MODE
12/01/2010	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.

UNITED STATES PATENT and TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 23313-1450
WWW.USPTO.GOV

Mailed:

In re Application of Szymanski et al.
Serial No.: 11/744,266
Filed: May 4, 2007

DECISION ON PETITION UNDER *37 CFR 1.48(a)*

Title: COMPOSITIONS COMPRISING THIOETHER-FUNCTIONAL OLIGOMERIC POLYTHIOLS

This is a decision on the PETITION TO CORRECT INVENTORSHIP IN A NON-PROVISIONAL PATENT APPLICATION filed October 3, 2008 to correct inventorship under 37 CFR 1.48(a) by adding the name of Nina Bojkova to the list of inventors of the instant application.

It is noted that the applicant has met the requirements of 37 C.F.R. § 1.48(a) by (1) submitting a request to correct the inventorship that sets forth the desired inventorship change; (2) providing a statement from each person being added as an inventor that the error in inventorship occurred without deceptive intention on his or her part; (3) providing a declaration of the actual inventors as required by 37 C.F.R. § 1.63; (4) providing the processing fee set forth in 1.17(i); and, (5) providing the written consent of the assignee.

The request is **GRANTED**.

The application file is being forwarded to the appropriate section of the Patent and Trademark Office for correction of the record.

Mark Eashoo
Supervisory Patent Examiner
Art Unit 1767
Technology Center 1700

PPG INDUSTRIES INC
Intellectual Property Dept.
One PPG Place
Pittsburg, PA 15272

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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TYCO TECHNOLOGY RESOURCES
4550 NEW LINDEN HILL ROAD
SUITE 140
WILMINGTON DE 19808-2952

MAILED

FEB 07 2011

OFFICE OF PETITIONS

In re Application of	:	
LANDIS, et al	:	
Application No. 11/744,303	:	DECISION ON PETITION
Filed: May 4, 2007	:	
Attorney Docket No. E-GI-00346/09720-0208	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 13, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, January 15, 2008, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on March 16, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1620; and (3) the required statement of unintentional delay.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

This application is being referred to Technology Center AU 2833 for appropriate action by the Examiner in the normal course of business.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

cc: DANIEL J. JENKINS
100 PINE STREET
HARRISBURG, PA 17101

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. (BO)
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

MAILED
SEP 20 2011
OFFICE OF PETITIONS

In re Application of	:	
David Hornstein	:	
Application No. 11/744,316	:	DECISION ON PETITION
Filed: May 4, 2007	:	TO WITHDRAW
Attorney Docket No. 11642-005002	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 31, 2011.

The request is **APPROVED**.

The request was signed by Denis G. Maloney on behalf of the practitioners of record associated with Customer Number 26161.

Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to inventor David Hornstein at the address indicated below.

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (571) 272-3210.

Irvin Dingle
Petitions Examiner
Office of Petitions

cc: David Hornstein
10 Beaver Pond Road
Lincoln, MA 01773-3309

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/744,316	05/04/2007	David Hornstein	11642-005002

CONFIRMATION NO. 8559

POA ACCEPTANCE LETTER

David Hornstein
10 Beaver Pond Road
Lincoln, MA 01773-3309

OC000000049930560

Date Mailed: 09/20/2011

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 08/31/2011.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

/idingle/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/744,316	05/04/2007	David Hornstein	11642-005002

CONFIRMATION NO. 8559

POWER OF ATTORNEY NOTICE

26161
FISH & RICHARDSON P.C. (BO)
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

OC000000049930559

Date Mailed: 09/20/2011

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 08/31/2011.

- The Power of Attorney to you in this application has been revoked by the applicant. Future correspondence will be mailed to the new address of record(37 CFR 1.33).

/idingle/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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Paper No.

MAILED

FEB 23 2011

OFFICE OF PETITIONS

PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK NJ 08933-7003

In re Application of	:	
Deng et al.	:	DECISION
Application No. 11/744,340	:	ON APPLICATION FOR
Filed: May 4, 2007	:	PATENT TERM ADJUSTMENT
Atty Docket No. PRD2267USNP	:	
Title: METHODS FOR THE	:	
PREPARATION OF PYRAZOLE-	:	
CONTAINING COMPOUNDS	:	

This is in response to the "APPLICATIONS FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705(b), WITHIN THREE MONTHS OF RECEIPT OF THE NOTICE OF ALLOWANCE" filed January 18, 2011. Applicants submit that the correct patent term adjustment to be indicated on the patent is at least five hundred and seventy-one (571) days, not five hundred and sixty-seven (567) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction partly on the basis that the Office will take in excess of three years to issue this patent. In addition, Applicants contend that a single period of applicant delay was miscalculated and should not have resulted in a reduction.

To the extent that the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of

issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file an application for patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, Applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, Applicants must timely file an application for patent term adjustment prior to the payment of the issue fee.[1]

---

[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.

To the extent that Applicants otherwise requests reconsideration of the patent term adjustment at the time of the mailing of the notice of allowance, the request is **DISMISSED**.

37 C.F.R. § 1.704(c)(8) sets forth, *in toto*:

> "(c) Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:
>
> ...
>
> (8) Submission of a supplemental reply or other paper (emphasis added), 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;"

A response to a restriction requirement was filed on February 26, 2010 and an Information Disclosure Statement (IDS) was received four days later on March 2, 2010. Consequently, the Office assessed a reduction of four days, pursuant to 37 CFR § 1.704(c)(8).

Applicants argue that the reduction was improper: since the "subject matter of an IDS is very different"[2] than the subject matter of a response to a restriction requirement, the IDS should not be considered a "supplemental reply" to the prior-submitted response to the restriction requirement. Applicants add that "with respect to IDSs, this section relates to supplemental IDSs."[3]

Applicants' argument has been considered, and has been found to be unpersuasive. The Rule indicates that the submission of either a "supplemental reply" or an "other paper" after a reply has been filed constitutes applicant delay. Moreover, the Rule does not limit the submissions to "supplemental IDSs" as Applicants have argued. **The Office holds that the IDS submitted**

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[2] Petition, page 3.
[3] Id. at 2.

on March 2, 2010 constitutes an "other paper" within the meaning of 37 C.F.R. § 1.704(c)(8), and therefore, the four-day reduction pursuant to this Rule is warranted.

The Office acknowledges submission of the $200.00 fee set forth in 37 C.F.R. § 1.18(e). No additional fees are required.

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 C.F.R. § 1.705(d) and must include payment of the required fee under 37 C.F.R. § 1.18(e).

Applicants are reminded that any delays by the Office pursuant to 37 C.F.R. §§ 1.702(a)(4) and 1.702(b) and any applicant delays under 37 C.F.R. § 1.704(c)(10) will be calculated at the time of the issuance of the patent and Applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries regarding this decision should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

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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A PATENT LAWYER CORP, PLC
R WILLIAM GRAHAM
22 S ST CLAIR ST
DAYTON OH 45402

MAILED
AUG 05 2010
OFFICE OF PETITIONS

In re Application of	:	
Kilbarger, Aaron	:	DECISION ON PETITION
Application No. 11/744,369	:	TO WITHDRAW
Filed: May 4, 2007	:	FROM RECORD
Attorney Docket No. K-00020-001	:	

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 28, 2010.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office will require the practitioner(s) to certify that he, she or they have: (1) given reasonable notice to the client, prior to the expiration of the reply period, which the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any replies that may be due and the time frame within which the client must respond, pursuant to 37 CFR 10.40 (c).

The request was signed by R. William Graham on behalf of all attorneys/agents of record who are associated with Customer Number 25179. All attorneys/agents associated with Customer Number 25179 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, Aaron Kilbarger, at the address indicated below.

Telephone inquires concerning this decision should be directed to the undersigned at (571) 272-3206. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

Liana Walsh
Petitions Examiner
Office of Petitions

cc: AARON KILBARGER
P.O. BOX 160
JAMESTOWN OH 45335

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450

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NOV 01 2011
OFFICE OF PETITIONS

ROSENBAUM & SILVERT, P.C.
1480 TECHNY ROAD
NORTHBROOK IL 60062

In re Application of :
Paul Richard AUCKLAND : ON PETITION
Application No. 11/744,486 :
Filed: May 4, 2007 :
Atty. Docket No.: 6088-008

This is a decision on the petition under 37 CFR 1.137(b), filed October 3, 2011, to revive the above-identified application.

The petition is **DISMISSED.**

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mailing date of this decision. Extensions of time under 37 CFR 1.136 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 respond in a timely manner to the final Office action mailed August 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. The application became abandoned November 26, 2009. A Notice of Abandonment was mailed October 15, 2010.

A grantable petition under 37 CFR1.137(b) must be accompanied by: (1) an appropriate reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay for 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 CFR1.137(d). The petition lacks item (2).

Item (2) requires the payment of the petition fee of $1860 ($930 small entity). As this fee has not been paid, the petition cannot be granted.

A "payment" of $1345 towards a 5-month extension of time was included in the instant petition, however this payment was declined. As such, we were unable to apply the $1345 to the instant petition fee.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. If the person signing the instant petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed to the address currently of record until such time as appropriate instructions are received to the contrary.

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 relating to this decision should be directed to Robert DeWitty, Petitions Examiner, Office of Petitions (571-272-8427).

Robert DeWitty
Petitions Attorney
Office of Petitions

cc: **Richard C. Ekstrom**
Ekstrom Law Group, 650 Castro Street, Suite 120-248
Mountain View, CA 94041

UNITED STATES PATENT AND TRADEMARK OFFICE

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LAW OFFICES OF ERIC KARICH
2807 ST. MARK DR.
MANSFIELD TX 76063

MAILED
FEB 25 2011
OFFICE OF PETITIONS

In re Application of	:	
Brown et al.	:	
Application No. 11/744,499	:	DECISION ON PETITION
Filed: May 4, 2007	:	
Attorney Docket No. 0762-01UA	:	

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 final Office action mailed, April 12, 2010, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on July 13, 2010. A Notice of Abandonment was mailed November 17, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a 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.

Further, it is not apparent whether the statement of unintentional delay was signed by a person who would have been in a position of knowing that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Nevertheless, in accordance with 37 CFR 10.18, the statement is accepted as constituting a certification of unintentional delay. However, in the event that petitioner has no knowledge that the delay was unintentional, petitioner must make such an inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay was intentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This matter is being referred to Technology Center AU 3743 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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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No.

MAILED
AUG 25 2011
OFFICE OF PETITIONS

Sutherland GE
999 Peachtree Street
Atlanta GA 30309

In re Application of	:	
Ghasripoor et al.	:	
Application No. 11/744,506	:	LETTER REGARDING
Filed: May 4, 2007	:	PATENT TERM ADJUSTMENT
Docket No. 19441-0166	:	
Title: ARTICLE HAVING A PROTECTIVE	:	
COATING AND METHODS	:	

This is in response to the "REQUEST FOR RECONSIDERATION UNDER 37 C.F.R. § 1.705(b) OF PATENT TERM ADJUSTMENT," filed August 16, 2011. Applicants request that the determination of patent term adjustment be increased by at least one hundred and nine (109) days to one thousand and seventy (1070) days from nine hundred and sixty-one (961) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment. Applicants request this correction partly on the basis that the Office will take in excess of three years to issue this patent.[1] In addition, Applicants contend that one period of examination delay was incorrectly calculated.[2]

To the extent that the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for

[1] Petition, pages 2-3.
[2] Id.

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[3].

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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.

To the extent that Applicants otherwise request reconsideration of the patent term adjustment at the time of the mailing of the notice of allowance, the request is **GRANTED to the extent indicated herein**.

The Office has updated the PALM screen to reflect that the amount of examination Delay is 705 days. As such, the Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is 705 days. A copy of the updated PALM screen, showing the correct determination, is enclosed.

On June 9, 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 961 days. The instant application for patent term adjustment was timely filed[4] on or before payment of the issue fee.

There is one period of examination delay in dispute.

The Office agrees that the adjustment of 961 days should be removed, and that an adjustment of 705 days is warranted. This application was filed on May 4, 2007. Fourteen months and 705 days later, the Office mailed a restriction requirement on June 9, 2010. As such, an adjustment of 705 days is warranted, pursuant to 37 C.F.R. § 1.703(a)(1). The Office improperly accorded an adjustment of 961 days. The adjustment of 961 days has been removed, and an adjustment of 705 days has been entered.

In view thereof, the patent term adjustment as of the mailing of the notice of allowance is 705 days: 705 examination delay minus zero applicant delay.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

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[4] PALM records indicate that the issue fee was paid on August 16, 2011.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[5]

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

Enclosure: Copy of REVISED PALM Screen

[5] Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).

Patent Term Adjustments

PTA/PTE Information | Patent Term Adjustment | Patent Term Extension

Application Number*: 11744506 Search | Explanation of PTA Calculation | Explanation of PTE Calculation

PTA Calculations for Application: 11744506

Application Filing Date	05/04/2007	OverLapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	961
A Delays	961	PTO Manual Adjustment	-256
B Delays	0	Applicant Delay (APPL)	0
C Delays	0	Total PTA (days)	705

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
72	08/23/2011		P028	Adjustment of PTA Calculation by PTO	705	0	
71	08/23/2011		P028	Adjustment of PTA Calculation by PTO		961 0	
52	06/09/2011		MN/=.	Mail Notice of Allowance		0	
51	06/08/2011		OAR	Office Action Review		0	
50	06/08/2011		IREV	Issue Revision Completed		0	
49	06/08/2011		DVER	Document Verification		0	
48	06/08/2011		N/=.	Notice of Allowance Data Verification Completed		0	
47	06/06/2011		CNTA	Allowability Notice		0	
46	05/24/2011		FWDX	Date Forwarded to Examiner		0	
45	05/13/2011		A...	Response after Non-Final Action		0	
44	04/27/2011		MCTMS	Mail Miscellaneous Communication to Applicant		0	
43	04/25/2011		CTMS	Miscellaneous Action with SSP		0	
42	03/17/2011		C.ADB	Correspondence Address Change		0	
41	02/16/2011		FWDX	Date Forwarded to Examiner		0	
40	01/18/2011		FEE.	Fee Payment Recorded (fees filed separately e.g. not with original papers, etc).		0	
38	01/14/2011		L130	Receipt of all Acknowledgement Letters		0	
37	01/14/2011		L197	Receipt of Acknowledgment Letter		0	
36	01/12/2011		MNFEE	Mail Notice of Required Fees Due		0	
35	01/11/2011		NFEE	Fee (additional) Due Notice		0	
34	01/10/2011		FWDX	Date Forwarded to Examiner		0	
33	01/05/2011		A...	Response after Non-Final Action		0	
32	10/05/2010		MCTNF	Mail Non-Final Rejection		0	
31	10/01/2010		CTNF	Non-Final Rejection		0	
27	07/13/2010		FWDX	Date Forwarded to Examiner		0	
26	07/09/2010		ELC.	Response to Election / Restriction Filed		0	
25	06/10/2010		PG-ISSUE	PG-Pub Issue Notification		0	
24	06/09/2010	10/22/2007	MCTRS	Mail Restriction Requirement	961	15	
23	06/07/2010		CTRS	Restriction/Election Requirement		0	
22	03/30/2010		DOCK	Case Docketed to Examiner in GAU		0	
21	03/24/2010		DOCK	Case Docketed to Examiner in GAU		0	
20	03/04/2010		PG-PB-DT	PG-Pub Notice of new or Revised projected publication date		0	
19	03/04/2010		OIPE	Application Dispatched from OIPE		0	
17	02/25/2010		L197	Receipt of Acknowledgment Letter		0	
16	02/25/2010		L197	Receipt of Acknowledgment Letter		0	
39	01/18/2010		LET.	Miscellaneous Incoming Letter		0	
15	06/22/2007		L175	Applicant response received		0	
13	05/23/2007		COMP	Application Is Now Complete		0	
14	05/22/2007		PGPW	Waiting LR clearance		0	
10	05/22/2007		ML170	Request for Applicant Statement Regarding Potential NASA Interest (45-Day Letter) Mailed		0	
9	05/17/2007		ML196	Agency Referral Letter Mailed		0	
8	05/17/2007		ML196	Agency Referral Letter Mailed		0	
7	05/15/2007		L170	Referred for NASA Property Rights review by L&R LARS		0	
6	05/15/2007		L196	Referred by L&R for Third-Level Security Review. Agency Referral Letter Generated		0	
5	05/15/2007		L196	Referred by L&R for Third-Level Security Review. Agency Referral Letter Generated		0	
4	05/14/2007		L198	Referred to Level 2 (LARS) by OIPE CSR		0	
3	05/14/2007		CLSS	CASE CLASSIFIED BY OIPE		0	
2	05/12/2007		SCAN	IFW Scan & PACR Auto Security Review		0	
1	05/04/2007		IEXX	Initial Exam Team nn		0	
0.5	05/04/2007		EFILE	Filing date		0	

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In re Patent No. 8,129,041	:	
Ghasripoor et al.	:	
Application No. 11/744,506	:	LETTER REGARDING
Issue Date: March 6, 2012	:	PATENT TERM ADJUSTMENT
Filed: May 4, 2007	:	
Atty Docket No. 19441-0166	:	

This decision is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d), filed March 16, 2012. Patentee requests that the patent term adjustment be corrected from one thousand, five hundred and ninety-seven (1597) days to one thousand, three hundred and forty-one (1341) days.

The request for reconsideration of the patent term adjustment under 37 C.F.R. § 1.705(b) is **DISMISSED as moot**.

On March 6, 2012, the above-identified application matured into U.S. Patent No. 8,129,041 with a patent term adjustment of 1341 days, and not 1597 days as asserted by Patentee on the second page of this petition. This request for reconsideration of patent term adjustment was timely filed within two months of the issue date of the patent. See 37 C.F.R. § 1.705(d).

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The record supports a conclusion that this patent is not subject to a terminal disclaimer.

As set forth above, Patentee requests that the patent term adjustment be corrected 1341 days, however this patent issued with a patent term adjustment of 1341 days. In view thereof, no adjustment to the patent term will be made. It follows that a certificate of correction is not required.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. § 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. § 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3225.[1]

Paul Shanoski
Senior Attorney
Office of Petitions

[1] Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.

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In re Patent No. 7,923,257 Cerda et al. Issue Date: April 12, 2011 Application No. 11/744,518 Filed: May 4, 2007 Attorney Docket No. 10296-081001 Title: DETECTING ISOMERS USING DIFFERENTIAL DERIVATIZATION MASS SPECTROMETRY	DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT AND NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION

This is a decision on the petition filed on June 13, 2011, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by five hundred sixty-six (566) days.

The request for reconsideration of the patent term adjustment (PTA) pursuant to 37 CFR 1.705(d) is **Granted-in-Part.**

The above-identified application matured into U.S. Pat. No. 7,923,257 on April 12, 2011. The patent issued with a patent term adjustment of 437 days. The instant application for patent term adjustment was timely filed in accordance with 37 CFR 1.705(d). Patentee contests the period of adjustment of 166 days accorded pursuant to 37 CFR 1.702(b) and assert that the correct period of adjustment under 37 CFR 1.702(b) is 294 days. Patentee also states that applicant delay should be 210 not 211 days as there is a one day overlap associated with the 37 CFR 1.704 (c)(10)reductions of 89 and 1 day.

Petitioner's arguments regarding 1.702(b) delay have been carefully considered, but are not persuasive. The period of adjustment pursuant to 37 CFR 1.702(b) was properly calculated at 166 days.

35 USC 154(b)(1)(B) states in relevant part:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including — (i) any time consumed by continued examination of the application requested by the applicant under section 132(b).

37 CFR 1.702(b) states in relevant part:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including: (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b).

37 CFR 1.703(b) states in relevant part:

The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the following periods: (1) The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is time

consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56365, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Accordingly, in the instant matter, and in compliance with the provisions of law and rules set forth above, the period of adjustment under § 1.702(b) is 166 days.

Patentee's argument that the 1 day reduction should be removed from applicant delay due to overlap is warranted. As such patentee's delay total 210 (27 + 94 + 89) 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 application is being forwarded to the Certificate of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **four hundred thirty-eight (438)** days.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3215.

Charlema Grant

Charlema Grant
Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,923,257 B2

DATED : April 12, 2011 **DRAFT**

INVENTOR(S) : Cerda 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 437 days

Delete the phrase "by 437 days" and insert – by 438 days--

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OFFICE OF PETITIONS

In re Patent No. 7,923,257
Cerda et al.
Issue Date: April 12, 2011
Application No. 11/744,518
Filed: May 4, 2007
Attorney Docket No. 10296-081001
Title: DETECTING ISOMERS USING DIFFERENTIAL DERIVATIZATION MASS SPECTROMETRY

DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

This is a decision on the "RESPONSE TO DECISION ON APPLICATION FOR PATENT TERM ADJUSTMENT AND NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION" filed July 20, 2011. Patentees request that the determination of patent term adjustment under 35 U.S.C. § 154(b) be corrected from 438 days to 566 days.

Patentees also 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 Abbott Biotherapeutics Corp v. Kappos, 1:2010cv01853 (D.D.C. 2010). There is no specific regulatory provision for requesting that a petition under 37 CFR 1.705(d) be held in abeyance.

The petition to change patent term adjustment determination under 35 U.S.C. § 154(b) from 438 days to a 566 days is **DENIED.**

BACKGROUND

On April 12, 2011, the above-identified application matured into U.S. Patent No. 7,923, 257, with a revised patent term adjustment of 437 days. A petition decision under 37 CFR 1.705(d) mailed on June 20, 2011 adjusted the patent term to 438 days. On July 20, 2011, patentees timely submitted this request for reconsideration of patent term adjustment, asserting that the correct number of days of Patent Term Adjustment is 566

days. Patentees maintain that the Office incorrectly calculated Office delay pursuant to 37 CFR 1.702(b). Patentees contend that the Office erred in subtracting from the "B delay" a period of time that was not "consumed by continued examination of the application." Specifically, Patentees argue that (after the filing of the request for continued examination) the Office mailed a Notice of Allowance on December 6, 2010, thereby closing examination of the application on that date. Thus, Patentee argues no continued examination took place during the 128 day period from December 6, 2010 (the mailing date of the Notice of Allowance) until April 12, 2011 (the date the patent was issued). As such, Patentees maintain that the "B delay" should include 128 days and be increased from 166 to 294 days. Patentees conclude that the correct patent term adjustment is 566 days (the sum of 482 days of "A delay" and 294 days of "B delay" minus 210 days of applicant delay").

RELEVANT STATUTE AND REGULATIONS

The statutory basis for calculation of "B delay" is 35 U.S.C. 154(b)(1)(B) GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, which provides that:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including –

(i) any time consumed by continued examination of the application requested by the applicant under section 132(b);

(ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or

(iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

The implementing regulation, 37 CFR 1.702(b) provides that:

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including:

(1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);

(2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);

(3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;

(4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or

(5) Any delay in the processing of the application by the Office that was requested by the applicant.

OPINION

Patentees' arguments have been considered, but not found persuasive. The Office calculated the period of "B delay" pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 CFR 1.702(b)(1) as 166 days based on the application having been filed under 35 U.S.C. 111(a) on May 4, 2007 and the patent not having issued as of the day after the three year date, May 5, 2010, and a request for continued examination under 132(b) having been filed on October 18, 2010. 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

[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:

applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

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(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by

the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application

by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F. Supp. 2d 138, 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)[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

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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.

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 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,

[3] Thus, on occasion, even where a request for continued examination has already been filed and a notice of allowance issued pursuant to that request, applicant may file a further request for continued examination.

in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

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 566 days. Therefore, the petition to change the patent term adjustment indicated on the above-identified patent to 566 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 Charlema Grant, Petitions Attorney at (571) 272-3215.

Anthony Knight
Director
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 10/05/10

TO SPE OF : ART UNIT 3727

SUBJECT : Request for Certificate of Correction for Appl. No.: 11744552 Patent No.: 7749048

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (C of C)
Randolph Square 9D40-D
Palm Location 7580
[redacted]

Lamonte Newsome
Certificates of Correction Branch
571-272-3421

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

X **Approved**	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Formatted: Indent: Left: 1.22"

Comments: Entry recommended. /Robert Rose/

PTOL-306 (REV. 7/03) U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Monica S. Carter

MONICA CARTER
SUPERVISORY PATENT EXAMINER

3727

SPE Art Unit

PAGE 2/2 * RCVD AT 10/6/2010 12:11:09 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-5/16 * DNIS:2709990 * CSID:5712730275 * DURATION (mm-ss):00-30

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MINNEAPOLIS MN 55440-1022

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OFFICE OF PETITIONS

In re Patent No. 7,858,369 :
Issued: December 28, 2010 : DECISION ON PATENT TERM
Application No. 11/744,590 :
Filed: May 4, 2007 :
Atty. Dkt. No.: 13425-187002 :

This is a decision on the application for patent term adjustment filed February 28, 2011 requesting that the patent term adjustment be increased from 204 days to 325 days.

The request for reconsideration of the patent term adjustment (PTA) pursuant to 37 CFR 1.705(d) is **DISMISSED**.

The above-identified application matured into U.S. Pat. No. 7,858,369 on December 28, 2010. The patent issued with a patent term adjustment of 204 days. The instant application for patent term adjustment was timely filed in accordance with 37 CFR 1.705(d). Patentee contests the period of adjustment of 27 days accorded pursuant o 37 CFR 1.702(b) and assert that the correct period of adjustment under 37 CFR 1.702(b) is 148 days.

Petitioner's arguments have been carefully considered, but are not persuasive. The period of adjustment pursuant to 37 CFR 1.702(b) was properly calculated at 27 days.

35 USC 154(b)(1)(B) states in relevant part:

> Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including — (i) any time consumed by continued examination of the application requested by the applicant under section 132(b).

37 CFR 1.702(b) states in relevant part:

> Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application, but not including: (1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b).

37 CFR 1.703(b) states in relevant part:

> The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the following periods: (1) The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued.

Accordingly, in the instant matter, and in compliance with the provisions of law and rules set forth above, the period of adjustment under § 1.702(b) is 27 days, the period from June 1, 2010, the date that the RCE was filed, to December 28, 2010, the date that the patent issued, being excluded from the period of adjustment under 37 CFR 1.702(b).

In view thereof, no adjustment to the patent term will be made.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

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OFFICE OF PETITIONS

FISH & RICHARDSON P.C. (TC)
PO BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 7,858,369
Issued: December 28, 2010
Application No. 11/744,590
Filed: May 4, 2007
Atty. Dkt. No.: 13425-187002

: DECISION ON REQUEST FOR
: RECONSIDERATION OF
: PATENT TERM ADJUSTMENT

This is a decision on the request for reconsideration of decision mailed May 18, 2011 with respect to the application for patent term adjustment under 37 CFR 1.704(d) filed February 28, 2011. This request, filed July 18, 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 Abbott Biotherapeutics Corp v. Kappos, 1:2010cv01853 (D.D.C. 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. 7,858,369 on December 28, 2010 with a revised patent term adjustment of 204 days. On May 18, 2011, a decision on patentees' application for patent term adjustment under 37 CFR 1.705(d), filed February 28, 2011, was mailed. The decision under 37 CFR 1.705(d) mailed May 18, 2011 dismissed patentees' request for increase in patent term adjustment from 204 days to 325 days.

Patentees herein request that the patent term adjustment for the above-identified patent be increased from 204 days to 325 days (207 days pursuant to 37 CFR 1.703(a) plus 148 days pursuant to 37 CFR 1.703(b) less 30 days 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 "consumed by continued examination of the application." Specifically, patentees argue that subsequent to the filing of the request for continued examination on June 1, 2010, examination of the application closed on August 30, 2010, the date upon which the Notice of Allowance was mailed. Thus, patentees argue that no continued examination took place

during the 121 day period from August 30, 2010 (the mailing date of the Notice of Allowance) until December 28, 2010 (the date the patent was issued). As such, patentees maintain that the "B delay" should include the 121 days and be increased from 27 days to 148 days. Thus, patentees conclude that the correct patent term adjustment is thus 325 days (the sum of 207 days of "A delay" and 148 days of "B delay" minus 30 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' 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 27 days based on the application having been filed under 35 USC 111(a) on May 4, 2007 and the patent not having issued as of May 5, 2010, the day after the date that is three years after the date that the application was filed, and a request for continued examination under 132(b) having been filed on June 1, 2010. In other words, the 121-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.

---

[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.

Further, counting the period of time excluded from the "B delay" for the filing of a request for continued examination under 35 U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentees do not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentees' argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F. Supp. 2d 138, 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)[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)

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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.

appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See, 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See, 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under 35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in BlackLight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See, BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See, In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See, 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37

CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See, 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[3] permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See, 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

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[3] Note, 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

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 325 days. Therefore, the petition to change the patent term adjustment indicated on the above-identified patent to 325 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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Date: 03/29/11

Patent No. : 7878025 B2
Ser. No. : 11/744,606
Inventor(s) : **Rydlewicz**
Issued : **February 1, 2011**
Title : Oval shaped diamond cut having hearts and arrows pattern
Docket No. : **DE1706**

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322 and/or 1.323.

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

In view of the foregoing, your request, in this mater, is hereby denied.

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1.17(i) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail: Mail Stop PETITIONS

Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-0025
ATTN: Office of Petitions

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, no additional fee is required.

Lamonte M. Newsome

Lamonte M. Newsome
For Mary Diggs, Supervisor
Decisions & Certificates
Of Correction Branch
(571) 272-3421 or (703) 305-8309

David A. Einhorn, Esq.
Baker & Hostetler LLP
45 Rockefeller Plaza
New York NY 10111

LMN

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MAILED

MAY 23 2011

OFFICE OF PETITIONS

David A. Einhorn, Esq.
Baker & Hostetler LLP
45 Rockefeller Plaza
New York NY 10111

Patent No. 7,878,025	:	
Issue Date: February 1, 2011	:	
Application No. 11/744,606	:	ON PETITION
Filed: May 4, 2007	:	
Attorney Docket No. DEI706	:	

This is a decision on the petition filed May 3, 2011, which is being treated as a request under 37 CFR 3.81(b) to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The petition is **GRANTED**.

The patent file is being forwarded to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

The petition fee of $130 will be charged to petitioner's deposit account. The payment of this fee has been authorized by the petitioner.

Telephone inquiries concerning this decision may be directed to the Kimberly Inabinet at (571) 272-4618. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (703) 756-1814.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

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OBLON, SPIVAK, MCCLELLAND
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ALEXANDRIA VA 22314

MAILED
SEP 12 2011
OFFICE OF PETITIONS

In re Application of :
Gleeson, et al. :
Application No. 11/744,622 : DECISION
Filed/Deposited: 4 May, 2007 :
Attorney Docket No. 308410US26CONT :

This is a decision on the petition filed on 7 September, 2011, pursuant to 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition pursuant to 37 C.F.R. §1.181 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition pursuant to 37 C.F.R. §1.181."

This is **not** a final agency action within the meaning of 5 U.S.C. §704.

As to the Request to Withdraw
the Holding of Abandonment

Petitioner is directed to the Commentary at MPEP §711.03(c)(I) for guidance as to the proper showing requirements for relief pursuant to 37 C.F.R. §1.181.

Petitioner appears not to comply with the guidance in the Commentary at MPEP §711.03(c)(I)—as discussed below, Petitioner has failed to satisfy the showing requirements set forth there. Petitioner may find it beneficial to review that material and move step-wise through that guidance in the effort to satisfy the showing requirements (statements and supporting documentation).

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the final Office action mailed on 5 August, 2010, with reply due absent extension of time on or before 5 November, 2011.

On Monday, 7 February, 2011, Petitioner filed a request and fee for extension of time and a Notice of Appeal and fee, with reply due absent extension of time on or before 7 April, 2011.

The Office mailed the Notice of Abandonment on 17 August, 2011.

On 7 September, 2011, Petitioner filed, *inter alia*, a request and fee for extension of time and a petition pursuant to 37 C.F.R. §1.181 seeking withdrawal of the holding of abandonment, but failing to make the showing required pursuant to 37 C.F.R. §1.181, and as outlined in the guidance in the Commentary at MPEP §711.03(c) (I), and as discussed below. Notably, while the matter potentially was extendable through 7 September, 2011, Petitioner's failure to file a proper reply (*e.g.*, an Appeal Brief and fee) also marked the expiration of the statutory period.

The application went abandoned by operation of law after midnight 7 September, 2011.

Thus, while the Notice of Abandonment may have been mailed somewhat precipitously, there is no indication at this writing that a proper and timely reply was filed by Petitioner.

It appears that Petitioner's only recourse may be to file a petition pursuant to pursuant to 37 C.F.R. §1.137(b), with the requirements thereof (*i.e.*, petition, fee, reply, statement of unintentional delay, and terminal disclaimer and fee where required)—see: the guidance in the Commentary at MPEP §711.03(c)(II).

With regard to Petitioner's request to withdraw the holding of abandonment pursuant to 37 C.F.R. §1.181, the guidance in the Commentary at MPEP §711.03(c)(I) provides in pertinent part as to timely fling:

***

> 37 C.F.R. §1.10(c) through §1.10(e) and §1.10(g) set forth procedures for petitioning the Director of the USPTO to accord a filing date to correspondence as of the date of deposit of the correspondence as "Express Mail." A petition to withdraw the holding of abandonment relying upon a timely reply placed in "Express Mail" must include an appropriate petition under 37 C.F.R. §1.10(c), (d), (e), or (g) (see MPEP §513). When a paper is shown to have been mailed to the Office using the "Express Mail" procedures, the paper must be entered in PALM with the "Express Mail" date.

Similarly, applicants may establish that a reply was filed with a postcard receipt that properly identifies the reply and provides prima facie evidence that the reply was timely filed. See MPEP §503. For example, if the application has been held abandoned for failure to file a reply to a first Office action, and applicant has a postcard receipt showing that an amendment was timely filed in response to the Office action, then the holding of abandonment should be withdrawn upon the filing of a petition to withdraw the holding of abandonment. When the reply is shown to have been timely filed based on a postcard receipt, the reply must be entered into PALM using the date of receipt of the reply as shown on the post card receipt.

Where a certificate of mailing under 37 C.F.R. §1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 C.F.R. 1.8(b) and MPEP §512. As stated in 37 C.F.R. §1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application). When the correspondence is shown to have been timely filed based on a certificate of mailing, the correspondence is entered into PALM with the actual date of receipt (i.e., the date that the duplicate copy of the papers was filed with the statement under 37 C.F.R. §1.8).

37 C.F.R. §1.8(b) also permits applicant to notify the Office of a previous mailing or transmission of correspondence and submit a statement under 37 C.F.R. §1.8(b)(3) accompanied by a duplicate copy of the correspondence when a reasonable amount of time (e.g., more than one month) has elapsed from the time of mailing or transmitting of the correspondence. Applicant does not have to wait until the application becomes abandoned before notifying the Office of the previous mailing or transmission of the correspondence. Applicant should check the private Patent Application Information Retrieval (PAIR) system for the status of the correspondence before notifying the Office. See MPEP §512. [1]

***

A Petitioner unable to comply with and/or otherwise satisfy these requirements may 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)

[1] *See*: MPEP §711.03(c) (I)(B).

Out of an abundance of caution, Petitioners always are reminded that the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (*see*: 37 C.F.R. §1.181(f)), and those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[2]

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994). And the regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application.[3],[4]

Moreover, the Office has set forth in the Commentary at MPEP §711.03(c)(I) the showing and timeliness requirements for a proper showing for relief under 37 C.F.R. §1.181 in these matters.

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other

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[2] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on Petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §11.18 (formerly 37 C.F.R. §10.18) to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

[3] See: Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. at 53158-59 (October 10, 1997), 1203 Off. Gaz. Pat. Office at 86-87 (October 21, 1997).

[4] The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition. (Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.) Delays in responding properly raise the question whether delays are unavoidable. Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) And the Petitioner must be diligent in attending to the matter. Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care. (By contrast, 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.))

> means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[5]

Allegations as to the Request to
Withdraw the Holding of Abandonment

The guidance in the Commentary at MPEP §711.03(c)(I) specifies the showing required and how it is to be made and supported.

Petitioner appears not to have made the showing required.

CONCLUSION

Accordingly, the petition pursuant to 37 C.F.R. §1.181 is **dismissed**.

ALTERNATIVE VENUE

Should Petitioner wish to revive the application, Petitioner may wish to properly file a petition to the Commissioner pursuant to 37 C.F.R. §1.137(b) requesting revival of an application abandoned due to unintentional delay. (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.)

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[5] In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By facsimile: **(571) 273-8300**
Attn: Office of Petitions

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[6]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

[6] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
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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OBLON, SPIVAK, MCCLELLAND
MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA VA 22314

MAILED
DEC 20 2011
OFFICE OF PETITIONS

In re Application of :
Gleeson, et al. :
Application No. 11/744,622 : DECISION
Filed/Deposited: 4 May, 2007 :
Attorney Docket No. 308410US26CONT :

This is a decision on the petition filed on 1 November, 2011, 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 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 final Office action mailed on 5 August, 2010, with reply due absent extension of time on or before 5 November, 2011.

On Monday, 7 February, 2011, Petitioner filed a request and fee for extension of time and a Notice of Appeal and fee, with reply due absent extension of time on or before 7 April, 2011.

The Office mailed the Notice of Abandonment on 17 August, 2011.

On 7 September, 2011, Petitioner filed, *inter alia*, a request and fee for extension of time and a petition pursuant to 37 C.F.R. §1.181 seeking withdrawal of the holding of abandonment, but

failing to make the showing required pursuant to 37 C.F.R. §1.181, and as outlined in the guidance in the Commentary at MPEP §711.03(c) (I), and as discussed below. Notably, while the matter potentially was extendable through 7 September, 2011, Petitioner's failure to file a proper reply (*e.g.,* an Appeal Brief and fee) also marked the expiration of the statutory period.

The application went abandoned by operation of law after midnight 7 September, 2011.

Thus, while the Notice of Abandonment may have been mailed somewhat precipitously, there was no indication on the original petition that a proper and timely reply was filed by Petitioner. The Petitioner failed to satisfy the showing consistent with the guidance in the Commentary at MPEP §711.03(c)(I) as to timely filing/reply; the petition was dismissed on 12 September, 2011.

On 1 November, 2011, Petitioner re-advanced the request to withdraw the holding of abandonment pursuant to 37 C.F.R. §1.181, averred timely reply, and this time proceeded to demonstrate a timely reply in the form of a request for extension of time in the instant application and the submission of a continuing application in the form of Application No. 13/226,916—thus, seeking to satisfy the showing consistent with the guidance in the Commentary at MPEP §711.03(c)(I) as to timely filing/reply. (MPEP §711.03(c) II.A.2.(c)(C)).

With regard to Petitioner's request to withdraw the holding of abandonment pursuant to 37 C.F.R. §1.181, the guidance in the Commentary at MPEP §711.03(c)(I) provides in pertinent part as to timely filing:

***

> 37 C.F.R. §1.10(c) through §1.10(e) and §1.10(g) set forth procedures for petitioning the Director of the USPTO to accord a filing date to correspondence as of the date of deposit of the correspondence as "Express Mail." A petition to withdraw the holding of abandonment relying upon a timely reply placed in "Express Mail" must include an appropriate petition under 37 C.F.R. §1.10(c), (d), (e), or (g) (see MPEP §513). When a paper is shown to have been mailed to the Office using the "Express Mail" procedures, the paper must be entered in PALM with the "Express Mail" date.
>
> Similarly, applicants may establish that a reply was filed with a postcard receipt that properly identifies the reply and provides prima facie evidence that the reply was timely filed. See MPEP §503. For example, if the application has been held abandoned for failure to file a reply to a first Office action, and applicant has a postcard receipt showing that an amendment was timely filed in response to the Office action, then the holding of abandonment should be withdrawn upon the filing of a petition to withdraw the holding of abandonment. When the reply is shown to have been timely filed based on a postcard receipt, the reply must be entered into PALM using the date of receipt of the reply as shown on the post card receipt.

> Where a certificate of mailing under 37 C.F.R. §1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 C.F.R. 1.8(b) and MPEP §512. As stated in 37 C.F.R. §1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application). When the correspondence is shown to have been timely filed based on a certificate of mailing, the correspondence is entered into PALM with the actual date of receipt (i.e., the date that the duplicate copy of the papers was filed with the statement under 37 C.F.R. §1.8).
>
> 37 C.F.R. §1.8(b) also permits applicant to notify the Office of a previous mailing or transmission of correspondence and submit a statement under 37 C.F.R. §1.8(b)(3) accompanied by a duplicate copy of the correspondence when a reasonable amount of time (e.g., more than one month) has elapsed from the time of mailing or transmitting of the correspondence. Applicant does not have to wait until the application becomes abandoned before notifying the Office of the previous mailing or transmission of the correspondence. Applicant should check the private Patent Application Information Retrieval (PAIR) system for the status of the correspondence before notifying the Office. See MPEP §512. [1]

***

A Petitioner unable to comply with and/or otherwise satisfy these requirements may revive the application: Petitioner may wish to properly file a petition to the Commissioner requesting revival of an application abandoned due to unintentional delay under 37 C.F.R. §1.137(b). (See: http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c)

Out of an abundance of caution, Petitioners always are reminded that the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (*see*: 37 C.F.R. §1.181(f)), and those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[2]

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[1] *See*: MPEP §711.03(c) (I)(B).

[2] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on Petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §11.18 (formerly 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). And the regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application.[3],[4]

Moreover, the Office has set forth in the Commentary at MPEP §711.03(c)(I) the showing and timeliness requirements for a proper showing for relief under 37 C.F.R. §1.181 in these matters.

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[5]

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[3] See: Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. at 53158-59 (October 10, 1997), 1203 Off. Gaz. Pat. Office at 86-87 (October 21, 1997).

[4] The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition. (Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.) Delays in responding properly raise the question whether delays are unavoidable. Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) And the Petitioner must be diligent in attending to the matter. Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care. (By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.))

[5] In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

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 as considered pursuant to 37 C.F.R. §1.181 is **granted**, and the 17 August, 2011, Notice of Abandonment hereby is **vacated**.

The instant application is released to the Technology Center/AU 1784 for further processing in due course as is necessary..

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[6]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

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[6] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 11/15/10 **Paper No.:** —

TO SPE OF : ART UNIT 1634

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/744647 Patent No.: 7794946 B2

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Virginia Tolbert
Certificates of Correction Branch
571-272-0460

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: /JCS/

Dave Nguyen
Digitally signed by Dave Nguyen
DN: cn=Dave Nguyen, c=US, o=TC 1600, ou=AU 1634, email=dave.nguyen@uspto.gov
Date: 2010.12.14 09:42:47 -05'00'

UNITED STATES 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.

OBLON, SPIVAK, MCCLELLAND
MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA VA 22314

MAILED
SEP 27 2011
OFFICE OF PETITIONS

In re Application of :
Gleeson et al. : DECISION GRANTING PETITION
Application No. 11/744,675 :
Filed: May 4, 2007 :
Atty Docket No. 308406US96CONT:

This is a decision on the PETITION TO WITHDRAW NOTICE OF ABANDONMENT and REQUEST FOR EXTENSION OF TIME both filed September 7, 2011, which is properly treated as a no-fee petition.

By Notice of Abandonment mailed August 17, 2011, applicant was advised that the above-identified application became abandoned for failure to file a reply to the final Office action mailed August 5, 2010. A Notice of Appeal, made timely by an extension of time, was timely filed on February 7, 2011. No further reply received, the courtesy Notice of Abandonment was mailed.

On petition, applicant files a five-month extension of time and a showing that a continuing application is filed therewith.

Applicant is correct that withdrawal of the holding of abandonment is warranted. Applicant had two (2) months from the filing date of the notice of appeal (with extensions of time obtainable under 37 CFR 1.136) filed February 7, 2011 to file the appeal brief (accompanied by the fee required by 37 CFR 41.20(b)(2)) or take other appropriate action. As five months is the maximum extendable period, the period for applicant to take further action was extendable to September 7, 2011. The mailing of the notice of abandonment on August 17, 2011 was premature.

On September 7, 2011, applicant filed the required extension of time for response within the fifth month in this application. Applicant also filed a continuing application.

However, as no reply to the Office action of August 5, 2010 is filed and the extension is obtained solely for the purpose of copendency with a continuing application, this application will become abandoned upon expiration of the extended period for reply.

Accordingly, the holding of abandonment per the Notice of August 17, 2011 is hereby **WITHDRAWN**.

The petition under § 1.181 is **GRANTED**.

No fee is required on petition under § 1.181.

Technology Center AU 1784 has been advised of this decision. The application is, thereby, forwarded to the Technology Center's technical support staff to withdraw the holding of abandonment per Notice of August 17, 2011. Nonetheless, provided no reply other than the continuing application is filed, this application is abandoned effective September 8, 2011 in favor of the continuing application filed September 7, 2011.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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HUMAN GENOME SCIENCES INC.
INTELLECTUAL PROPERTY DEPT.
14200 SHADY GROVE ROAD
ROCKVILLE MD 20850

MAILED

OCT 19 2010

OFFICE OF PETITIONS

In re Patent No. 7,781,176	: DECISION ON REQUEST FOR
Rosen et al.	: RECONSIDERATION OF
Issue Date: August 24, 2010	: PATENT TERM ADJUSTMENT
Application No. 11/744,695	: AND
Filed: May 4, 2007	: NOTICE OF INTENT TO ISSUE
Attorney Docket No. PZ003P5D1C1	: CERTIFICATE OF CORRECTION

This is a decision on the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d), filed October 4, 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 five hundred fifty (550) 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 fifty (550) days is **GRANTED**.

The Office acknowledges submission of the $200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **five hundred fifty (550) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,781,176 B2

DATED : August 24, 2010 **DRAFT**

INVENTOR(S) : Rosen 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 451 days

Delete the phrase "by 451 days" and insert – by 550 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 12,2011

In re Application of :

Patrick Nasiatka

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11744714

Filed : 04-May-2007

Attorney Docket No : 028080-0388

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed May 12,2011 , 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 3774 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	11744714
Filing Date	04-May-2007
First Named Inventor	Patrick Nasiatka
Art Unit	3774
Examiner Name	PAUL PREBILIC
Attorney Docket Number	028080-0388
Title	INTRAOCULAR CAMERA FOR RETINAL PROSTHESES

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	/Marc E. Brown/
Name	Marc E. Brown
Registration Number	28590

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DEC 15 2011

OFFICE OF PETITIONS

TRAN & ASSOCIATES
P.O. Box 68
Saratoga CA 95071-0068

In re Application of Bao Tran Application Number: 11/744,715 Filing Date: 05/04/2007 Attorney Docket Number: AFL-100C2 HugeIdea	: : : : : :	ON PETITION

This is a decision in response to the petition under 37 CFR 1.137(b) filed on November 20, 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 decision.

This application became abandoned on March 1, 2011, upon withdrawal of the Notice of Appeal filed on March 1, 2011, because no claims were allowed. Notice of Abandonment was mailed on June 7, 2011.

A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

The petition lacks item (1) in that a proper reply has not been filed. An amendment is not a proper reply after withdrawal of an appeal.

37 CFR 1.114 states, in pertinent part:

> 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.

MPEP 1215 states, in pertinent part:

> Prior to a decision by the Board, if an applicant wishes to withdraw an application from appeal and to reopen prosecution of the application, applicant can file a request for continued examination (RCE) under 37 CFR 1.114, accompanied by a submission (i.e., a reply responsive within the meaning of 37 CFR 1.111 to the last outstanding Office action) and the RCE fee set forth under 37 CFR 1.17(e).

Accordingly, an RCE and the fee and submission under 37 CFR 1.114 must be filed with a renewed petition.

Additionally, the statement of unintentional delay in the petition does not track the language set forth in 37 CFR

1.137(b)(3). It is recommended that petitioner use the attached form when filing a renewed petition.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

A reply may also be filed via EFS-Web.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Encl: PTO/SB/64

UNITED STATES PATENT AND TRADEMARK OFFICE

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Saratoga CA 95071-0068

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OFFICE OF PETITIONS

In re Application of	:	
Bao Tran	:	
Application No. 11/744,715	:	ON PETITION
Filed: 05/04/2007	:	
Attorney Docket No. AFL-100C2	:	
HugeIdea	:	

This is a decision in response to the renewed petition under 37 CFR 1.137(b) filed on December 31, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on March 1, 2011, upon withdrawl of the Notice of Appeal filed on March 1, 2011, because no claims were allowed. Notice of Abandonment was mailed on June 7, 2011. On November 20, 2011, a petition to revive was filed. On December 15, 2011, the petition was dismissed.

Receipt of the Request for Continued Examination and amendment as the submission required under 37 CFR 1.114, is acknowledged.

The application is being referred to Technology Center Art Unit 3689 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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IAN F. BURNS & ASSOCIATES
4790 Caughlin Parkway #701
RENO NV 89519-0907

MAILED
OCT 04 2011
OFFICE OF PETITIONS

In re Application of :
Seelig, et al. :
Application No. 11/744,766 :
Filed: May 4, 2007 :
Attorney Docket No. 619.9137 :

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28(c), filed September 21, 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.

Inquiries related to this communication 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
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Alexandria, VA 22313-1450
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MAILED Paper No.

AUG 16 2011

OFFICE OF PETITIONS

FISH & RICHARDSON P.C. (BO)
P.O. BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 7,951,608	:	DECISION ON REQUEST
Cerda et al.	:	FOR
Issue Date: May 31, 2011	:	RECONSIDERATION OF
Application No. 11/744,789	:	PATENT TERM ADJUSTMENT
Filed: May 4, 2007	:	and
Atty Docket No. 10296-080001	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on July 29, 2011 pursuant to 37 C.F.R. § 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by seven hundred and eighty (780) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by seven hundred and fifty-four (754) days is **GRANTED to the extent indicated herein.**

Submission of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fee is required.

Patentee has indicated that this patent is not subject to a terminal disclaimer.[1]

First, Patentee argues that one additional period of applicant delay is warranted. 37 C.F.R. § 1.703(c)(8) indicates that the "[s]ubmission 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" constitutes a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application, "in which case the period of adjustment set forth in § 1.703 shall be reduced by

[1] Petition, page 5.

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."
A notice of appeal was filed on December 30, 2010 and an Information Disclosure Statement was filed four days later on January 3, 2011. Patentee argues that a four-day reduction is warranted pursuant to 37 C.F.R. § 1.703(c)(8).

Patentee's argument has been considered, and has been deemed to be persuasive.

Second, Patentee disputes the period of time excluded from B delay for appellate review. Patentee's argument has been considered, but not found persuasive. The period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). An appeal to the Board of Patent Appeals and Interferences commences with the filing of a notice of appeal. See 35 U.S.C. 134(a). Generally, an appeal to the Board of Patent Appeals and Interferences ends with either 1) a Board decision, 2) the examiner reopening prosecution and issuing another Office action, or 3) the applicant filing a request to withdraw the appeal and reopen prosecution (e.g. the filing of a request for continued examination). In this instance the period consumed by appellate review is 26 days, beginning on December 30, 2010, the date of filing of the notice of appeal and ending on January 24, 2011, the subsequent date of the mailing of a notice of allowance. Thus, B delay is 366 (392 - 26) 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.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or

patentee an opportunity to be heard. Accordingly, Patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Any subsequent filing pertaining to this matter should indicate that the attorney handling this matter is Paul Shanoski, and may be submitted by mail,[2] hand-delivery,[3] or facsimile.[4] Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web.[5]

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **seven hundred and fifty-four (754) days.**

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3225.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

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[2] Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
[3] Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.
[4] (571) 273-8300: please note this is a central facsimile number.
[5] https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,951,608 B2

DATED : **May 31, 2011** **DRAFT**

INVENTOR(S) : Cerda 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 758 days

Delete the phrase "by 758 days" and insert – by 754 days--

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LAWSON & WEITZEN, LLP
88 BLACK FALCON AVE
SUITE 345
BOSTON MA 02210

MAILED
DEC 13 2010
OFFICE OF PETITIONS

In re Patent No. 7,747,454	:	
Bartfeld et al.	:	DECISION ON REQUEST FOR
Issue Date: June 29, 2010	:	PATENT TERM ADJUSTMENT
Application No. 11/744,870	:	
Filed: May 6, 2007	:	
Atty Docket No. 40227-001	:	

This is a decision on the petition filed on June 24, 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 eighty-seven (87) days.

The request is **DISMISSED**.

Submission of the patent term adjustment application fee is a prerequisite prior to treatment on the merits of any application submitted pursuant to 37 CFR 1.705. The instant application was filed without the required $200.00. Further, a general authorization to charge any required fees, did not accompany the request.

Accordingly, the request is dismissed for failure to comply with the requirement of 37 CFR 1.705(b)(1) to submit the fee under § 1.18(e).

Telephone inquiries specific to this matter should be directed to the petitions attorney, Charlema Grant at (571) 272- 3215.

Anthony Knight
Director
Office of Petitions

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Dickinson Wright, PLLC
James E. Ledbetter, Esq.
International Square
1875 Eye Street, NW., Suite 1200
WASHINGTON, DC 20006

MAILED
JAN 03 2011
OFFICE OF PETITIONS

In re Application of
Herve Marche, et. al.
Application No. 11/745,032
Filed: May 7, 2007
Attorney Docket No. L7307.07123

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed on October 19, 2010, requesting revival of the above-identified application.

The petition under 37 CR 1.137(a) is **dismissed as moot**[1], since the present petition is properly treated as a petition under 37 CFR 1.181, to withdraw the holding of abandonment.

The petition under 37 CFR 1.181 is **granted**.

The above application was held abandoned for failure to timely respond to the final Office action mailed October 15, 2009, which set a three (3) months period for reply. A reply was due on or before January 15, 2010. A Notice of Abandonment was mailed on June 21, 2010.

Petitioner argues that "a Response to the Final Rejection was filed on November 24, 2009, by the filing of a Request for New Office Action and resetting of Response Period via EFS-Web."

A review of record shows that a response to the final Office action was timely filed on November 24, 2009, as stated by petitioner. Therefore, since the response was timely submitted within three months from the mail date of the Office action of October 15, 2009, this application should not be abandoned.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status.

This application file is being referred to Technology Center Art Unit 3644 for consideration of the response received on November 24, 2009.

Telephone inquiries relating to this decision should be directed to Andrea Smith at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

David Bucci
Petitions Examiner

[1] The $540 petition fee submitted on October 19, 2010, will be credited back to petitioner's credit card, in due course.

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KENYON & KENYON LLP
1500 K STREET N.W.
SUITE 700
WASHINGTON, DC 20005

MAILED
APR 28 2011
OFFICE OF PETITIONS

In re Application of	:	
Masahiro Yamashita et al	:	
Application No. 11/745,072	:	DECISION ON PETITION
Filed: May 7, 2007	:	UNDER 37 CFR 1.313(c)(1)
Attorney Docket No. 12477/16	:	

This is a decision on the petition under 37 CFR 1.313(c), filed April 25, 2011, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **DISMISSED**.

The Office received a Request for Continued Examination (RCE) and petition under 37 CFR 1.182 to Seek Designation of the Application as a U.S. National Stage Application with this petition. Unfortunately, the petition under 37 CFR 1.182 is an improper RCE submission.

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).

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

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United States Patent and Trademark Office
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Kenyon & Kenyon LLP
1500 K Street N.W.
Suite 700
Washington, DC 20005

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MAY 06 2011

PCT LEGAL ADMINISTRATION

In re Application of: YAMASHITA et al.	:	
U.S. Application No.: 11/745,072	:	
Filing Date: May 07, 2007	:	
Attorney's Docket No.: 12477/16	:	DECISION
For: AROMATIC HYDROCARBON BASED PROTON EXCHANGE MEMBRANE AND DIRECT METHANOL FUEL CELL USING SAME	:	

This decision is issued in response to applicant's "Petition under 37 CFR 1.182 to Seek Designation of the Application as a U.S. National Stage Application" filed April 25, 2011. Applicant requests that the present application be treated as a U.S. National Phase of PCT/JP2005/020354 filed under 35 U.S.C. 371.

BACKGROUND

On November 07, 2005, applicant filed international application PCT/JP2005/020354 which claimed a priority date of November 10, 2004. The deadline for submission of the basic national fee was thirty months from the priority date, i.e., May 10, 2007.

On May 07, 2007, applicant initiated the present application by filing electronically a "Transmittal Letter To The United States Designated/Elected Office (DO/EO/US) Concerning A Submission Under 35 U.S.C. 371" (Form PTO-1390) requesting entry into the U.S. national stage for international application PCT/JP2005/020354. The Transmittal Letter was accompanied by, among other materials, fifty two (52) page specification, two (2) pages of claims, and an abstract; a declaration and power of attorney; a Preliminary Amendment; and a $940 fee payment.

During the electronic filing process, applicant identified the present application as a "Utility" application, rather than a national stage application filed under 35 U.S.C. 371. Accordingly, the application was processed by the USPTO as a filing under 35 U.S.C. 111(a).

On April 25, 2011, applicant filed the "Petition under 37 CFR 1.182 to Seek Designation of the Application as a U.S. National Stage Application" considered herein.

DISCUSSION

The USPTO has adopted a bright-line test for determining whether application papers will be processed under 35 U.S.C. 371 or alternatively under 35 U.S.C. 111(a). Under this standard, any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). See 37 CFR 1.495(g):

> The documents and fees submitted . . . must be clearly identified as a submission to enter the national stage under 35 U.S.C. 371. Otherwise the submission will be considered as being made under 35 U.S.C. 111(a).

In addition, section 1893.03(a) of the MPEP states that:

> If there are any conflicting instructions as to whether the filing is under 35 U.S.C. 111(a) or 35 U.S.C. 371, the application will be accepted as filed under 35 U.S.C. 111(a).

The Form PTO-1390 Transmittal Letter (and Preliminary Amendment) electronically filed by applicant on May 07, 2007 identified the application as a national stage filing under 35 U.S.C. 371. However, during the electronic filing process, applicant selected the application identifier "Utility," rather than the separate application identifier specifically applicable to national stage applications filed under 35 U.S.C. 371. This is evident from the Electronic Acknowledgment Receipt generated at the time of filing, which identifies the application as a "Utility" under 35 U.S.C. 111(a) application rather than a U.S. national stage application filed under 35 U.S.C. 371.

Applicant's identification of the application during the electronic filing process as a utility application filed under 35 U.S.C. 111(a) is a conflicting instruction that is not consistent with the intent to file a U.S. national stage application under 35 U.S.C. 371. Accordingly, the present application was properly treated by the USPTO as a filing under 35 U.S.C. 111(a). Applicant's request to have the application treated as a filing under 35 U.S.C. 371 is therefore appropriately dismissed.

CONCLUSION

The petition to convert the application to a filing under 35 U.S.C. 371 is **DISMISSED** without prejudice. The present application was properly treated by the USPTO as a filing under 35 U.S.C. 111(a).

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT

Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Tel: (571) 272-3298
Fax: (571) 273-0459

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1500 K STREET N.W.
SUITE 700
WASHINGTON, DC 20005

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MAY 06 2011
OFFICE OF PETITIONS

In re Application of :
Masahiro Yamashita et al :
Application No. 11/745,072 : ON PETITION
Filed: May 7, 2007 :
Attorney Docket No. 12477/16

This is a decision on the petition filed May 5, 2011 which is being treated as a renewed petition 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 March 21, 2011 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Irvin Dingle at (571) 272-3210.

This matter is being referred to Technology Center AU 1726 for processing of the request for continued examination under 37 CFR 1.114 filed April 25, 2011 and for consideration of the Information Disclosure Statement filed May 5, 2011.

/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).

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Suite 700
Washington, DC 20005

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PCT LEGAL ADMINISTRATION

In re Application of: YAMASHITA et al.
U.S. Application No.: 11/745,072
Filing Date: May 07, 2007
Attorney's Docket No.: 12477/16
For: AROMATIC HYDROCARBON BASED PROTON EXCHANGE MEMBRANE AND DIRECT METHANOL FUEL CELL USING SAME

DECISION

This decision is issued in response to applicant's "Substitute Petition under 37 CFR 1.182 to Seek Designation of the Application as a U.S. National Stage Application" filed June 02, 2011. Applicant requests that the present application be treated as a U.S. National Phase of PCT/JP2005/020354 filed under 35 U.S.C. 371.

BACKGROUND

On November 07, 2005, applicant filed international application PCT/JP2005/020354 which claimed a priority date of November 10, 2004. The deadline for submission of the basic national fee was thirty months from the priority date, i.e., May 10, 2007.

On May 07, 2007, applicant initiated the present application by filing electronically a "Transmittal Letter To The United States Designated/Elected Office (DO/EO/US) Concerning A Submission Under 35 U.S.C. 371" (Form PTO-1390) requesting entry into the U.S. national stage for international application PCT/JP2005/020354. The Transmittal Letter was accompanied by, among other materials, fifty two (52) page specification, two (2) pages of claims, and an abstract; a declaration and power of attorney; a Preliminary Amendment; and a $940 fee payment.

During the electronic filing process, applicant identified the present application as a "Utility" application, rather than a national stage application filed under 35 U.S.C. 371. Accordingly, the application was processed by the USPTO as a filing under 35 U.S.C. 111(a).

On April 25, 2011, applicant filed the "Petition under 37 CFR 1.182 to Seek Designation of the Application as a U.S. National Stage Application." In a decision dated 06 May 2011, applicant's petition under 37 CFR 1.182 was dismissed without prejudice.

On 02 June 2011, applicant filed "Substitute Petition under 37 CFR 1.182 to Seek Designation of the Application as a U.S. National Stage Application" considered herein.

DISCUSSION

As previously stated, the USPTO has adopted a bright-line test for determining whether application papers will be processed under 35 U.S.C. 371 or alternatively under 35 U.S.C. 111(a). Under this standard, any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). See 37 CFR 1.495(g):

> The documents and fees submitted . . . must be clearly identified as a submission to enter the national stage under 35 U.S.C. 371. Otherwise the submission will be considered as being made under 35 U.S.C. 111(a).

In addition, section 1893.03(a) of the MPEP states that:

> If there are any conflicting instructions as to whether the filing is under 35 U.S.C. 111(a) or 35 U.S.C. 371, the application will be accepted as filed under 35 U.S.C. 111(a).

The Form PTO-1390 Transmittal Letter electronically filed by applicant on May 07, 2007 identified the application as a national stage filing under 35 U.S.C. 371. However, during the electronic filing process, applicant selected the application identifier "Utility (Utility under 35 U.S.C. 111(a))," rather than the separate application identifier specifically applicable to national stage applications filed under 35 U.S.C. 371. This is evident from the Electronic Acknowledgment Receipt generated at the time of filing, which identifies the application as a "Utility" under 35 U.S.C. 111(a) application rather than a U.S. national stage application filed under 35 U.S.C. 371.

It is noted that at the time of filing the above-identified application, applicants were given the option of selecting one of nine radio buttons (Accelerated Exam, Design, Design Reissue, International Application for filing in the US receiving office, Provisional, Reexam, Utility (Utility under 35 U.S.C. 111(a)), Utility Reissue, or U.S. National Stage under 35 U.S.C. 371) for new application types. Applicant's identification of the application during the electronic filing process as a utility (utility application filed under 35 U.S.C. 111(a)) is a conflicting instruction that is not consistent with the intent to file a U.S. national stage application under 35 U.S.C. 371. Accordingly, the present application was properly treated by the USPTO as a filing under 35 U.S.C. 111(a). Applicant's request to have the application treated as a filing under 35 U.S.C. 371 is therefore appropriately dismissed.

Petitioner asserts that "the Transmittal Letter (Form PTO-1390, Preliminary Amendment and Declaration filed on May 07, 2007 clearly manifested that the application

was filed under 35 U.S.C. 371." In accordance with the notice at 1077 O.G. 13 (14 April 1987), if the applicant files a U.S. national application and clearly identifies in the accompanying oath or declaration the specification to which it is directed by referring to a particular international application by PCT Application Number and International Filing Date and that he or she is executing the declaration as, and seeking a U.S. Patent as, the inventor of the invention described in the identified international application, then the application will be accepted as filed under 35 U.S.C. 371. Merely claiming priority of an international (PCT) application in an oath or declaration will not serve to indicate a filing under 35 U.S.C. 371. Also, if there are any conflicting instructions as to whether the filing is under 35 U.S.C. 111(a) or 35 U.S.C. 371, the application will be accepted as filed under 35 U.S.C. 111(a). In this case, the selection of the "utility" application identifier referencing 37 CFR 1.111(a) was inconsistent with and contradicted any stated desire to enter the national stage under 35 U.S.C. 371.[1] Therefore, applicant's paper deposited on May 07, 2009 were properly treated as a filing under 35 U.S.C. 111(a).[2]

Further, petitioner states that "the term 'utility' application is not limited to U.S. application under 35 U.S.C. 111, and the term does not exclude U.S. national stage entries of international patent application under 35 U.S.C. 371." Petitioner's assertion is correct, however, in this situation, the "Utility" application identifier in the EFS-Web system refers to application under 35 U.S.C. 111(a), not application under 35 U.S.C. 371.

Since the application is being treated as a filing under 35 U.S.C. 111(a), applicant has not properly claimed benefit of the international application in accordance with 35 U.S.C. 120 and 37 CFR 1.78(a) and, the instant application cannot be considered as a continuing application of PCT/JP2005/020354. In order to claim benefit under 35 U.S.C. 120 to the prior-filed PCT application at this point, applicants must file a petition under 37 CFR 1.78(a)(3).

In conclusion, applicant has not provided any showing of sufficient cause (i.e., the loss of patent rights, the lack of an alternative remedy) that would justify the conversion of the present application, which has been properly processed as an application filed under 35 U.S.C. 111(a), to a national stage application filed under 35 U.S.C. 371. For example, as an alternative remedy, applicant may still file a proper national stage of PCT/JP2005/020354, accompanied by a petition for revival of the application under 37 CFR 1.137(b), and obtain

---

[1]MPEP section 201.06(c) states that 37 CFR 1.53(b) is the section under which all application are filed except: (A) an application resulting from entry of an international application into the national stage under 35 U.S.C. 371 and 37 CFR 1.495; (B) a provisional application under 35 U.S.C. 111(b) ad 37 CFR 1.53(c); or (C) a continued prosecution application (CPA) of a design application under 37 CFR 1.53(d).

[2]This application is consistent with the OG Notice "Minimum Requirements for Acceptance of Applications Under 35 U.S.C. 371 (the National Stage of PCT)" which provides that the Office will look to a transmittal or cover letter for an indication that the application papers are being filed under 35 U.S.C. 371.

the U.S. national stage application that was purportedly intended here.[3] (See Form (PTO/SB/64pct) Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally under 37 CFR 1.137(b).) This recommendation to file a petition under 37 CFR 1.137(b) should not be construed as an indication as to whether or not any such petition(s) will be favorably considered.

CONCLUSION

The petition to convert the application to a filing under 35 U.S.C. 371 is DISMISSED without prejudice. The present application was properly treated by the USPTO as a filing under 35 U.S.C. 111(a).

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Tel: (571) 272-3298
Fax: (571) 273-0459

[3]Application no. 11/745,072 should not be referred to when filing the National Stage application under 35 U.S.C. 371.

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Suite 700
Washington, DC 20005

MAILED
NOV 17 2011
PCT LEGAL ADMINISTRATION

In re Application of: YAMASHITA et al. :
U.S. Application No.: 11/745,072 :
Filing Date: May 07, 2007 :
Attorney's Docket No.: 12477/16 : DECISION
For: AROMATIC HYDROCARBON BASED :
PROTON EXCHANGE MEMBRANE AND :
DIRECT METHANOL FUEL CELL USING :
SAME :

This decision is issued in response to applicant's "Petition for Unintentionally Delayed Claim of Benefit of a Prior Application under 35 U.S.C. §365(c)" filed September 28 2011, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to the prior-filed international application set forth in the amendment filed September 28 2011.

The petition is **GRANTED**.

The present nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3).

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) a reference to the prior-filed nonprovisional applications has been included in an amendment to the first sentence of the specification following the title, as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) applicant's statement that "the entire delay in amending the first sentence of the specification to cross reference to prior international, PCT/JP2005/020354, as parent of a continuation application was not intentional. . . " is construed as meaning that "the entire delay between the date the claim was due under 37 CFR §1.78(a)(2)(ii) and the date the claim was filed was unintentional." If this is incorrect, petitioner must immediately notify the Office of PCT Legal Administration. As construed, petitioner's statement satisfied item (3) above.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the prior-filed 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 international applications, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Anthony Smith, Attorney Advisor, at (571) 272-3298.

This matter is being referred to Technology Center Art Unit 1726 for appropriate action on the amendment submitted September 28, 2011, including consideration by the examiner of the claim for benefit of the prior-filed application.

Bryan Lin

Bryan Lin
Legal Examiner
Office of PCT Legal Administration

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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ALLEGHENY TECHNOLOGIES
INCORPORATED
1000 SIX PPG PLACE
PITTSBURGH PA 15222-5479

MAILED
SEP 27 2011
OFFICE OF PETITIONS

In re Application :
Hebda, et al. :
Application No. 11/745,189 : PATENT TERM ADJUSTMENT
Filing or 371(c) Date: May 7, 2007 :
Dkt. No.: TWC-2027 CON :

This is in response to the application for patent term adjustment under 37 CFR 1.705(b), filed September 21, 2011.

Applicants argue that the Notice of Allowance should have indicated a patent term extension of 876 days and that the issue notification and patent should indicate a patent term extension of 1253 days. Applicants argue that the application is entitled to an additional adjustment of 414 days of B delay and 414 days of adjustment under 37 CFR 1.703(d)(1) due to the application being under a *de facto* secrecy order.

37 CFR 1.702(b)

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].

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).

37 CFR 1.703(d)(1)

With respect to applicants' argument that the application is entitled to further reduction as a consequence of the application being under a *de facto* secrecy order, applicants' arguments have been considered, but are not found persuasive. There is no indication that the application was ever subject to a secrecy order, secrecy having not been recommended. Accordingly, the request for additional adjustment pursuant to 37 CFR 1.703(d)(1) is DISMISSED.

In view thereof, no change to the patent term adjustment indicated in the Determination of Patent Term Adjustment mailed June 27, 2011 will be made.

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).

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).

---

[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) 272-3205.

/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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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

MAILED

AUG 10 2011

OFFICE OF PETITIONS

In re Patent No. 7,929,976	:	ON PETITION
Issue Date: April 19, 2011	:	
Application No. 11/745,196	:	
Filed: May 7, 2007	:	
Attorney Docket No. 10587.0287-02000	:	

This is a decision on the request filed July 28, 2011, a petition under 37 CFR 3.81(b) to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The 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(h) of this chapter.

The request for certificate of correction submitted with the petition does not reflect the assignee information to be corrected on the front page of the patent, therefore the petitioner has failed to comply with the provisions of 37 CFR 3.81(b). The request cannot be granted at this time.

Petitioner alleges the error to be corrected was made by the Patent and Trademark Office. Assignment data printed on the patent is based solely on the information supplied on The Fee(s) Transmittal Form (PTOL-85B). The assignment data on the patent was the same as indicated on the Fee Transmittal Form provided by applicant so the file record shows no error on the part of 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

Telephone inquiries related to this decision should be directed to the Kimberly Inabinet at (571) 272-4618.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

MAILED
SEP 09 2011
OFFICE OF PETITIONS

In re Patent No. 7,929,976	:	
Issue Date: April 19, 2011	:	
Application No. 11/745,196	:	ON PETITION
Filed: May 7, 2007	:	
Attorney Docket No. 10587.0287-02000	:	

This is a decision on the renewed request filed August 31, 2011, a petition under 37 CFR 3.81(b) to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The petition is **GRANTED**.

The patent file is being forwarded to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Telephone inquiries concerning this decision may be directed to the Kimberly Inabinet at (571) 272-4618. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (703) 756-1814.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

UNITED STATES 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 6600
Scottsdale, AZ 85251

MAILED
APR 04 2011
OFFICE OF PETITIONS

In re Application of	:	
Robert Adams, et al.	:	
Application No. 11/745,282	:	DECISION ON PETITION
Filed: May 7, 2007	:	TO WITHDRAW
Attorney Docket No. 10197.0100	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 16, 2011.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The request was signed by Michael J. Lang on behalf of all attorneys of record. All attorneys/agents have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

All future communications from the Office will be directed to the assignee of the entire interest at the first copied address below until otherwise properly notified by the applicant.

There is an outstanding Office action mailed December 22, 2010 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to Terri Johnson at 571-272-2991.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

cc: **Overby Farm, LLC**
1050 Top View Road
Bloomfield, MI 48304

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/745,282	05/07/2007	Robert Adams	10197.0100

CONFIRMATION NO. 1511

POWER OF ATTORNEY NOTICE

39602
THE NOBLITT GROUP, PLLC
4800 NORTH SCOTTSDALE ROAD
SUITE 6000
SCOTTSDALE, AZ 85251

OC000000046924764

Date Mailed: 04/04/2011

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 02/16/2011.

- 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.

/tsjohnson/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

UNITED STATES PATENT AND TRADEMARK OFFICE

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.
11/745,357	05/07/2007	Mark A. Crawford	P-7214/1	1652

64315 7590 12/12/2011
David W. Highet, VP & Chief IP Counsel
Becton, Dickinson and Company
(Snell & Wilmer)
1 Becton Drive, MC 110
Franklin Lakes, NJ 07417-1880

EXAMINER
NAGPAUL, JYOTI

ART UNIT	PAPER NUMBER
1797	

MAIL DATE	DELIVERY MODE
12/12/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

In re Patent No. CRAWFORD ET AL.	:	
Issue Date: 31 August 2010	:	**DECISION GRANTING**
Appl No.: 11/745,357	:	**PETITION**
Filed: May 07, 2007	:	*37 CFR 1.324*
For: VASCULAR ACCESS DEVICE TIME SENSITIVE STATUS INDICATION	:	

This is a decision on the petition filed 28 July 2011 to correct inventorship under 37 CFR 1.324.

The petition is granted.

The patented file is being forwarded to Certificate of Corrections Branch for issuance of a certificate naming only the actual inventor or inventors.

Jill A. Warden
Supervisory Patent Examiner
Art Unit 1773

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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K&L GATES LLP
IP DOCKETING
630 HANSEN WAY
PALO ALTO, CA 94304

MAILED

APR 04 2011

OFFICE OF PETITIONS

In re Application of :
Luis Chang :
Application No. 11/745,369 :
Filed: May 7, 2007 :
Attorney Docket No. 55595-00005 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed March 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 September 22, 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 December 23, 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 3693 for further processing.

Irvin Dingle
Petitions Examiner
Office of Petitions

cc: Jong Ho Lee
K&L Gates LLP
Four Embarcadero Center, Suite 1200
San Francisco, CA 94111

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Ditthavong Mori & Steiner, P.C.
918 Prince Street
Alexandria VA 22314

MAILED
MAY 23 2011
OFFICE OF PETITIONS

In re Application of

Leppanen, et al. :

Application No. 11/745,439

: DECISION ON PETITION

Filed: May 7, 2007

:

Attorney Docket No. **P5083US00**

This is a decision on the petition under 37 CFR 1.137(b), filed May 4, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The above-cited application became abandoned for failure to reply in a timely manner to the non-final Office action mailed July 9, 2010, which set a shortened statutory period for reply of three (3) months from its mailing date. No extension of time pursuant to 37 CFR 1.136(a) was obtained within the allowable period. Accordingly, the application became abandoned on October 10, 2010. A Notice of Abandonment was mailed January 24, 2011.

The amendment filed May 4, 2011, is noted.

The application is being forwarded to Technology Center 2400, GAU 2452 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450

MAILED
FEB 10 2011
OFFICE OF PETITIONS

McAndrews, Held & Malloy, Ltd.
500 West Madison Street
Ste. 3400
Chicago, Illinois 60661

In re Application of	:	
Andreas TSANGARIS et al.	:	ON PETITION
Application No. 11/745,441	:	
Filed: 7 May 2007	:	
Atty. Docket No.: 1877US01	:	

This is a decision on the petition under 37 CFR 1.137(b), filed 7 January 2011, to revive the above-identified application ("Application").

The petition is **GRANTED**.

The above-identified became abandoned for failure to reply in a timely manner to the non-final Office action mailed 23 November 2009 ("outstanding Office action"), which set a shortened statutory period of reply statutory reply period of three (3) months. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. The application thus became abandoned on 24 February 2010, with notification mailed 29 June 2010.

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 12/785,219, filed 21 May 2010.

General inquiries relating to this decision should be directed to Robert DeWitty, Petitions Examiner, Office of Petitions (571-272-6051).

David Bucci
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20120131

DATE :

TO SPE OF : ART UNIT 2617

SUBJECT : Request for Certificate of Correction on Patent No.: 7,801,098

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:

/DWAYNE BOST/
Supervisory Patent Examiner.Art Unit 2617

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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EDWARD M. LIVINGSTON, PA
963 TRAIL TERRACE DRIVE
NAPLES FL 34103

MAILED
FEB 16 2011
OFFICE OF PETITIONS

In re Application of :
Osborne :
Application No. 11/745,528 : DECISION ON PETITION
Filed: May 8, 2007 :
Attorney Dkt. No.: 07-6951 :

This is a decision on the petition filed under 37 CFR 1.137(b) in the above-identified application filed on December 29, 2010.

The petition is **GRANTED.**

This application became abandoned for failure to timely submit a reply to the non-final Office action mailed on February 22, 2010. The Notice set an extendable three-month reply period of May 22, 2010. Accordingly, this application became abandoned on May 23, 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 an amendment (2) the petition fee of $810.00, and (3) a statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3215.

This application is being referred to Technology Center AU 3765 for appropriate action by the Examiner in the normal course of business on the reply received

Charlema Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Decision Date : June 17,2011

In re Application of :

Steven Ruben

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11745580

Filed : 08-May-2007

Attorney Docket No : PZ002P2C3

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed June 17,2011 , to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid in this application cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

This application file is being referred to Technology Center AU 1644 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	11745580
Filing Date	08-May-2007
First Named Inventor	Steven Ruben
Art Unit	1644
Examiner Name	SHARON WEN
Attorney Docket Number	PZ002P2C3
Title	ANTIBODIES TO HNFIP24 POLYPEPTIDES

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 Schuller/
Name	Joseph Schuller
Registration Number	48708

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P.O. Box 1450
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MAILED
SEP 20 2011
OFFICE OF PETITIONS

FISH & RICHARDSON P.C. (TC)
PO BOX 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 7,975,733	:	DECISION ON REQUEST
Horppu, et al.	:	FOR
Issue Date: July 12, 2011	:	RECONSIDERATION OF
Application No. 11/745,702	:	PATENT TERM ADJUSTMENT
Filed: May 8, 2007	:	and
Atty Docket No. 19497-005001 / P17487US00	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on September 12, 2011, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by nine hundred and forty-nine (949) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by **eight hundred and seventy-two (872)days** is **GRANTED to the extent indicated herein.**

The instant petition was filed September 12, 2011. Patentees state, in pertinent part:

> Section 154(b)(1)(B)(i) of Title 35 excludes from the calculation of B Delay "any time consumed by continued examination of the application." In the present matter, a Request for Continued Examination were filed on February 23, 2011. The Director erred in the calculation of the patent term adjustment by subtracting from B Delay a period of time that was not "consumed by continued examination of the application." The PTO mailed a Notice of Allowance on April 27, 2011, thereby closing examination of the application on that date. Thus, no continued examination took place during the 77 day period from

April 27, 2011 (the mailing date of the Notice of Allowance) until July 12, 2011 (the date the patent was issued). Accordingly, 77 days of B Delay should have been included in addition to the 290 days accorded by the Director for a total B Delay of 367 days.

The Office's calculation of "B delay" is correct. The "B delay" is an adjustment entered if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. However, the adjustment does not include, among other things, any time consumed by continued examination of the application at the request of the applicant under 35 U.S.C. 132(b)[1]. So, with respect to calculating the "B delay" where applicant has filed a request for continued examination, the period of adjustment is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage 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.

---

[1] Pursuant to 35 U.S.C. 132(b), 37 CFR 1.114 provides for continued examination of an application, as follows:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F. Supp.2d 138(D.D.C., September 30, 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the United States until the date of issuance of the patent. The

time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)[2]. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. *Websters Collegiate Dictionary*, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

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[2] Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under

35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[3] permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the

[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.

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 February 23, 2011, and the patent issued by virtue of that request on July 12, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on February 23, 2011, and ending on July 12, 2011, is not included in calculating Office delay.

Patentees also note that a reduction to the patent term adjustment under 37 CFR 1.704(c)(8) is warranted for the filing of a supplemental reply on November 1, 2010. A review of the application file history reveals that a reduction to the patent term adjustment of 55 days is warranted for the filing of a supplemental paper on November 1, 2010, with said period beginning September 8, 2010, and ending November 1, 2010. A period of reduction to the patent term adjustment of 55 days is being entered, accordingly.

Accordingly, the revised patent term adjustment is 872 days (668 days "A" delay + 290 days "B" delay - 0 days of overlap - 86 days of applicant delay.)

The petition fee of $200.00 required by 37 CFR 1.18 was received on September 12, 2011.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an

applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **eight hundred and seventy-two (872)** days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,975,733 B2

DATED : Jul. 12, 2011

INVENTOR(S) : Horppu, 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 (927) days

Delete the phrase "by 927 days" and insert – by 872 days--

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11-15-10

TO SPE OF : ART UNIT 3764

SUBJECT : Request for Certificate of Correction for Appl. No.: 11745708 Patent No.: 7674205

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: _____

_____

_____

_____

_____

_____ SPE _____ Art Unit

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United States Patent and Trademark Office
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SEP 19 2011

OFFICE OF PETITIONS

Fish & Richardson PC
P.O.Box 1022
Minneapolis MN 55440

In re Patent No.7,979,523	:	
Ladd	:	DECISION FOR REQUEST
Issue Date: July 12, 2011	:	FOR RECONSIDERATION
Application No. 11/745,781	:	OF PATENT TERM
Filed: May 8, 2007	:	ADJUSTMENT
Attorney Docket No. 26310-0254001 / 950406	:	

This is a decision on the "Application for Patent Term Adjustment Under 37 CFR 1.705(d)," filed September 12, 2011. Patentees request that the patent term adjustment indicated on the face of the Letters of Patent be corrected from nine hundred and twenty-three (923) days, to one thousand, sixty-two (1,062) days.

The request for reconsideration of the patent term adjustment under 37 CFR 1.705(d) is **DISMISSED**.

On July 12, 2011, the above-identified application matured into U.S. Patent No. 7,979,523, with a revised patent term of 923 days. By the instant petition, patentees assert that the patent term should be adjusted by 393 days pursuant to 37 CFR 1.702(b) and 37 CFR 1.703(b). Patentees state:

> Section 154(b)(1)(B)(i) of Title 35 excludes from the calculation of B Delay "any time consumed by continued examination of the application." In the present matter, a Request for Continued Examination was filed on January 18, 2011. The Director erred in the calculation of the patent term adjustment by subtracting from B Delay a period of time that was not "consumed by continued examination of the application." The PTO mailed a Notice of Allowance on February 24, 2011, thereby closing examination of the application on that date. Thus, no continued examination took place during 139 day period from February 24, 2011 (the mailing date of the Notice of Allowance) until July

12, 2011 (the date the patent was issued). Accordingly, 139 days of "B Delay" should have been included in addition to the 254 days accorded by the Director for a total B Delay of 393 days.

Excerpt taken from "Application for Patent Term Adjustment Under 37 CFR 1.705(d)," filed September 12, 2011, Pg. 2.

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

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[1] Pursuant to 35 U.S.C. 132(b), 37 CFR 1.114 provides for continued examination of an application, as follows:

(a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

U.S.C. 132(b), from the date on which the request for continued examination is filed to the date the patent is issued is proper. Patentee does not dispute that time consumed by continued examination of an application under 35 U.S.C. 132(b) is properly excluded and that the calculation of the excluded period begins on the date of filing of the request for continued examination. At issue is what further processing or examination beyond the date of filing of the request for continued examination is not any time consumed by continued examination of the application under 35 U.S.C. 132(b). The USPTO indicated in September of 2000 in the final rule to implement the patent term adjustment provisions of the AIPA that once a request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114 is filed in an application, any further processing or examination of the application, including granting of a patent, is by virtue of the continued examination given to the application under 35 U.S.C. 132(b) and CFR 1.114. See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term, 65 Fed. Reg. 56366, 56376 (Sept. 18, 2000) (response to comment 8). Thus, the excluded period begins with the filing of the request for continued examination and ends with the issuance of the patent.

Patentee's argument that the period of time after the issuance of a notice of allowance on a request for continued examination is not "any time consumed by continued examination requested by the applicant under section 132(b)" within the meaning of 35 U.S.C. 154(b)(1)(B)(i) is not availing. This limitation is not supported by the statutory language. Garcia v. United States, 469 U.S. 70, 75 (1984) ("only the most extraordinary showing of contrary intentions from [legislative history] would justify a limitation on the 'plain meaning' of the statutory language"). BP Am. Prod. Co. v. Burton, 549 U.S. 84, 91 (2006) ("Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning"). The statute provides for a guarantee of no more than 3-year application pendency, by providing for an adjustment in the patent term:

First, "Subject to the limitations of paragraph (2)," means that the limitations of paragraph 2 apply to this paragraph's adjustment of patent term. That is, the day-to-day extension of patent term for pendency beyond the 3 year period is restricted as follows: 1) "B delay" cannot accrue for days of "A delay" that overlap, 2) the patent term cannot be extended beyond disclaimed term, and 3) the period of adjustment, including accrued "B delay," will be reduced for applicant delay.

Second, "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States," meaning that the condition must first occur that the issuance of an original patent (35 U.S.C. 153), not merely the issuance of a notice of allowance, is delayed due to the Office's failure to issue a patent (sign and record a patent grant in the name of the United States), not merely mail a notice of allowance, within 3 years after the actual filing date of the application in the United States. This provision gives the Office a three-year period to issue a patent (sign and record a patent grant in the name of the United States) after the application filing date before an adjustment will accrue for "B delay."

Third, "not including- (i) any time consumed by continued examination of the application requested by the applicant under section 132(b); (ii) any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court; or (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), meaning that the three-year period does not include "any time consumed by" or "any delay in processing," as specified in clauses (i)-(iii). This language correlates to 35 U.S.C. 154(b)(1)(A) which likewise provides the basis for determining the period given the Office to take the specified actions before an adjustment will accrue for "A delay" (e.g., extended for 1 day after the day after the period specified in clauses (i)-(iv)).

Furthermore, these clauses are interpreted using their ordinary meanings. Nonetheless, the context of the legislation should be considered. As stated in Wyeth v. Dudas, 580 F. Supp.2d 138(D.D.C., September 30, 2008), because the clock for calculating the 20-year patent term begins to run on the filing date, and not on the day the patent is actually granted, some of the effective term of a patent is consumed by the time it takes to prosecute the application. To mitigate this effect, the statute, *inter alia*, grants adjustments of patent term whenever the patent prosecution takes more than three years, regardless of the reason. The time consumed by prosecution of the application includes every day the application is pending before the Office from the actual filing date of the application in the

United States until the date of issuance of the patent. The time it takes to prosecute the application ends not with the mailing of the notice of allowance, but with the issuance of the patent.

Thus, not including "any time consumed by" means not including any days used to prosecute the application as specified in clauses (i)-(ii)[2]. Clause (i) specifies "any time consumed by continued examination of the application requested by the applicant under section 132(b)." Clause (ii) specifies "any time consumed by a proceeding under section 135(a), any time consumed by the imposition of an order under section 181, or any time consumed by appellate review by the Board of Patent Appeals and Interferences or by a Federal court." "Time" in the context of this legislation throughout refers to days. "Consumed by" means used by or used in the course of. *Websters Collegiate Dictionary*, (11th ed.). The "any" signifies that the days consumed by are "any" of the days in the pendency of the application, and not just days that occur after the application has been pending for 3 years. As such, "any time consumed by" refers to any days used in the course of 1) continued examination of the application under section 132(b)(the filing of a request for continued examination), 2) interference proceedings, 3) secrecy orders, and 4) appellate review. Thus, that 3-year period given to the Office to issue a patent before an adjustment will accrue for "B delay" does not include any days used in the course of or any time consumed by clauses (i)-(ii), including any time consumed by the filing of a request for continued examination.

Fourth, "the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued" meaning that the consequence of this failure is that after "the end of that 3-year period" an additional 1 day of patent term will accrue for each day that the application is pending until the day the patent is issued.

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[2] Clause (iii) provides for not including (iii) any delay in the processing of the application by the United States Patent and Trademark Office requested by the applicant except as permitted by paragraph (3)(C), the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued. It is noted that paragraph (3)(C) allows with an adequate showing by applicant for reinstatement of no more than 3 months of the patent term reduced for applicant delay in taking in excess of three months to respond.

The "time consumed by" or used in the course of the continued examination of the application requested by the applicant under section 132(b) does not end until issuance of the patent. 35 U.S.C. 132(b) was enacted under the same title, the "American Inventors Protection Act of 1999," as 35 U.S.C. 154(b). Section 4403 of the AIPA amended 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). Thus, clause (i) is different from clause (ii) in that clause (i) refers to an examination process whereas clause (ii) refers to time consumed by proceedings (interferences, secrecy orders and appeals) in an application.

By nature, the time used in the course of the examination process continues to issuance of the patent. The examination process involves examining the application to ascertain whether it appears that the applicant is entitled to a patent under the law. See 35 U.S.C. 131 ("[t]he Director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the Director shall issue a patent therefor"). If on examination it appears that the applicant is entitled to a patent, the USPTO issues a notice of allowance. See 35 U.S.C. 151 ("[i]f it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant"). If on examination it appears that the applicant is not entitled to a patent, the USPTO issues a notice (an Office action) stating the applicable rejection, objection, or other requirement, with the reasons therefor. See 35 U.S.C. 132 ("[w]henever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application"). Neither the issuance of a notice of allowance nor the insurance of an Office action terminates the examination process. If after the issuance of an Office action under 35 U.S.C. 132 it subsequently appears that the applicant is entitled to a patent (e.g., in response to an argument or amendment by the applicant), the USPTO will issue a notice of allowance. Conversely, if after the issuance of a notice of allowance under

35 U.S.C. 151 it subsequently appears that the applicant is not entitled to a patent (e.g., in response to information provided by the applicant or uncovered by the USPTO), the USPTO will withdraw the application from issuance and issue an Office action under 35 U.S.C. 132 stating the applicable rejection, objection, or other requirement, with the reasons therefor.

As held in Blacklight Power, the USPTO's responsibility to issue a patent containing only patentable claims does not end with the issuance of a notice of allowance under 35 U.S.C. 151. See BlackLight Power, Inc. v. Rogan, 295 F.3d 1269, 1273 (Fed. Cir. 2002). Rather, if there is any substantial, reasonable ground within the knowledge or cognizance of the Director as to why an application should not issue, it is the USPTO's duty to refuse to issue the patent even if a notice of allowance has previously been issued for the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896).

Moreover, the applicant continues to be engaged in the examination process after the mailing of the notice of allowance. 37 CFR 1.56 makes clear that the applicant has a duty to disclose information material to patentability as long as the application is pending before the USPTO (i.e., until a patent is granted or the application is abandoned). See 37 CFR 1.56(a) ("[t]he duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned"). 37 CFR 1.97 and 1.98 provide for the consideration of information submitted by the applicant after a notice of allowance has been mailed. See 37 CFR 1.97(d). In addition, 37 CFR 1.312 provides for the amendment of an application after a notice of allowance has been mailed. In fact, the request for examination procedures[3] permit the filing of a request for continued examination under 37 CFR 1.114 even after the issuance of a notice of allowance under 35 U.S.C. 151. See 37 CFR 1.114(a)(1).

As the examination process does not terminate with the mailing of the notice of allowance, the time consumed by continued examination requested by the applicant under section 132(b) does not terminate with the mailing of the notice of allowance. All the time the application is pending from the date of filing of the request for continued examination to the mailing of the notice of allowance through issuance of the

[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.

patent is a consequence of the filing of the request for continued examination. Further action by the Office is pursuant to that request. Applicant has gotten further prosecution of the application without having to file a continuing application under 37 CFR 1.53(b).

All of the continued examination pursuant to the filing of the request by the applicant is properly excluded from the delay attributed to the Office. 35 U.S.C. 154(b)(1)(B)'s guarantee of a total application pendency of no more than three years provides for adjustment of the patent term for delay due to the Office's failure to issue the patent within three years, but does not include "any time consumed by continued examination requested by the applicant under 35 U.S.C. 132(b)." It is not necessary to mitigate the effect on the 20-year term to the extent that applicant has requested that the Office continue to examine the application via a request for continued examination, in lieu of, the filing of a continuing application under 37 CFR 1.53(b).

In this instance, a request for continued examination was filed on January 18, 2011, and the patent issued by virtue of that request on July 12, 2011. Pursuant to 35 U.S.C. 154(b)(1)(B)(i), the period beginning on January 18, 2011, and ending on July 12, 2011, is not included in calculating Office delay.

In view thereof, it is concluded that the patent term adjustment of 923 days indicated on 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.

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.: ——

DATE : 1/24/11

TO SPE OF : ART UNIT 2614

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/745883 Patent No.: 7769178B2

CofC mailroom date: 1/14/2011

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

Virginia Tolbert
Certificates of Correction Branch
571-272-0460

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☑ **Approved** — All changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

SPE

2614
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MAILED

FEB 15 2011

OFFICE OF PETITIONS

FISH & RICHARDSON P.C. (SV)
PO BOX 1022
MINNEAPOLIS MN 55440-1022

In re Application of	:	
Terry D. Beard	:	
Application No. 11/745,940	:	DECISION GRANTING PETITION
Filed: May 8, 2007	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 19293-025015	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed February 14, 2011, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on December 29, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3208.

This application is being referred to Technology Center AU 2614 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed IDS.

/Karen Creasy/
Karen Creasy
Petitions Examiner
Office of Petitions

---

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B - Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form* ***must*** *be completed and timely submitted to avoid abandonment of the application.*

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 7/27/11

TO SPE OF : ART UNIT: 2614

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/745,969 Patent No. 7,864,965

CofC mailroom date 7/21/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Ernest C. White, LIE

Certificates of Correction Branch

703-756-1814 _____

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☑ **Approved** — All changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

SPE

2614
Art Unit

PTOL-306 (REV. 7/03) U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MAILED
JUN 20 2011
OFFICE OF PETITIONS

Wong, Cabello, Lutch, Rutherford &
Brucculeri, LLP
20333 SH 249 6th Floor
Houston, TX 77070

In re Application of	:	
Thomas G. Price et al.	:	
Application No. 11/745,971	:	DECISION ON PETITION
Filed: May 8, 2007	:	TO WITHDRAW
Attorney Docket No. 06-021-US (149-0197US)	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed May 16, 2011.

The request is **moot because a revocation of power of attorney has been filed.**

A review of the file record indicates that the power of attorney to Wong, Cabello, Lutch, Rutherford & Brucculeri, LLP, has been revoked by the assignee of the patent application on June 2, 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: Brake, Hughes, Bellermann, LLP
c/o CPA Global
P.O. Box 52050
Minneapolis, MN 55402

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Morgan, Lewis & Bockius LLP/Google
2 Palo Alto Square
3000 El Camino Real, Suite 700
Palo Alto CA 94306

MAILED
NOV 22 2010
OFFICE OF PETITIONS

In re Application of :
Sercinoglu, et al. :
Application No. 11/746,049 :
Filed: May 8, 2007 :
Attorney Docket No. 060963-5230US :

DECISION ON PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed September 14, 2010, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant non-provisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is GRANTED.

Petitioner states that the instant non-provisional application is the subject of an application filed in an eighteen-month publication country on May 9, 2007. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen-month publication country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing.

A petition to revive an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

(1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
(2) the petition fee as set forth in 37 CFR 1.17(m); and
(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of February 17, 2011 accompanies this decision on petition.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3205.

This application is being forwarded to Technology Center Art Unit 2164 for further processing.

/ALESIA M. BROWN/

Alesia M. Brown
Petitions Attorney
Office of Petitions

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/746,049	05/08/2007	Olcan Sercinoglu	060963-5230US

CONFIRMATION NO. 1924

82750
Morgan, Lewis & Bockius LLP/Google
2 Palo Alto Square
3000 El Camino Real, Suite 700
Palo Alto, CA 94306

NONPUBLICATION RESCISSION LETTER

OC000000044421216

Date Mailed: 11/10/2010

Communication Regarding Rescission Of Nonpublication Request and/or Notice of Foreign Filing

Applicant's rescission of the previously-filed nonpublication request and/or notice of foreign filing is acknowledged. The paper has been reflected in the Patent and Trademark Office's (USPTO's) computer records so that the earliest possible projected publication date can be assigned.

The projected publication date is 02/17/2011.

If applicant rescinded the nonpublication request before or on the date of "foreign filing,"[1] then no notice of foreign filing is required.

If applicant foreign filed the application after filing the above application and before filing the rescission, and the rescission did not also include a notice of foreign filing, then a notice of foreign filing (not merely a rescission) is required to be filed within 45 days of the date of foreign filing. See 35 U.S.C. § 122(b)(2)(B)(iii), and Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. § 122(b)(2)(B)(ii)-(iv), 1272 Off. Gaz. Pat. Office 22 (July 1, 2003).

If a notice of foreign filing is required and is not filed within 45 days of the date of foreign filing, then the application becomes abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii). In this situation, applicant should either file a petition to revive or notify the Office that the application is abandoned. See 37 CFR 1.137(f). Any such petition to revive will be forwarded to the Office of Petitions for a decision. Note that the filing of the petition will not operate to stay any period of reply that may be running against the application.

Questions regarding petitions to revive should be directed to the Office of Petitions at (571) 272-3282.

[1] Note, for purpose of this notice, that "foreign filing" means "filing an application directed to the same invention in another country, or under a multilateral international agreement, that requires publication of applications 18 months after filing".

/ambrown/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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MCKEE, VOORHEES & SEASE, P.L.C.
801 GRAND AVENUE
SUITE 3200
DES MOINES IA 50309-2721

MAILED
JUL 01 2011
OFFICE OF PETITIONS

In re Application of :
Ottman :
Application No. 11/746,167 : ON PETITION
Filed: May 9, 2007 :
Attorney Docket No. **P07847US01**

This is a decision on the petition under 37 CFR 1.182 filed May 5, 2011, to change the name of the first named inventor cited on this application in USPTO records.

The petition is granted.

The name of the first named joint inventor for the above-cited application is changed to "Dawn Emily Marilyn Ottman".

A corrected filing receipt is enclosed.

The application file is being directed to Technology Center GAU 2885 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
11/746,167	05/09/2007	2885	425	P07847US01	18	2

CONFIRMATION NO. 2177

CORRECTED FILING RECEIPT

22885
MCKEE, VOORHEES & SEASE, P.L.C.
801 GRAND AVENUE
SUITE 3200
DES MOINES, IA 50309-2721

OC000000048507143

Date Mailed: 06/30/2011

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)

DAWN EMILY MARILYN OTTMAN, Lemmon, SD;

Assignment For Published Patent Application

CANDEW SCIENTIFIC, LLC, Lemmon, SD

Power of Attorney: The patent practitioners associated with Customer Number 22885

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/879,927 01/12/2007

Foreign Applications (You may be eligible to benefit from the **Patent Prosecution Highway** program at the USPTO. Please see http://www.uspto.gov for more information.)

If Required, Foreign Filing License Granted: 05/29/2007

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 11/746,167**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No
**** SMALL ENTITY ****

Title

SOLAR RECHARGEABLE LIGHT EMITTING DIODE LIGHTS

Preliminary Class

362

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
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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA VA 22314

MAILED
MAR 14 2011
OFFICE OF PETITIONS

In re Patent No. 7,849,494 :
Issue Date: December 7, 2010 :
Application No. 11/746,220 : ON PETITION
Filed: May 9, 2007 :
Attorney Docket No. 308528US8X :

This is a decision on the petition filed February 9, 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) 272-3205. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

The Certificates of Correction Branch will be notified of this decision granting the petition under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction.

/ALESIA M. BROWN/

Alesia M. Brown
Attorney Advisor
Office of Petitions

[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

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.
11/746,231	05/09/2007	Gilles MORIN	MORIN=9	2305

1444 7590 07/22/2011
Browdy and Neimark, PLLC
1625 K Street, N.W.
Suite 1100
Washington, DC 20006

EXAMINER
SPURLOCK, BRETT SHANE

ART UNIT	PAPER NUMBER
3742	

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

Commissioner for Patents
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Browdy and Neimark, PLLC
1625 K Street, N.W.
Suite 1100
Washington DC 20006

In re Application of:
MORIN, GILLES et al
Serial No. 11/746,231
Filed: Jan. 22, 2008
Docket: PJB 08019
Title: AUTOMATIC DISPENSER OF BREWED BEVERAGES

DECISION ON PETITION UNDER 37 CFR § 1.181

This is a decision on the request filed July 11, 2011 under 37 CFR 1.181 requesting withdrawal of the finality of the last Office action mailed May 11, 2011.

The petition is **Granted.**

In finding petitioner's points of argument persuasive, the requested relief is granted. As such, the finality of the Office actions issued on May 11, 2011 is premature and the finality of the Office action is hereby withdrawn. The Office action mailed on May 11, 2011 will be designated as a non-final Office action. Since the finality is being withdrawn, the amendment filed on July 5, 2011 in response to the Office action of May 11, 2011 is treated as a 37 CFR § 1.111 amendment.

The application is being forwarded to the examiner via the Supervisory Patent Examiner of the Art Unit for consideration of the Rule 111 Amendment of July 5, 2011. Any inquiry regarding this decision should be directed to Henry C. Yuen, Supervisory Patent Examiner, at (571) 272-4856.

PETITION GRANTED.

Sharon Gibson, Director
Technology Center 3700

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.
11/746,231	05/09/2007	Gilles MORIN	MORIN=9	2305

1444 7590 01/11/2012
Browdy and Neimark, PLLC
1625 K Street, N.W.
Suite 1100
Washington, DC 20006

EXAMINER
SPURLOCK, BRETT SHANE

ART UNIT	PAPER NUMBER
3742	

MAIL DATE	DELIVERY MODE
01/11/2012	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Browdy and Neimark, PLLC
1625 K Street, N.W.
Suite 1100
Washington DC 20006

In re Application of:
MORIN, GILLES et al
Serial No.: 11/746,231
Filed: May 9, 2007
Docket: MORIN-9
Title: AUTOMATIC DISPENSER OF BREWED BEVERAGES

DECISION ON PETITION

This is a decision on the petition filed on December 7, 2011 seeking to withdraw the finality of the Office action of November 7, 2011. The petition is being considered pursuant to 37 CFR § 1.181 and no fee is required for the petition.

The petition is DISMISSED.

The petitioner requests withdrawal of the finality of the Office action mailed November 7, 2011. The petitioner believes that the final rejection of November 7, 21011 was not necessitated by the applicant's amendment filed on October 26, 2011. In particular, petitioner asserts that the amendments to the claims were merely to identify inherent components or functions of the automatic device that was defined in claim 1 prior to the amendment of October 26, 2011. Petitioner did acknowledge that claim 1 was amended to specify that the chute has an upper surface, that the wiping arm contacts the upper surface of the chute for removing product adhering to the upper surface and that the previously claimed drive mechanism for imparting a reciprocating cleaning motion to the wiping arm was directly connected to the wiping arm. Petitioner further argues that these limitations should be considered to represent features that were inherent in the original claim. Petitioner therefore believes that the new grounds of rejection were not necessitated by the amendment of October 26, 2011.

The relevant record shows that:

1. A non-final rejection was made on July 26, 2011. In the non-final Office action, claims 1-15 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shih in view of Johnson. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shih in view of Johnson and further in view of Feldner. Claims 1-20 are also rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 7,328,649 to Morin in view of Johnson (US 2593151 A).

2. In response to the non-final Office action of July 26, 2011, a Rule 111 Amendment to the claims was submitted on October 26, 2011. In the amendment, the applicant substantively amended claims 1, 5, 17 and 20. This amendment effectively changed the scope of previously presented claims as filed on July 5, 2011.
3. In response, a final rejection was issued on November 7, 2011. In the final Office action, claims 1-15 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shih in view of Smiley (US 20040226583 A1). Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shih in view of Smiley and further in view of Feldner. Claims 1-20 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 7,328,649 to Morin.
4. On December 7, 2011, a petition requesting withdrawal of the finality of the rejection of November 7, 2011 was submitted.

Discussion and Analysis

In the petition, the petitioner asserts that the rejection of claims 1-20 made on November 7, 2011 was not necessitated by the amendment filed on October 26, 2011 and that the finality of the rejection should be withdrawn. The petition states that the amendments to the claims submitted on October 26, 2011 were made only to identify inherent components or functions of the automatic device that was defined in claim 1 prior to the amendment of October 26, 2011. Claim 1 was amended to specify that the chute has an upper surface, that the wiping arm contacts the upper surface of the chute for removing product adhering to the upper surface and that the previously claimed drive mechanism for imparting a reciprocating cleaning motion to the wiping arm was directly connected to the wiping arm. Petitioner believes that these limitations should be considered to represent features that were inherent in the original claim.

In order to determine whether or not the amendment filed October 26, 2011 necessitated the new grounds of rejection in the final Office action of November 7, 2011, a comparison and analysis of at least the claim 1 filed on July 5, 2011 and the current amended claims of October 26, 2011 must be made. The amendments made to claim 1 on October 26, 2011 indeed added substantive changes. In particular, the amendments to claim 1, inter alia, added the terms, "said chute having an upper surface," "said wiping arm contacts and wipes ~~the~~said upper surface of said chute ~~with which the product is in contact~~for removing product adhering to said upper surface," and "an electric drive mechanism directly connected to said wiping arm for imparting a reciprocating cleaning motion to said wiping arm". These features as amended on October 26, 2011 were not previously included in the scope of independent claim 1. Therefore, when the non-final rejection of the claims was made, the rejection did not address these newly amended features. A careful study of the Johnson patent indeed reveals that the Johnson reference teaches that there is a wiping motion relative to the wire rather than the wire moving relative to another surface. When the scope of claim 1 was changed by the amended features, the rejection of the claims was changed to include the prior art reference, Smiley patent. The wiping arm of Smiley contacts an upper surface of the chute in Smiley. Also, since the electric drive is connected directly to the wiping arm, the examiner needed to use anther prior art reference, namely, the Smiley patent. In other words, the use of the new reference Smiley patent in the rejection of claims was necessitated by the amendment which amended the features to independent claim 1, thereby changing the scope of the claims. This evidences that new grounds of rejection were in fact necessitated by the

applicant's amendment filed on October 26, 2011. Therefore, the final rejection is proper and in compliance with M.P.E.P. § 706.07(a)[1].

In the petition, the petitioner also argues that the amended limitations to the claims should have been reasonably expected. This line of argument is speculative. In view of the substantively changes made to claim 1, there is no reasonable expectation that the examiner would anticipate the applicant to add such detailed structure of the wiping arm contacting the upper surface of the chute and the electric drive mechanism directly connected to said wiping arm for imparting a reciprocating cleaning motion to said wiping arm in the claims. As also stated in MPEP § 706.07(a):

> **>However, note that an examiner cannot be expected to foresee whether or how an applicant will amend a claim to overcome a rejection except in very limited circumstances (e.g., where the examiner suggests how applicant can overcome a rejection under 35 U.S.C. 112, second paragraph)<.

The review of the record shows that the examiner was in compliance with proper examining practice as set forth in M.P.E.P. § 706.07(a). The claim amendment presented on October 26, 2011 necessitated the new grounds of rejection as promulgated in the final Office action issued on November 7, 2011. The examiner's finality of the Office action is correct. Therefore, the relief requested by petitioner cannot be granted by petition.

Conclusion

For the foregoing reasons, the relief requested by petitioner will not be granted. The examiner's finality of the Office action dated November 7, 2011 is appropriate.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision, 37 CFR 1.181(f). The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. No extension of time under 37 CFR 1.136(a) is permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181". Any inquiry regarding this decision should be directed to Josie Ballato, Special Programs Examiner, at (571) 272-3567.

Accordingly, the petition is dismissed.

Robin O. Evans

Robin Evans, Acting Director
Technology Center 3700

[1] Relevant portion of MPEP § 706.07(a): Final Rejection, When Proper on Second Action, states: Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

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GOOGLE / FENWICK
SILICON VALLEY CENTER
801 CALIFORNIA ST.
MOUNTAIN VIEW, CA 94041

MAILED

OCT 21 2011

OFFICE OF PETITIONS

In re Application of :
Jay Yagnik, et al. :
Application No.: 11/746,339 : ON PETITION
Filed: May 9, 2007 :
Attorney Docket No.: 24207-12671 :

This is a decision on the petition, filed October 20, 2011, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on October 3, 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 relating to this decision should be directed to the undersigned at (571) 272-3204.

The application is being referred to Technology Center AU 2624 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.*

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CHARLES A. ELDERING
524 ST. LAWRENCE WAY
FURLONG, PA 18925

MAILED

OCT 22 2010

OFFICE OF PETITIONS

In re Application of	:	
Andrew Alexander Kenedy, et. al.	:	
Application No. 11/746,380	:	ON PETITION
Filed: May 9, 2007	:	
Attorney Docket No. EBI-005-US	:	

This is a decision on the petition under 37 CFR 1.137(b), filed September 8, 2010, to revive the above-identified application.

The application became abandoned for failure to file a reply to the Notice of Allowance and Fee(s) Due mailed on June 2, 2010. A Notice of Abandonment was mailed September 10, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of $755 for payment of the issue fee and $300 for payment of the publication fee; (2) the petition fee of $810 and (3) a proper statement of unintentional delay. Therefore, the petition is **GRANTED**.

This application file is being referred to the Office of Data Management for further processing into a patent.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : April 26, 2011

TO SPE OF : ART UNIT 3742

SUBJECT : Request for Certificate of Correction for Appl. No. 11/746457 patent No.:7669517 B2
C of C mailroom date:--10-09-09

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.

X **Approved**	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: _____

/Tu Hoang/

SPE **Art Unit** 3742

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UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/746,465	05/09/2007	Harvey B. Buck	007404-000723 23204 US	2722

41577 7590 10/18/2010
Woodard, Emhardt, Moriarty, McNett & Henry LLP
Roche Diagnostics
111 Monument Circle, Suite 3700
Indianapolis, IN 46204-5137

EXAMINER
SODERQUIST, ARLEN

ART UNIT	PAPER NUMBER
1777	

NOTIFICATION DATE	DELIVERY MODE
10/18/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Karla.Dirks@Roche.com
DocketDept@uspatent.com

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Alexandria, VA 22313-1450
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wk

Mailed:

OCT 18 2010

In re application of	:	
Buck	:	DECISION ON
Serial No. 11/746,465	:	PETITION
Filed: May 9, 2007	:	
For: SYSTEM AND METHOD FOR ANALYTE MEASUREMENT USING A NONLINEAR SAMPLE RESPONSE		

This is a decision on the PETITION FILED UNDER 37 CFR 1.181 on September 29, 2010 to withdraw the Finality of the Office Action mailed August 9, 2010. In the Final Rejection, the Examiner repeated the rejection under 35 USC 103 using the same references as previously cited however the Examiner in the base of the 35 USC 103 rejection provided a new grounds of rejection based on newly-cited non-patent documents.

The Examiner provided these references to establish that it was within the skill of one of ordinary skill in the art to use a non-linear signal to measure a concentration of sugars and other analytes using non-linear responses as well as separate the signal components for this purpose. Applicant did not amend the claims in response to the first Office Action nor were the references now used by the Examiner cited in a previously submitted IDS.

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). Where information is submitted in an information disclosure statement during the period set forth in 37 CFR 1.97(c) with a fee, the examiner may use the information submitted, e.g., a printed publication or evidence of public use, and make the next Office action final whether or not the claims have been amended, provided that no other new ground of rejection which was not necessitated by amendment to the claims is introduced by the examiner. See MPEP § 609.04(b).

DECISION

The petition is **GRANTED**.

The finality of the August 9, 2010 action is withdrawn. The period for response will continue run from the mail date of August 9, 2010.

/W. GARY JONES/
W. Gary Jones, Director
Technology Center 1700
Chemical and Materials Engineering

Troy J. Cole
Woodard, Emhardt, Moriarty, McNett & Henry LLP
Roche Diagnostics
111 Monument Circle, Suite 3700
Indianapolis IN 46204-5137

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SPRINKLE IP LAW GROUP / ZIMMER
1301 W. 25TH STREET
SUITE 408
AUSTIN, TX 78705

MAILED

FEB 27 2012

OFFICE OF PETITIONS

In re Application of	:	
LEMOINE, Jeremy et al.	:	
Application No. 11/746,481	:	DECISION ON PETITION
Filed: May 09, 1997	:	TO WITHDRAW
Attorney Docket No. **1292.1391101**	:	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 15, 2012.

The request is **NOT APPROVED** as moot.

A review of the file record indicates that the power of attorney to Sprinkle IP Law Group/Zimmer has been revoked by the assignee of the patent application on February 09, 2012. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

All future communications from the Office will continue to be directed to the new address of record until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to the undersigned at 571-272-4231.

/Michelle R. Eason/
Michelle R. Eason
Paralegal Specialist
Office of Petitions

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FAEGRE & BENSON LLP
PATENT DOCKETING - INTELLECTUAL PROPERTY
2200 WELLS FARGO CENTER
90 SOUTH SEVENTH STREET
MINNEAPOLIS MN 55402-3901

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AUG 03 2010

OFFICE OF PETITIONS

In re Patent No. 7,670,385 :
Issue Date: March 2, 2010 :
Application No. 11/746,510 : DECISION ON PETITION
Filed: May 9, 2007 :
Attorney Docket No. 74603-352223 :

This is a decision on the Request To Correct The Assignee Under 37 C.F.R. 3.81(b), filed June 10, 2010, which is being treated as a Petition Under 3.81(b) to identify the correct assignee's name. A completed Certificate of Correction Form PTO/SB/44 was submitted with the petition.

The petition under 37 CFR 3.81(b) is **GRANTED**.

Petitioner urges that the present Petition was submitted to correct the assignee's name on the previously submitted PTOL-85B and such error was inadvertent. Accordingly, petitioner requests, in effect, that a Certificate of Correction (PTO/SB/44) be issued the 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) that was submitted with petition.

Inquiries related this communication should be directed to the undersigned at (571)272-3213.

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. 7,670,385.

Cheryl Gibson Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

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HICKMAN PALERMO TRUONG & BECKER, LLP
ONE ALMADEN BOULEVARD
FLOOR TWELVE
SAN JOSE CA 95113

MAILED
MAR 12 2012
OFFICE OF PETITIONS

In re Application of	:	
Dov Koren	:	
Application No. 11/746,547	:	DECISION GRANTING PETITION
Filed: May 9, 2007	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 60122-0015	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, March 8, 2012 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on January 16, 2012 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to Technology Center AU 2178 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment of the application.*

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 09/22/11

TO SPE OF : ART UNIT 2889

SUBJECT : Request for Certificate of Correction for Appl. No.: 11746579 Patent No.: 7737620

CofC mailroom date: 09/14/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580
You can fax the Directors/SPE response to 571-273-3421

Note: **Should the changes in the claims be approved?**

Lamonte Newsome

Certificates of Correction Branch

571-272-3421

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

Approved	**All** changes apply.
☐ **Approved in Part**	Specify below which changes **do not** apply.
☐ **Denied**	State the reasons for denial below.

Comments: All changes are approved.

Karabi Guharay

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

/Toan Ton/_____ 2889 _____

SPE **Art Unit**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 09/22/11

TO SPE OF : ART UNIT 2889

SUBJECT : Request for Certificate of Correction for Appl. No.: 11746579 Patent No.: 7737620

CofC mailroom date: 09/14/11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580
[redacted]

Note: **Should the changes in the claims be approved?**

Lamonte Newsome

Certificates of Correction Branch

571-272-3421

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

Approved — All changes apply. Comment [k1]: [redacted]

☐ **Approved in Part** — Specify below which changes **do not** apply.

☐ **Denied** — State the reasons for denial below.

Comments: All changes are approved.

Karabi Guharay

PTOL-306 (REV. 7/03) U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

SPE Art Unit

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ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000

MAILED

DEC 28 2010

OFFICE OF PETITIONS

In re Application of	:	
Michael E. Last	:	
Application No. 11/746,614	:	DECISION ON PETITION
Filed: May 9, 2007	:	TO WITHDRAW
Attorney Docket No. 043455/328683	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed November 19, 2010.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. 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 Christopher S. Haggerty on behalf of all attorneys of record. All attorneys/agents have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

All future communications from the Office will be directed to the assignee of the entire interest at the first copied address below until otherwise properly notified by the applicant.

There is an outstanding Office action mailed August 16, 2010 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to Terri Johnson at 571-272-2991.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

cc: **Last Minute Tee Times, Inc.**
210 Autumn Sage Drive
Alpharetta, GA 30005-4653

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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
11/746,614	05/09/2007	Michael E. Last	043455/328683

CONFIRMATION NO. 2977

POWER OF ATTORNEY NOTICE

826
ALSTON & BIRD LLP
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE, NC 28280-4000

OC000000045091685

Date Mailed: 12/22/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 11/19/2010.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/tsjohnson/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Decision Date : June 20,2011

In re Application of :

Katsunori Nishida

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11746632

Filed : 09-May-2007

Attorney Docket No : 076376.0750

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed June 20,2011 , to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid in this application cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.

Telephone inquiries concerning this decision should be directed to the Patent Electronic Business Center (EBC) at 866-217-9197.

This application file is being referred to Technology Center AU 2861 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	11746632
Filing Date	09-May-2007
First Named Inventor	Katsunori Nishida
Art Unit	2861
Examiner Name	ANH VO
Attorney Docket Number	076376.0750
Title	INKJET PRINTERS AND METHODS FOR MOUNTING INK CARTRIDGES TO INKJET PRINTERS

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	/Sam C. Olive/
Name	Sam C Olive
Registration Number	59903

UNITED STATES 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.

INNOVAR, LLC
P O BOX 250647
PLANO TX 75025

MAILED
DEC 20 2010
OFFICE OF PETITIONS

In re Application of	:	
Deborah Ellen Miller Shelton	:	DECISION ON PETITION
Application No. 11/746,633	:	PURSUANT TO
Filed: May 9, 2007	:	37 C.F.R. § 1.182
Attorney Docket No. DS-2	:	
Title: TRELLIS AND TOOL SYSTEM	:	

This is in response to the petition filed on September 16, 2010, pursuant to 37 C.F.R. § 1.182, requesting a change of the name of the inventor. Specifically, Petitioner has requested that "Deborah Ellen Miller Shelton" be changed to "Deborah Ellen Miller."

This petition is **DISMISSED**.

With this petition, Petitioner has included a Supplemental Application Data Sheet (ADS) and the petition fee. This petition cannot be granted however, for the following two reasons.

First, the Supplemental Application Data Sheet that was presented with this petition cannot be accepted, as it has not been titled as such.[1]

Secondly, Petitioner has failed to submit a statement from the inventor that has been signed in both forms of the inventor's name, averring one to be the version of her name prior to the name change, and the other to be the version subsequent to the name change which is to be reflected in Office records.

The time period for filing a renewed petition is governed by 37 C.F.R. § 1.182. Therefore, if reconsideration of this decision

[1] Pursuant to MPEP § 601.05, any ADS that is submitted to "correct, modify, or augment the original application data...must be titled 'Supplemental Application Data Sheet."

is desired, any response to this decision must be submitted within **TWO MONTHS** from the mail date of this decision, and **extensions of time under 37 C.F.R. § 1.136(a) are not permitted.** The reply should include a cover letter entitled "Renewed Petition pursuant to 37 C.F.R. § 1.182." This is not a final agency action within the meaning of 5 U.S.C § 704.

Any subsequent filing pertaining to this matter should indicate that the attorney handling this matter is Paul Shanoski, and may be submitted by mail,[2] hand-delivery,[3] or facsimile.[4] Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web.[5]

If responding by mail, Petitioner is advised not to place the undersigned's name on the envelope. Only the information that appears in the footnote should be included - adding anything else to the address will delay the delivery of the response to the undersigned.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[6] All other inquiries concerning examination procedures should be directed to the Technology Center.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

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2 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
3 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.
4 (571) 273-8300- please note this is a central facsimile number.
5 https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html
6 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.

UNITED STATES PATENT AND TRADEMARK OFFICE

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MAILED
JUN 06 2011
OFFICE OF PETITIONS

Paper No.

INNOVAR, LLC
P O BOX 250647
PLANO TX 75025

In re Application of	:	
Deborah Ellen Miller	:	DECISION ON RENEWED
Application No. 11/746,633	:	PETITION PURSUANT TO
Patent No. 7,874,100	:	37 C.F.R. § 1.182
Filed: May 9, 2007	:	
Issued: January 25, 2011	:	
Attorney Docket No. DS-2	:	
Title: TRELLIS AND TOOL SYSTEM	:	

This is in response to the renewed petition filed on January 12, 2011 pursuant to 37 C.F.R. § 1.182, requesting a change of the name of the inventor. Specifically, Petitioner has requested that "Deborah Ellen Miller Shelton" be changed to "Deborah Ellen Miller."

This renewed petition is **DISMISSED**.

An original petition pursuant to 37 C.F.R. § 1.182 was filed on September 16, 2010, and was dismissed via the mailing of a decision on December 20, 2010.

With this renewed petition, Petitioner has included an executed and properly titled Supplemental Application Data Sheet (ADS).[1] Petitioner has further included a statement from the inventor that has been signed in both forms of the inventor's name, averring one to be the incorrect version of her name and the other to be the correct version of her name.

However, two weeks after the filing of this renewed petition, the present application matured into U.S. Patent No. 7,874,100. Since the application has issued as a

[1] It is noted that the supplemental ADS cannot be entered, as it fails to "contain all of the section headings listed in" 37 C.F.R. § 1.76(b), as required by 37 C.F.R. § 1.76(a).

patent since the filing of this renewed petition, a certificate of correction will be required (along with the $100 fee and the $130 processing fee) as a condition for granting the petition pursuant to 37 C.F.R. § 1.182. On May 23, 2011, the undersigned telephoned Petitioner in an effort to secure these two items. A voicemail was left, and as of the mailing of this decision, it does not appear that the call has been returned or the items have been provided.

Any response to this decision should include a cover letter entitled "Second Renewed Petition pursuant to 37 C.F.R. § 1.182." This is not a final agency action within the meaning of 5 U.S.C § 704. The response should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail,[2] hand-delivery,[3] or facsimile.[4] Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web.[5] If responding by mail, Petitioner is advised not to place the undersigned's name on the envelope. Only the information that appears in the footnote should be included - adding anything else to the address will delay the delivery of the response to the undersigned.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[6]

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

---

[2] Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
[3] Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.
[4] (571) 273-8300: please note this is a central facsimile number.
[5] https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html
[6] Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.

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SONNENSCHEIN NATH & ROSENTHAL LLP
PO BOX 061080
WACKER DRIVE STATION WILLIS TOWER
CHICAGO IL 60606-1080

MAILED

AUG 3 0 2010

OFFICE OF PETITIONS

In re Application of	:	
Takagi, et al.	:	
Application No. 11/746,736	:	ON REQUEST FOR
Filed: May 10, 2007	:	RECONSIDERATION OF
Attorney Docket Number: 09792909-6939	:	PATENT TERM ADJUSTMENT

This is a decision on the petition under 37 CFR 1.705(b), filed July 14, 2010. Applicants believe that they should be accorded additional PTA. 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 **four hundred sixty-one (461) days** (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. 19-3140, 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

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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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500 WEST MADISON ST
SUITE 3400
CHICAGO IL 60661

MAILED

JAN 31 2011

OFFICE OF PETITIONS

In re Application of	:	
Rodgers, et al.	:	
Application No. 11/746,773	:	ON REQUEST FOR
Filed: May 10, 2007	:	RECONSIDERATION OF
Attorney Docket Number: 17951US02	:	PATENT TERM ADJUSTMENT

This is a decision on the petition under 37 CFR 1.705(b), filed December 6, 2010. Applicants believe that they should be accorded an additional PTA of 309 days. Applicants request this correction on the basis that the Office will take in excess of three years to issue this patent.

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment solely as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file a request for reconsideration of patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

In view thereof, the correct determination of PTA prior to issuance is **six hundred forty-four (644) days**.

The application is being forwarded to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to Petitions Attorney Cliff Congo at (571) 272-3207.

Anthony Knight
Director
Office of Petitions

[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

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DIW Oct-10

ADAM MICHAEL SPENCER
DESERAI MARIE SPENCER
3773 DOGWOOD AVE
PARKER CO 80134

MAILED
OCT 06 2010
OFFICE OF PETITIONS

In re Application of	:	
Spencer et al.	:	
Application Number: 11/746866	:	ON PETITION
Filing Date: 05/10/2007	:	
For: TRI-AXIAL CONTROL DEVICE	:	

This is a decision on the renewed petition under 37 CFR 1.137(b) filed on June 23, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on January 7, 2010, for failure to timely submit the issue and publication fees. On December 28, 2009, a check was received in payment of the above-referenced fees, but the check was returned as unpaid due to insufficient funds. Notice of Abandonment was mailed on February 3, 2010. The paper styled as a petition, filed on March 5, 2010, was dismissed on May 27, 2010.

Receipt of the issue and publication fees and the petition fee required by § 1.17(m) is acknowledged.

Receipt of the change of correspondence address filed on July 19, 2010 is acknowledged. All correspondence will be mailed to the new address of record.

Receipt of the request to change the correspondence address filed on August 25, 2010, is also acknowledged. As this request has been signed only by inventor Adam M. Spencer, the request must be dismissed as not being signed by all inventors. A copy of this decision will be mailed to the address indicated therein. All future correspondence, however, will be mailed solely to the address of record.

The application is referred to the Office of Data Management for processing into a patent.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

cc: ADAM M. SPENCER
2801 WESTERN AV, APT. 137
SEATTLE WA 98121

UNITED STATES PATENT AND TRADEMARK OFFICE

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COWAN LIEBOWITZ & LATMAN, P.C
JOHN J TORRENTE
1133 AVENUE OF THE AMERICAS
NEW YORK, NY 10036

MAILED

JUN 27 2011

OFFICE OF PETITIONS

In re Application of
Salvador E. Correa, et al.
Application No. 11/746,911
Filed: May 10, 2007
Attorney Docket No. B429-114 (25803.120)

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 27, 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 November 23, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is February 24, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $405, 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 1729 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

April M. Wise
Petitions Examiner
Office of Petitions

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1400 CRESCENT GREEN
SUITE 300
CARY NC 27518

MAILED

DEC 06 2010

OFFICE OF PETITIONS

In re Application of	:	
Thomas Vogelsang	:	
Application No. 11/746,946	:	DECISION ON PETITION
Filed: May 10, 2007	:	TO WITHDRAW
Attorney Docket No. 6343-052	:	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 10, 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 Mark R. Bilak on behalf of all attorneys/agents associated with customer number 71577. All attorneys/agents associated with customer number 71577 have been withdrawn.

The correspondence address has been changed and is copied below.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at 571-272-4618.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Qimonda AG
Gustav-Heinemann-Ring 212
Muenchen, Germany 81739

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/746,946	05/10/2007	Thomas Vogelsang	6343-052

CONFIRMATION NO. 3594

POWER OF ATTORNEY NOTICE

71577
COATS & BENNETT/QIMONDA
1400 CRESCENT GREEN
SUITE 300
CARY, NC 27518

OC000000044825475

Date Mailed: 12/06/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 11/10/2010.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/kainabinet/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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JANSSON SHUPE & MUNGER LTD.
245 MAIN STREET
RACINE WI 53403

MAILED

OCT 26 2010

OFFICE OF PETITIONS

In re Application of	:	
James S. WEBER	:	
Application No. 11/747,102	:	DECISION ON PETITION
Filed: May 10, 2007	:	TO WITHDRAW
Attorney Docket No. WDS-2880	:	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 1, 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 Steven M. Shape on behalf of the attorneys of record associated with Customer No. 24314.

The attorneys of record associated with Customer No. 24314 have been withdrawn.

Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address indicated below until otherwise properly notified.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

/DCG/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

Cc: JAMES S. WEBER
P.O. BOX 603
GURNEE IL 60031

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/747,102	05/10/2007	James S Weber	WDS-2880

CONFIRMATION NO. 3884

POWER OF ATTORNEY NOTICE

24314
JANSSON SHUPE & MUNGER LTD.
245 MAIN STREET
RACINE, WI 53403

OC000000044168324

Date Mailed: 10/25/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 10/01/2010.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

/dcgoodwyn/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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FISH & RICHARDSON P.C.
P.O. Box 1022
MINNEAPOLIS MN 55440-1022

MAILED
SEP 30 2011
OFFICE OF PETITIONS

In re Application of :
Cheng, et al. :
Application No. 11/747,156 : ON PETITION
Filed: May 10, 2007 :
Attorney Docket No. 07844-0826001 / P728 :

This decision is mailed in response to the petition under 37 CFR 1.181, filed September 23, 2011, requesting withdrawal of the holding of abandonment in the above-identified application. In the alternative, petitioners request revival under (1) the unavoidable delay provision of 37 CFR 1.137(a) or (2) the unintentional delay provision of 37 CFR 1.137(b).

The petition under 37 CFR 1.181 is **DISMISSED**.

The petition under 37 CFR 1.137(a) is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

This application became abandoned for failure to timely respond to the Notice of Allowance, mailed June 2, 2011, which set a three (3) month period for reply. Accordingly, this application became abandoned on September 3, 2011. A Notice of Abandonment was mailed on September 19, 2011.

Petitioners assert the application did not become abandoned because the Office, both verbally and in writing, allegedly misled the applicants' representative as to the correct controlling dates for paying the required issue fee.

On June 2, 2011, the Office mailed a Notice of Allowance, which set a three month non-extendable period to pay the issue fee and complete a PTOL-85(b). On August 2, 2011, the examiner of record and applicants' representative conducted an interview during which the examiner stated there was a typographical error in the prior Examiner's Amendment and that he would be sending a corrected notice of allowance. On August 4, 2011, the examiner contacted applicants' representative and stated that the Corrected Notice of Allowance would reset the period for response. The Interview Summary of August 11, 2011 supports the summary of events that took place in August 2011. On August 11, 2011, the Office mailed a Supplemental Notice of Allowability/Supplemental Examiner's Amendment. A Notice of Abandonment was mailed on September 19, 2011 because the issue fee was not timely submitted.

Petitioners argue that because the examiner incorrectly stated the controlling dates for paying the issue fee, and applicants' representative relied on the erroneous statements, that the application is not abandoned.

Petitioners are reminded that the Notice of Allowance of June 2, 2011 set a three month non-extendable period for reply. The June 2, 2011 Notice of Allowance was never withdrawn. A Corrected Notice of Allowance was never mailed. A Supplemental Notice of Allowability/Supplemental Examiner's Amendment was mailed on August 11, 2011. However, it did not alter the due date for the issue fee set by the June 2, 2011 Notice of Allowance. The application did become abandoned on September 3, 2011 for failure to pay the issue fee in a timely manner.

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is **dismissed**.

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d).

As authorized, the petition fee of $540.00 will be charge to petitioners' deposit account.

The instant petition lacks item (3).

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 37 CFR 1.137(a).

A Notice of Allowance and Fee(s) Due and a Notice of Allowability set forth separate and distinct requirements that must be satisfied. The Notices are not viewed as a single unit. As stated above, a Corrected Notice of Allowance was never mailed. The only period set for payment of the issue fee is found in the June 2, 2011 Notice of Allowance.

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); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (1891).

Petitioners assert that during a September 6, 2011 telephone conversation, the examiner again confirmed that the period for responding had been reset to being on the date the Supplemental Notice of Allowance was mailed. As discussed above, no supplemental notice of allowance was mailed. Petitioners are reminded that official communication with the Office must be carried out in writing. 37 CFR 1.2. Oral advice from Office employees is not binding. See In re Sivertz, 227 USPQ 255,256 (Comm'r Pat. 1985). An Office employee's alleged statements made during a telephone conversation cannot nullify the June 2, 2011 Notice, which required timely submission of the issue fee to avoid abandonment of the application.

In the instant case, petitioners have failed to provide adequate evidence that the delay was unavoidable. The petition under 37 CFR 1.137(a) is **dismissed.**

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,510.00 and a completed PTOL-85(B); (2) authorization to charge deposit account no. 06-1050 the petition fee of $1,620.00; and (3) a proper statement of unintentional delay.

Deposit account no. 06-1050 will be charged $1,620.00.

The petition under 37 CFR 1.137(b) is **granted.**

After the mailing of this decision, the application will be forwarded to the Office of Data Management for processing into a patent.

Telephone inquiries may be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

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JAN 27 2012
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FISH & RICHARDSON P.C.
P.O. Box 1022
MINNEAPOLIS MN 55440-1022

In re Patent No. 8,055,779	:	DECISION ON REQUEST
Cheng, et al.	:	FOR
Issue Date: November 8, 2011	:	RECONSIDERATION OF
Application No. 11/747,156	:	PATENT TERM ADJUSTMENT
Filed: May 10, 2007	:	and
Atty Docket No. 07844-0826001 / P728	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on January 9, 2012, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by eight hundred and twenty (820) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by seven hundred and eight (708) days is **GRANTED to the extent indicated herein.**

Patentees maintain that entry of a reduction to the patent term of adjustment of 36 days is appropriate for the filing of an Information Disclosure Statement (IDS) on May 13, 2011. Patentees' argument is not persuasive. A review of the application file history reveals that a Notice of Appeal was filed April 7, 2011, and the IDS was filed May 13, 2011. There does not appear to be any filing that would trigger a reduction under 37 CFR 1.704(c)(8) as a Notice of Appeal is not considered a reply such that any paper applicant filed thereafter would be considered a supplemental paper under 37 CFR 1.704(c)(8).

Patentees further argue that the reduction to the patent term adjustment under 37 CFR 1.704(c)(3) should be 28 days rather

than the 33 (27 + 6) days entered. Patentees' argument is persuasive. **The period of reduction of 27 days and 6 days will be removed and a period of reduction of 28 days entered.**

Patentees dispute the period of time excluded from B delay for appellate review. Patentee's argument has been considered, but not found persuasive. The period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). An appeal to the Board of Patent Appeals and Interferences commences with the filing of a notice of appeal. See 35 U.S.C. 134(a). Generally, an appeal to the Board of Patent Appeals and Interferences ends with either 1) a Board decision, 2) the examiner reopening prosecution and issuing another Office action, or 3) the applicant filing a request to withdraw the appeal and reopen prosecution (e.g. the filing of a request for continued examination). In this instance the period consumed by appellate review is 179 days. Thus, B delay is 368 (547 - 179) 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 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.

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 Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **seven hundred and eight (708) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 8,055,779 B1

DATED : Nov. 8, 2011

INVENTOR(S) : Cheng, 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 (703) days

Delete the phrase "by 703 days" and insert – by 708 days--

2 5 AUG 2010

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P.O. Box 1450
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Hovey Williams LLP
10801 Mastin Blvd., Suite 1000
Overland Park KS 66210

In re Application of	
Jallal Messadek	: DECISION ON PETITION
Application No. 11/747,167	: UNDER 37 CFR 1.78(a)(3)
Filed: May 10, 2007	:
Attorney Docket No. 38229-CIP	:

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed 28 December 2009, to accept an unintentionally delayed claim under 35 U.S.C. § 120 and 365(c) for the benefit of priority to the prior-filed international application set forth in the amendment filed concurrently with the instant petition.

The renewed petition is **GRANTED**.

The present nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed international application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3).

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;

(2) the surcharge set forth in § 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) a reference to the prior-filed international 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. The statement contained in the instant petition is being construed as the statement required by 37 CFR 1.78 that the entire period of delay was unintentional and petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 and 365 (c) to the prior-filed international application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the prior-filed application. In order for this application to be entitled to the benefit of the prior-filed 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 application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether this application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed international application, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Derek Putonen at (571) 272-3294. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to Technology Center Art Unit 1647 for appropriate action on the amendment filed 28 December 2009, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 and 365 (c) to the prior-filed international application.

BryanLin

Bryan Lin
Legal Examiner
Office of PCT Legal Administration

ATTACHMENT: Corrected Filing Receipt

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Hovey Williams LLP
10801 Mastin Blvd., Suite 1000
Overland Park KS 66210

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In re Application of	:	
Jallal Messadek	:	
Application No. 11/747,167	:	DECISION ON PETITION
Filed: May 10, 2007	:	
Attorney Docket No. **38229-CIP**	:	

This is a decision on the petition, filed May 27, 2011, captioned "Petition to the Director Under 37 C.F.R. 1.181 to Set Aside Notice of Abandonment," , 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 timely respond to the non-final Office action of September 29, 2009, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on February 15, 2011.

Petitioner states that a timely reply (Amendment) concurrently with a petition to accept a delayed claim of priority was filed on December 28, 2009. Petitioner has submitted a copy of the previously mailed transmittal form, and a post card receipt dated December 28, 2009 from the USPTO indicating the receipt of above mentioned items.

Petitioner contends that the Notice of Abandonment was mailed in error since a timely reply (Amendment) was filed December 28, 2009. A review of the application file record confirms the receipt of the reply of December 28, 2009. Thus, the application is not abandoned in fact.

In view of the above, the Notice of Abandonment is hereby **VACATED** and the holding of abandonment **WITHDRAWN**.

Telephone inquiries concerning this decision should be directed to JoAnne Burke at (571) 272-4584.

This application is being referred to Technology Center AU 1647 for appropriate action in the normal course of business on the reply received on December 28, 2009.

/ Ramesh Krishnamurthy /
Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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JUL 12 2011
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HISCOCK & BARCLAY, LLP
2000 HSBC Plaza
100 Chestnut Street
Rochester, NY 14604-2404

In re Application of	:	
Thomas Cartwright	:	
Application No. 11/747,455	:	DECISION ON PETITION
Filed: May 11, 2007	:	TO WITHDRAW
Attorney Docket No. 3018046 US02	:	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 22, 2011.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The request was signed by Thomas R. FitzGerald 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 Thomas Cartwright at the address indicated below.

There is an outstanding Notice of Allowability mailed May 25, 2011 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to Terri Johnson at 571-272-2991.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

cc: **Thomas Cartwright**
365 NE Baker Road
Stuart, FL 34994

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
11/747,455	05/11/2007	Thomas Cartwright	3018046 US02

CONFIRMATION NO. 4514

POWER OF ATTORNEY NOTICE

44331
HISCOCK & BARCLAY, LLP
2000 HSBC PLAZA
100 Chestnut Street
ROCHESTER, NY 14604-2404

OC000000048687624

Date Mailed: 07/11/2011

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 06/22/2011.

- 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.

/tsjohnson/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

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NAVAL RESEARCH LABORATORY
ASSOCIATE COUNSEL (PATENTS)
CODE 1008.2
4555 OVERLOOK AVENUE, S.W.
WASHINGTON DC 20375-5320

MAILED
MAY 19 2011
OFFICE OF PETITIONS

In re Application of	:	
Nicholas J. Condon et al.	:	
Application No. 11/747,564	:	DECISION ON PETITION
Filed: May 11, 2007	:	
Attorney Docket No. 97,493	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 15, 2011, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before March 23, 2011, as required by the Notice of Allowance and Fee(s) Due, mailed December 23, 2011. Accordingly, the date of abandonment of this application is March 24, 2011. A Notice of Abandonment was mailed on April 7, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,510 and the publication fee of $300, (2) the petition fee of $1,620, and (3) a proper statement of unintentional delay. Accordingly, the issue and publication fees are accepted as being unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

This application is being referred to the Office of Data Management for further processing into a patent.

/Kimberly A. Inabinet/

Kimberly A. Inabinet
Petitions Examiner
Office of Petitions

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MOTOROLA MOBILITY, INC
600 NORTH US HIGHWAY 45
W2-55BB
LIBERTYVILLE IL 60048-5343

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In re Application of	:	
Kevin M. McKoen et al.	:	
Application No. 11/747,584	:	DECISION ON PETITION
Filed: May 11, 2007	:	
Attorney Docket No. BCS04392	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 15, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed September 24, 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 December 25, 2010. A Notice of Abandonment was mailed on April 26, 2011.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $1,860, (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.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

This application is being referred to Technology Center AU 2626 for appropriate action by the Examiner in the normal course of business on the reply received October 15, 2011.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

cc: Stewart M. Wiener
101 Tournament Drive
Horsham, PA 19044

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 05102011

DATE : April 12, 2011

TO SPE OF : ART UNIT 2882

SUBJECT : Request for Certificate of Correction for Appl. No. 11/747630 patent No.:7834981

C of C mailroom date:--02-28-11

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.

- [X] **Approved** — **All** changes apply.
- [ ] **Approved in Part** — Specify below which changes **do not** apply.
- [ ] **Denied** — State the reasons for denial below.

Comments:

/Edward J Glick/ GAU 2882

SPE **Art Unit**

OK TO ENTER: /J.H./

PTO/SB/44 (04-05)
Approved for use through 04/30/2007. 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. : 7,800,503

APPLICATION NO.: 11/747,700

ISSUE DATE : September 21, 2010

INVENTOR(S) : De Witte 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:

Claim 19, Column 11, Line 46:
"comprising providing" should be "wherein"

"first antenna on a common substrate" should be "first antenna are formed on a common substrate"

Claim 24, Column 11, Line 63:

"comprising providing" should be "comprising"

Claim 25, Column 12, Line 1:

comprising providing" should be "comprising"

/Jeffery Hofsass/
04/17/2012

MAILING ADDRESS OF SENDER (Please do not use customer number below):

OK TO ENTER: /J.H./

This collection of information is required by 37 CFR 1.322, 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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AUSTIN RAPP & HARDMAN
170 SOUTH MAIN STREET, SUITE 735
SALT LAKE CITY UT 84101

In re Application of	:	
YEH, et al	:	
Application No. 11/747,736	:	DECISION ON PETITION
Filed: May 11, 2007	:	
Attorney Docket No. 3557.2.177	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 8, 2011, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Notice, mailed June 29, 2010. The Notice set a period for reply of **one (1) month** from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on July 30, 2010. A Notice of Abandonment was mailed June 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 payment of the excess fees; (2) the petition fee of $1620; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

All other inquires should be directed to the Technology Center at (571) 272-2600.

This application is being referred to Technology Center AU 2611 for further processing.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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MARSHALL, GERSTEIN & BORUN LLP (FISHER)
233 SOUTH WACKER DRIVE
6300 WILLIS TOWER
CHICAGO IL 60606

MAILED
JUL 27 2011
OFFICE OF PETITIONS

In re Application of	:	
Andrew P. Dove, et al.	:	
Application No. 11/747,777	:	DECISION GRANTING PETITION
Filed: May 11, 2007	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 06005/35169D	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, July 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 June 30, 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 2629 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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FINNEGAN HENDERSON FARABOW
GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

MAILED

OCT 25 2010

OFFICE OF PETITIONS

In re Application of	:	
Roy Ben-Yoseph et al	:	DECISION REFUSING STATUS
Application No. 11/747,819	:	UNDER 37 CFR 1.47(a)
Filed: May 11, 2007	:	
Attorney Docket No. 10587.0313-00000	:	

This is a decision on the petition filed, September 7, 2010, requesting reconsideration of a decision mailed July 6, 2010, which refused to accord 37 CFR 1.47(a) status to the above-identified application.

The petition is **dismissed.**

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Any extensions of time will be governed by 37 CFR 1.136(a).

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks item (2) set forth above.

As to item (2), the oath or declaration is unacceptable since the declaration must be signed by the signing inventors on behalf of themselves and on behalf of the nonsigning inventor Cian Chang. The declaration would be acceptable if the signing inventors signed in their respective signature blocks and the signature block of the nonsigning inventor Cian Chang is left blank. See MPEP 409.03(a).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

Telephone inquiries should be directed to Irvin Dingle at (571) 272-3210.

David Bucci
Petition Examiner
Office of Petitions

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FINNEGAN HENDERSON FARABOW GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

MAILED

MAR 16 2011

OFFICE OF PETITIONS

In re Application of	:	
Roy Ben-Yoseph et al	:	DECISION GRANTING STATUS
Application No. 11/747,819	:	UNDER 37 CFR 1.47(a)
Filed: May 11, 2007	:	
Attorney Docket No. 10587.0313-00000	:	

This is a decision on the petition filed, January 25, 2011, requesting reconsideration of a decision mailed October 25, 2010, which refused to accord 37 CFR 1.47(a) status to the above-identified application.

The petition is **GRANTED.**

Petitioner has shown that the non-signing inventor, Cian Chang, has refused to join in the filing of the above-identified application.

The application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

As provided in 37 CFR 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

This matter is being referred to the Office of Patent Application Processing.

Telephone inquiries regarding this decision should be directed to Irvin Dingle at (571) 272-3210.

David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Cian Chang
13880 Dulles Corner Lane
Herndon, VA 20171

MAILED
MAR 16 2011
OFFICE OF PETITIONS

In re Application of
Roy Ben-Yoseph; Iain Fraser Langridge; Cian Chang
Application No. 11/747,819
Filed: May 11, 2007
For: WINDOW RESIZING IN A GRAPHICAL USER INTERFACE

Dear Mr. Chang:

You are named as a joint inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 116 (United States Code), and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Telephone inquiries regarding this communication should be directed to the Irvin Dingle at (571) 272-3210. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (571) 272-3150 or 1 (800) 972-6382 (outside the Washington D.C. area).

David Bucci
Petitions Examiner
Office of Petitions

cc: Finnegan, Henderson, Farabow, Garrett & Dunner LLP
901 New York Avenue, NW
Washington, DC 20001-4413

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PHILIP S. JOHNSON, ESQ.
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
WH3221
NEW BRUNSWICK, NJ 08933-7003

MAILED

FEB 28 2011

OFFICE OF PETITIONS

In re Application of	:	
Stephen H. DIAZ, et *al.*	:	
Application No. 11/747,907	:	DECISION ON PETITION
Filed: May 13, 2007	:	UNDER 37 CFR 1.181
Attorney Docket No. **CMI5007USDIV1**	:	

This is a decision on the petition, filed July 22, 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 **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.

This application was held abandoned for failure to timely respond to the Office action of September 29, 2009, which set a three (3) month shortened statutory period for reply. Accordingly, a reply was due on or before December 29, 2009.

Petitioner states that a timely reply was electronically filed on December 22, 2009, which included the following papers: Notice of Appeal with appeal fee and Amendment. Petitioner has submitted a copy of the previously submitted correspondence, which is accompanied by a electronic filing receipt bearing a receipt dated of December 22, 2009, which rendered the reply timely filed.

In view of the above, the holding of abandonment for failure to timely file a reply to the Office action of September 29, 2009 is hereby withdrawn and the application restored to pending status.

Telephone inquiries related to this decision may be directed to Monica A. Graves at (571) 272-7253. This application is being referred to Technology Center AU 3773 for appropriate action in the normal course of business on the reply received with petition.

Thurman K. Page
Petitions Examiner
Office of Petitions

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HORRIGAN CORPORATION
2300 EIGHTH ST
OLIVENHAIN CA 92024

MAILED
MAR 18 2011
OFFICE OF PETITIONS

In re Application of
Horrigan
Application No. 11/747,997
Filed: May 14, 2007
For: METHOD, DEVICE AND FORMULATION FOR THE TREATMENT OF NAIL DISORDERS

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 10, 2011, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The petition has **not** been reviewed on the merits because the petition has not been properly signed.

In this regard, petitioner's attention is directed to 37 CFR 1.33(b), which states.

> (b) Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:
> (1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
> (2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;
> (3) An assignee as provided for under §3.71(b) of this chapter; or
> (4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

The petition has not been signed.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3215.

Charlema Grant
Petitions Attorney
Office of Petitions

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HORRIGAN CORPORATION
2300 EIGHTH ST.
OLIVENHAIN CA 92024

MAILED
APR 20 2011
OFFICE OF PETITIONS

In re Application of
Horrigan
Application No. 11/747,997
Filed: May 14, 2007
For: METHOD, DEVICE AND FORMULATION FOR THE TREATMENT OF NAIL DISORDERS

DECISION ON PETITION

This is a decision on the renewed 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**.

This above-identified application became abandoned for failure to timely file a reply to a restriction requirement mailed March 15, 2010. The Office Action set a one (1) month shortened statutory period for reply. No timely extensions of time were obtained under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on April 16, 2010. A Notice of Abandonment was mailed March 16, 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 reply to the restriction requirement (2) the petition fee of $810.00, and (3) a 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 $555 extension of time fee submitted with the petition on February 10. 2011 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3215.

This application is being referred to Technology Center AU 3767 for appropriate action by the Examiner in the normal course of business on the reply received

Charlema Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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.
11/748,093	05/14/2007	Yusuke KIKUCHI	308725US2	5792

7590 02/22/2011
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER
MESA, JOSE M

ART UNIT	PAPER NUMBER
2484	

NOTIFICATION DATE	DELIVERY MODE
02/22/2011	ELECTRONIC

DECISION GRANTING PETITION UNDER 37 CFR 1.138(d)

The declaration of express abandonment is recognized

This is in response to the petition under 37 CFR 1.138(d), requesting for a refund of any previously paid search fee and excess claims fee in the above-identified application.

The petition is granted.

The express abandonment is recognized. Any previously paid search fee and excess claims fee are hereby refunded.

Telephone inquiries should be directed to the Office of Data Management at (571) 272-4200.

Nioni Farnes

Patent Publication Branch
Office of Data Management

FORM PET651G (Rev. 08/07)

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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PHILIP S JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK NJ 08933-7003

MAILED

AUG 03 2010

OFFICE OF PETITIONS

In re Patent No. 7,645,227	: DECISION ON
Smith, et al.	: REQUEST FOR RECONSIDERATION
Application No. 11/748,136	: of PATENT TERM ADJUSTMENT
Issue Date: January 12, 2010	:
Filed: May 14, 2007	:
Attorney Docket No. GYN5040USNP	:

This is a decision on the "PETITION TO HAVE PATENT TERM ADJUSTMENT RECALCULATED", filed January 11, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected.

The petition to correct the patent term adjustment indicated on the above-identified patent is **DISMISSED.**

On January 12, 2010, the instant application matured into U.S. Patent No. 7,645,227 with a patent term adjustment of twenty (20) days. Patentees filed the instant application for patent term adjustment on January 11, 2010. The Office determined a patent term adjustment of 20 days based upon 158 days of Office delay pursuant to 37 CFR 1.703(a)(2), reduced by 138 days of Applicant delay (135 days pursuant to 37 CFR 1.704(c)(8), and 3 days pursuant to 37 CFR 1.704(b)) .

A review of the file reveals that there were no errors in the calculation of the patent term adjustment.

The $200.00 fee set forth in 37 CFR 1.18(e) has been charged to Deposit Account No. 10-0750, as authorized.

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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Locke Lord Bissell & Liddell
IP Docket Department
3 World Financial Center
New York NY 10281-2101

MAILED
JUN 15 2011
OFFICE OF PETITIONS

In re Application of	:	
Kaisa Kautto-Koivula, et al.	:	
Application No. 11/748,158	:	DECISION GRANTING PETITION
Filed: May 14, 2007	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 1004289.143US	:	
42084150US1		

This is a decision on the petition under 37 CFR 1.313(c)(2), filed, June 14, 2011 to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on December 8, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Terri Johnson at (571) 272-2991.

This application is being referred to Technology Center AU 2823 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

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NEIFELD IP LAW PC
4813-B EISENHOWER AVENUE
ALEXANDRIA VA 22304

MAILED
NOV 08 2011
OFFICE OF PETITIONS

In re Application of	:	
Roberts, et al.	:	
Application No. 11/748,239	:	ON REQUEST FOR
Filed: May 14, 2007	:	RECONSIDERATION OF
Attorney Docket Number: PIP193ROBEU-US	:	PATENT TERM ADJUSTMENT

This is a decision on the petition under 37 CFR 1.705(b), November 2, 2011. Applicants believe that the PTA should be accorded an additional sixty-two (62) days. Applicant requests this correction on the basis that the Office will take in excess of three years to issue this patent pursuant to 37 CFR 1.702(b).

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment solely as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE**.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file a request for reconsideration of patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicant is advised that he may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee[1].

In view thereof, the correct determination of PTA prior to issuance is **one thousand sixty-five (1065) days.**

Receipt of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged.

The application is being forwarded to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3207.

Cliff Congo
Petitions Attorney
Office of Petitions

[1] For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

UNITED STATES PATENT AND TRADEMARK OFFICE

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MAILED
APR 21 2011
OFFICE OF PETITIONS

ZILKA-KOTAB, PC
PO BOX 721120
SAN JOSE, CA 95172-1120

In re Application of
David M. Cole, et al.
Application No. 11/748,439
Filed: May 14, 2007
Attorney Docket No. NAI1P328A/03.054.02

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 24, 2011.

The request is **DISMISSED** as moot.

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 undersigned at 571-272-1642.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

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NORTH AMERICA INTELLECTUAL PROPERTY CORPORATION
P.O. BOX 506
MERRIFIELD VA 22116

MAILED

FEB 15 2011

OFFICE OF PETITIONS

In re Application of	:	
Kuo-Wei Yang et al.	:	
Application No. 11/748,477	:	DECISION ON PETITION
Filed: May 14, 2007	:	
Attorney Docket No. **NAUP0852USA**	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 5, 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 December 17, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed September 17, 2010. Accordingly, the date of abandonment of this application is December 18, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply filed on December 20, 2010, in the form of payment of the issue fee of $1,510 and the publication fee of $300, (2) the petition fee of $1,620; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to JoAnne Burke at (571) 272-4584.

This application is being referred to the Office of Data Management for processing into a patent.

JoAnne Burke
Petitions Examiner
Office of Petitions

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY OF COMMERCE AND
COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, DC 20231

5/25/2011

Patent No. :7821473
Inventor(s) :Bryan J. Justice
Issued :10/26/2010
Title :Gradient Index Lens For Microwave Radiation
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 col. 3 line 4 is that "fail" is not on that line please identify where the correction is. 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

GIFFORD KRASS SPRINKLE ANDERSON & CITKOWSKI, P.C.
2701 TROY CENTER DRIVE, SUITE 330
POST OFFICE BOX 7021
TROY, MICHIGAN 48007-7021

HR

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450

Law Office of David H. Johnson
15950 Dallas Parkway
Suite 225
Dallas, Texas 75248

MAILED

FEB 17 2011

OFFICE OF PETITIONS

In re Application of
Hamet WATT et al.
Application No. 11/748,670
Filed: 15 May 2007
Atty Docket No. NM001

: ON PETITION

This is a decision on the petitions filed 18 May 2010 under 37 CFR 1.181 to withdraw the holding of abandonment, and alternatively, 37 CFR 1.137(b) to revive the above-identified Application.

The Petition under 37 CFR 1.181 is **DISMISSED**.

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 6 October 2010 ("outstanding Office action"), which set a shortened statutory period of reply of three (3) months. No reply was received, and no extension of time under the provisions of 37 CFR 1.136(a) was obtained. The application thus became abandoned on 7 January 2010.

Petitioner asserts that the Abandonment be withdrawn "... because the October 6 2009 Office Action was never received". This request is dismissed based on the following reasoning:

A grantable petition to withdraw holding of abandonment under 37 CFR 1.181 based on failure to receive an Office action requires: (1) a statement from the Practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and (2) a copy of the docket record where the non-received Office communication would have been entered had it bee received and docketed. This petition lacks item (2).

With respect to the petition under 37 CFR 1.137(b), the petition satisfies the conditions for revival pursuant to 37 CFR 1.137(b) by including (1) a reply in the form of a

Response to the outstanding Office action, (2) a petition fee of $810.00 (to be charged to deposit account no. 50-0573), and (3) a statement of unintentional delay. The reply to the outstanding Office action is accepted as having been unintentionally delayed.

To note, 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.

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.

The file does not indicate a change of address has been properly submitted, although the address given on the petition differs from the address of record. 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 only to the address of record.

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 Technology Center Art Unit 3622 for further action on the filed Response.

David Bucci
Petitions Examiner
Office of Petitions

cc: Messrs. Thomas J. McWilliams & Todd A. Norton
Drinker Biddle & Reath LLP
One Logan Square, Suite 2000
Philadelphia, Pennsylvania 19103

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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FITCH EVEN TABIN & FLANNERY
120 SOUTH LASALLE STREET, SUITE 1600
CHICAGO, IL 60603-3406

MAILED
NOV 10 2010
OFFICE OF PETITIONS

In re Application of	:	
Dennis Ann KIM, et *al.*	:	
Application No. 11/748,750	:	DECISION GRANTING PETITION
Filed: May 15, 2007	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **1410-77586-US**	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed November 8, 2010, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on October 20, 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 3721 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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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET, FOURTEENTH FLOOR
IRVINE, CA 92614

MAILED
JAN 21 2011
OFFICE OF PETITIONS

In re Application of	:	
Chul-Hong KIM, et *al.*	:	
Application No. 11/748,809	:	DECISION GRANTING PETITION
Filed: May 15, 2007	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **SDIYOU.235AUS**	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed January 20, 2011, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). *See* 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on December 14, 2010 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-7253.

This application is being referred to Technology Center AU 2879 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/Monica A. Graves/
Petitions Examiner, Office of Petitions

---

[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission). Petitioner is advised that the Issue Fee Transmittal Form* ***must*** *be completed and timely submitted to avoid abandonment of the application.*

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 10/26/09 **Paper No.:** —

TO SPE OF : ART UNIT 2862

SUBJECT : Request for Certificate of Correction for Appl. No.: 11/748846 Patent No.: 7576543B2

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Virginia Tolbert
Certificates of Correction Branch
571-272-0460

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

/Patrick Assouad/ SPE AU2858

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Alexandria, VA 22313-1450
www.uspto.gov

KANG LIM
2491 SAN RAMON VALLEY BLVD., #1-229
SAN RAMON CA 94583

MAILED

MAY 19 2011

OFFICE OF PETITIONS

In re Application of	:	
Iwamoto et al.	:	
Application No. 11/749,080	:	DECISION ON PETITION
Filed: May 15, 2007		TO WITHDRAW FROM RECORD
Attorney Docket No. KT-0702	:	
	:	

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 24, 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 was signed by Kang S. Lim on behalf of all attorneys of record associated with Customer Number 36088. However, since the practitioners were not appointed by a Customer Number upon filing of the instant application, petitioner may not withdraw the practitioners by Customer Number.

Further, 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 3 7 CFR 3. 71, or, if no assignee of the entire interest has properly been made of record, the most current address information provided for the first named inventor. The request to change the correspondence of record is not acceptable as the requested correspondence address is not that of the first named inventor, but rather the second named inventor.

As such, all future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Currently, there is an outstanding Office action mailed May 13, 2011 that requires a reply.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

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Alexandria, VA 22313-1450
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KANG LIM
2491 SAN RAMON VALLEY BLVD., #1-229
SAN RAMON CA 94583

MAILED
JUL 07 2011
OFFICE OF PETITIONS

In re Application of
Iwamoto et al.
Application No. 11/749,080
Filed: May 15, 2007
Attorney Docket No. KT-0702

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 July 1, 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.***

Therefore, as there is currently no Statement under 37 CFR 3.73(b) of record in the instant application, the Office cannot change the correspondence address to the address on the Request to Withdraw.

As such, all future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant.

Currently, there is an outstanding Office action mailed May 13, 2011 that requires a reply.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

/Joan Olszewski/
Joan Olszewski
Petitions Examiner
Office of Petitions

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MICHAEL P. MORRIS
BOEHRINGER INGELHEIM USA CORPORATION
900 RIDGEBURY ROAD
P.O. BOX 368
RIDGEFIELD CT 06877-0368

MAILED
APR 18 2011
OFFICE OF PETITIONS

In re Application of	:	
DURAN, et al	:	
Application No. 11/749,212	:	ON PETITION
Filed: May 16, 2007	:	
Attorney Docket No. 01-1816-7D7	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 17, 2011, to revive the above-identified application.

The petition is **DISMISSED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of July 6, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). *See* MPEP 711.03(c)(III)(A)(2). Since the amendment submitted does not *prima facie* place the application in condition for allowance (see attached Advisory Action, previously mailed August 5, 2010), the reply required must be a Notice of Appeal (and appeal fee), RCE, or the filing of a continuing application under 37 CFR 1.53(b).

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300.**

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

/Diane C. Goodwyn/
Diane C.Goodwyn
Petitions Examiner
Office of Petitions

Attachment: Advisory Action

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.
11/749,212	05/16/2007	Adil Duran	01-1816-7-D7	7799

28501 7590 08/05/2010
MICHAEL P. MORRIS
BOEHRINGER INGELHEIM USA CORPORATION
900 RIDGEBURY ROAD
P. O. BOX 368
RIDGEFIELD, CT 06877-0368

EXAMINER
MOORE, SUSANNA

ART UNIT	PAPER NUMBER
1624	

NOTIFICATION DATE	DELIVERY MODE
08/05/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO.e-Office.rdg@boehringer-ingelheim.com

Advisory Action Before the Filing of an Appeal Brief	Application No. 11/749,212	Applicant(s) DURAN ET AL.	
	Examiner SUSANNA MOORE	Art Unit 1624	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 July 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 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: *The definition of the variable R3 was removed by amendment. This raises a new 112, second paragraph rejection.* (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: 1.
   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: _____.

/James O. Wilson/
Supervisory Patent Examiner, Art Unit 1624

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MICHAEL P. MORRIS
BOERHRINGER INGELHEIM USA CORPORATION
900 RIDGEBURY ROAD
P.O. BOX 368
RIDGEFIELD CT 06877-0368

MAILED

MAY 3 1 2011

OFFICE OF PETITIONS

In re Application of	:	
DURAN, et al	:	
Application No. 11/749,212	:	**DECISION ON PETITION**
Filed: May 16, 2007	:	
Attorney Docket No. 01-1816-7-D7	:	

This is a decision on the renewed 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 timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of July 6, 2010. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is October 7, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810, and the submission required by 37 CFR 1.114; (2) the petition fee of $1620; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

This application is being referred to Technology Center AU 1624 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

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: 47004.000466	
Application Number: 11/749,213	Filing Date (or 371(b) or (f) Date): 05/16/2007
Patent Number: 7,953,653	Issue Date: 05/31/2011
First Named Inventor: Kent Siggers	
Title: System And Method For Combined Reconciliation Of Co-Branded Card Promotion And Settlement Of Private Label Card Accounts	

PATENTEE HEREBY REQUESTS RECALCULATION OF THE PATENT TERM ADJUSTMENT (PTA) UNDER 35 USC 154(b) INDICATED ON THE ABOVE-IDENTIFIED PATENT. THE PATENTEE'S SOLE BASIS FOR REQUESTING THE RECALCULATION IS THE USPTO'S PRE-*WYETH* INTERPRETATION OF 35 U.S.C. 154(b)(2)(A).

Note: This form is only for requesting a recalculation of PTA for patents issued before March 2, 2010, if the sole basis for requesting the recalculation is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A). See Instruction Sheet on page 2 for more information.

Patentees are reminded that to preserve the right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination, a patentee must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

**Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir., Jan. 7, 2010).

Signature	Date 08/01/2011
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.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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HUNTON & WILLIAMS LLP
INTELLECTUAL PROPERTY DEPARTMENT
2200 Pennsylvania Avenue, N.W.
WASHINGTON, DC 20037

Mail Date: 08/05/2011

Applicant	: Kent Siggers	: DECISION ON REQUEST FOR
Patent Number	: 7953653	: RECALCULATION of PATENT
Issue Date	: 05/31/2011	: TERM ADJUSTMENT IN VIEW
Application No	: 11/749,213	: OF WYETH
Filed	: 05/16/2007	:
		:

The Patentee's Request for Recalculation is **DISMISSED.**

This Request is deemed ineligible for consideration for one or more of the following reasons:

(A). The patent for which PTA recalculation is requested is either a design or reissue application or is a reexamination proceeding;

(B). The patent for which PTA recalculation is requested resulted from a utility or plant application filed under 35 USC 111(a) before May 29, 2000 and no CPA filed in the application on/after May 29, 2000;

(C). The patent for which PTA recalculation is requested resulted from an international application in which the international filing date was before May 29, 2000 and no CPA filed in the application on/after May 29, 2000;

(D). The patent for which PTA recalculation is requested issued on/after March 2, 2010;

(E). The Request for Recalculation was filed more than 180 days after the grant date of the patent and the request was not filed within two months of a dismissal of a request for reconsideration of the of the patent term under 37 CFR 1.705(d);

(F). The Request for Recalculation is not solely limited to USPTO pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A);

or

(G). A civil action was filed pursuant to 35 U.S.C. 154(b)(4)(A)concerning the same patent at issue in this request.

Patentee may file a reply to this decision dismissing the Request for Recalculation. Patentee must file such reply within one month or thirty days, whichever is longer, of the mail date of the decision dismissing the Request for Recalculation. No fee is required if patentee is asserting in the reply that the dismissal for ineligibility is improper.

Patentee should use document code PET.OP if electronically filing a reply to this dismissal. If the USPTO finds that the request was improperly deemed ineligible, the USPTO will mail applicant a recalculation determination.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A). Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154 (b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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AT&T Legal Department - ZO
Attn: Patent Docketing
Room 2A-207
One AT&T Way
Bedminster, NJ 07921

MAILED
JUN 03 2011
OFFICE OF PETITIONS

In re Application of Tischer :
Application No. 11/749,373 : Decision on Petition
Filing Date: May 16, 2007 :
Attorney Docket No. BS 070043/037-0102 :

This is a decision on the petition under 37 CFR 1.137(b) filed April 5, 2011, to revive the above-identified application.

The petition is **granted**.

The above-identified application became abandoned for failure to submit the issue fee in a timely manner in reply to the Notice of Allowance mailed December 27, 2010, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on Tuesday, March 29, 2011. A Notice of Abandonment was mailed on April 7, 2011.

The instant petition requests revival of the application.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed,
(2) The petition fee,
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
(4) A terminal disclaimer and fee if the application was filed on or before June 8, 1995, or if the application is a design application.

The petition satisfies the requirements of 37 CFR 1.137(b) in so far as petitioner has supplied a reply in the form of payment of the issue fee, the required petition fee of $1,620, and the required statement of unintentional delay. Therefore, the petition is granted and the application is revived.

The Office of Data Management ("ODM") will be informed of the instant decision. ODM will then take the any steps necessary, such as contacting the examiner regarding the amendment filed April 5, 2011, to prepare the application for issuance in due course.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

AT&T Legal Department - ZO
Attn: Patent Docketing
Room 2A-207
One AT&T Way
Bedminster NJ 07921

MAILED

OCT 03 2011

OFFICE OF PETITIONS

In re Patent No. 7,990,332	:
Tischer	: DECISION ON REQUEST FOR
Issue Date: August 2, 2011	: RECONSIDERATION OF
Application No. 11/749,373	: PATENT TERM ADJUSTMENT
Filed: May 16, 2007	: AND NOTICE OF INTENT
Attorney Docket No. BS	: TO ISSUE CERTIFICATE OF
070043/037-0102	: CORRECTION
Title: MULTI-DIRECTIONAL	:
RECEIVING ANTENNA ARRAY	:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED ON ISSUED PATENT (37 C.F.R. § 1.705(d))" filed on September 22, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand (1,000) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED**.

The $200.00 petition fee set forth in 37 CFR 1.18(e) has been assessed. No additional fees are required.

The application is being forwarded to the Certificate of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand (1,000)** days.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District

Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries specific to this matter should be directed to undersigned at (571) 272-3215.

/Charlema Grant/

Charlema Grant
Attorney Advisor
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,990,332 B1

DATED : August 2, 2011 **DRAFT**

INVENTOR(S) : Tischer

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 932 days

Delete the phrase "by 932 days" and insert – by 1,000 days--

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Hiscock & Barclay, LLP
One Park Place
300 South State Street
Syracuse NY 13202-2078

MAILED
OCT 28 2010
OFFICE OF PETITIONS

In re Application of	:	
Michael Frankel, et al.	:	
Application No. 11/749,389	:	NOTICE
Filed: May 16, 2007	:	
Attorney Docket No. 3023202 US01	:	

This is in response to the paper filed July 20, 2010 under 37 CFR 1.27(c) seeking status as a small entity.

The statement claiming small entity status of July 20, 2010 has been made of record and small entity status has been accorded.

The proper fee adjustments have been made to the petitioner's deposit account regarding the fee transactions that took place on July 13, 2010.

The application file is being Terri Johnson to 571-272-2991.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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IBM (ROC-BLF)
C/O BIGGERS & OHANIAN, LLP
P.O. BOX 1469
AUSTIN TX 78767-1469

MAILED
FEB 10 2011
OFFICE OF PETITIONS

In re Application of	:	
INGLETT, et al	:	
Application No. 11/749,397	:	DECISION ON PETITION
Filed: May 16, 2007	:	
Docket No. ROC920070072US1	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 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, August 4, 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 5, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a request for reconsideration, (2) the petition fee of $1620; and (3) and the required statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

This application is being referred to Technology Center AU 2111 for appropriate action by the Examiner in the normal course of business.

/Diane C. Goodwyn/
Diane C. Goodwyn
Petitions Examiner
Office of Petitions

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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SEP 17 2010

OFFICE OF PETITIONS

WORKMAN NYDEGGER
100 EAGLE GATE TOWER
60 EAST SOUTH TTEMPLE
SALT LAKE CITY, UT 84111

In re Application of
Brian R. Gephart, et al.
Application No. 11/749,403
Filed: May 16, 2007
Attorney Docket No. 14698.5.1

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 12, 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 R. Burns Israelsen on behalf of all attorneys of record who are associated with customer No. 22913. All attorneys/agents associated with the Customer Number 22913 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 July 7, 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: TRANSACTIONSECURE, LLC
836 SOUTH 150 WEST
CENTERVILLE, UT 84014

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
11/749,403	05/16/2007	Brian R. Gephart	14698.5.1

CONFIRMATION NO. 8156

POWER OF ATTORNEY NOTICE

Brian R. Gephart
11021 South Woodfield Road
South Jordan, UT 84095

OC000000043512389

Date Mailed: 09/15/2010

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 08/12/2010.

- 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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WHITHAM, CURTIS & CHRISTOFFERSON
& COOK, P.C.
11491 SUNSET HILLS ROAD
SUITE 340
RESTON VA 20190

MAILED
NOV 22 2010
OFFICE OF PETITIONS

In re Patent No. 7,602,154	:	
Issue Date: October 13, 2009	:	
Application No. 11/749,405	:	NOTICE
Filed: May 16, 2007	:	
Attorney Docket No. 01640588AA	:	

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

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	11749482
Filing Date	16-May-2007
First Named Inventor	Isamu Nakagawa
Art Unit	2625
Examiner Name	CHAN PARK
Attorney Docket Number	00862.127836.
Title	INFORMATION PROCESSING APPARATUS, CONTROL METHOD THEREOF, AND PROGRAM THEREOF

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	/Frank Cire/
Name	Frank L. Cire
Registration Number	42419

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Decision Date : May 19,2011

In re Application of :

Isamu Nakagawa

DECISION ON PETITION

UNDER CFR 1.313(c)(2)

Application No : 11749482

Filed : 16-May-2007

Attorney Docket No : 00862.127836.

This is an electronic decision on the petition under 37 CFR 1.313(c)(2), filed May 19,2011 , to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid 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 2625 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

In re Application of
Robert L. Doubler

Application No. 11749615

Filed: May 16,2007

Attorney Docket No. 3672U.034

:DECISION ON PETITION TO MAKE SPECIAL
:UNDER 37 CFR 1.102(c)(1)

This is a decision on the electronic petition under 37 CFR 1.102 (c)(1), filed 25-AUG-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.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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RIM/FINNEGAN
901 New York Avenue NW
Washington, DC 20001

MAILED

DEC 17 2010

OFFICE OF PETITIONS

In re Patent No. 7,453,233 :
Issue Date: November 18, 2008 :
Application No.: 11/749,680 : ON PETITION
Filed: May 16, 2007 :
Attorney Docket No.: 11298.0188-02000 :

This is a decision in response to the petition under 37 CFR 1.78(a)(3), filed October 21, 2010, seeking to add a claim for priority under 35 U.S.C. § 120 to nonprovisional Application No. 10/087,629, filed March 1, 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 May 16, 2007. 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.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) must be accompanied by:

> **(1)** the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
> **(2)** the surcharge set forth in § 1.17(t); and
> **(3)** a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition lacks item (1) above. It is noted that petitioner has included an improper "amendment" to add the reference to a prior-filed application on page one following the first sentence of the specification. However, since the application issued into a patent on November 18, 2008, a certificate of correction (along with the $100 fee) is required to satisfy the requirements of 37 CFR 1.78(a)(2)(i).

For future reference petitioner is reminded that an amendment which is physically apart of a petition does not comply with 37 CFR 1.121, 1.52, or 1.4(c) and an incorporation by reference statement added after an application's filing date is not effective because no new matter can be added to an application

after its filing date (*see* 35 U.S.C. § 132(a)). If an incorporation by reference statement is included in an amendment to the specification to add a benefit claim under 35 U.S.C. § 120 after the filing date of the application, the amendment would not be proper. When a benefit claim under 35 U.S.C. § 120 is submitted after the filing of an application, the reference to the prior application cannot include an incorporation by reference statement of the prior application. *See* Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980). *Note* MPEP §§ 201.06(c) and 608.04(b).

If reconsideration of this decision is desired, a renewed petition under 37 CFR § 1.78(a)(3) and an appropriate Certificate of Correction (and fee) are required.

Further correspondence with respect to this matter should be delivered through one of the following mediums:

By mail:	Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450
By hand:	Customer Service Window Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(571) 273-8300 ATTN: Office of Petitions
By internet:	EFS-Web[1]

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

[1] www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/749,683	05/16/2007	Daniel Joseph Raffel	YAH1P066/Y02081US00	8659

7590 09/16/2010
Weaver Austin Villeneuve & Sampson - Yahoo!
P.O. BOX 70250
OAKLAND, CA 94612-0250

EXAMINER
PAN, YONGJIA

ART UNIT	PAPER NUMBER
2173	

NOTIFICATION DATE	DELIVERY MODE
09/16/2010	ELECTRONIC

DECISION DISMISSING PETITION UNDER 37 CFR 1.138(d)

The declaration of express abandonment will not be recognized

This is in response to the petition under 37 CFR 1.138(d), requesting for a refund of any previously paid search fee and excess claims fee in the above-identified application.

The petition is dismissed.

The express abandonment will **not** be recognized for the reason(s) indicated below:

1. ☑ The petition was not filed in sufficient time to permit the appropriate officials to recognize the abandonment before an examination has been made of the application. See 37 CFR 1.138(d).
2. ☐ The petition was not signed by a party authorized by 37 CFR 1.33(b)(1), (3) or (4).
3. ☐ The application is not an application filed under 35 U.S.C. 111(a) on or after December 8, 2004.
4. ☐ The petition for express abandonment under 1.138(d) is dismissed because the applicant did not pay any search fee and excess claims fees in the above-identified application.

Telephone inquiries should be directed to the Office of Data Management at (571) 272-4200.

Nioni Farmer

Patent Publication Branch
Office of Data Management

FORM PET651D (Rev. 08/07)

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GREENBERG TRAURIG (NJ)
200 PARK AVE.
P.O. BOX 677
FLORHAM PARK NJ 07932

MAILED
JAN 24 2012
OFFICE OF PETITIONS

In re Application of David Platt et al. Application No. 11/749,728 Filed: May 16, 2007 Attorney Docket No. 089918-023001	: : : : : :	DECISION ON PETITION TO MAKE SPECIAL UNDER 37 CFR 1.102(c)(1)

This is a decision on the petition under 37 CFR 1.102(c)(1), filed December 21, 2011, to make the above-identified application special based on applicant's age as set forth in M.P.E.P. § 708.02, Section IV.

The petition is **GRANTED**.

A grantable petition to make an application special under 37 CFR 1.102(c)(1) and MPEP § 708.02, Section IV: Applicant's Age must be accompanied by evidence showing that at least one of the applicants is 65 years of age, or more, such as a birth certificate or a statement by applicant. No fee is required

The instant petition includes a statement by an attorney on behalf of inventor Eliezer Zomer, attesting to his/her age. The above-identified application has been accorded "special" status.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at 571-272-4618.

The application is being forwarded to Technology Center 1628 for action on the merits commensurate with this decision.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : January 3, 2012

TO SPE OF : ART UNIT 2443.

SUBJECT : Request for Certificate of Correction for Appl. No.: 11749769. Patent No.: 7877494.

CofC mailroom date: 12-21-11

Please respond to this request for a certificate of correction within 7 days.

FOR IFW FILES:

- Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

FOR PAPER FILES:

Please review the requested changes/corrections as shown in the attached certificate of correction. Please complete this form (see below) and forward it with the file to:

Certificates of Correction Branch (CofC)
Randolph Square – 9D10-A
Palm Location 7580

Note: _____

_____

Magdalene Talley
Certificates of Correction Branch
571-272-0423 _____

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

- ☒ **Approved** — **All** changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: The corrections filed on 12/21/2011 have been approved and the amendments do not raise any issues regarding the scope of the claims.

Thanks

/Tonia L. M. Dollinger/ 2443

SPE **Art Unit**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 10/09/10

TO SPE OF : ART UNIT 1788

SUBJECT : Request for Certificate of Correction for Appl. No.: 11749780 Patent No.: 7704599

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: _____

Carrie Shoho
SPE

1787
Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION